

Annex A

INSOLVENCY REGULATIONS []

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Regulations relating to company insolvency and winding up (including the winding up of companies that are not insolvent) and related matters, including the functions and qualifications of insolvency practitioners, the public administration of insolvency, the penalisation and redress of malpractice and wrongdoing, and the avoidance of certain transactions at an undervalue.

PART 1: GENERAL

1. Title

These Regulations may be cited as the "**Insolvency Regulations 2015**".

2. Legislative authority

These Regulations are made by the Board of Directors of the Global Market.

3. Application of these Regulations

These Regulations apply in the jurisdiction of the Global Market.

4. Date of enactment

These Regulations are enacted on the date specified by the Board of Directors of the Global Market in the resolution approving the adoption of these Regulations.

5. Commencement

These Regulations come into force on the date specified by the Board of Directors of the Global Market in the resolution approving the adoption of these Regulations.

6. Interpretation

Schedule 1 (*Interpretation*) contains—

- (a) interpretative provisions which apply to these Regulations; and
- (b) a list of defined terms used in these Regulations.

7. Administration by the Registrar

These Regulations and any legislation made under these Regulations are administered by the Registrar.

8. Amendments, alterations and supplements

The Board of Directors of the Global Market may from time to time supplement, alter or amend the provisions of these Regulations with such other supporting regulation, orders, rules, guidance or forms that the Board of Directors considers necessary.

9. Conduct of meetings

Where these Regulations require or permit a meeting of creditors, members or contributories to be held (or an alternative process to be followed), the provisions of Schedule 6 (*Creditors' Meetings*) shall govern the conduct of such meeting or alternative process.

PART 2: ADMINISTRATION

Chapter 1 - Nature of Administration

10. Administration

- (1) For the purposes of these Regulations, "**administrator**" of a Company means a person appointed under this Part 2 (*Administration*) to manage the Company's affairs, business and property and "**administrator**" of a Deed of Company Arrangement means a person appointed under this Part 2 (*Administration*) to act as the administrator of a Deed of Company Arrangement.
- (2) For the purposes of this Part 2 (*Administration*)—
 - (a) a Company is "**in administration**" while the appointment of an administrator of the Company has effect;
 - (b) a Company "**enters administration**" when the appointment of an administrator of the Company takes effect;
 - (c) a Company ceases to be in administration when the appointment of an administrator of the Company ceases to have effect in accordance with this Part 2 (*Administration*); and
 - (d) a Company does not cease to be in administration merely because an administrator of the Company vacates office (by reason of resignation, death or otherwise) or is removed from office.
- (3) A person may be appointed as administrator of a Company—
 - (a) by administration order of the Court under Section 15 (*Administration order*);
 - (b) by the holder of a qualifying charge under Section 30 (*Power to appoint*); or
 - (c) by the Company or its Directors under Section 38 (*Power to appoint*).

11. Purpose of administration

- (1) The administrator of a Company must perform his functions with the objective of—
 - (a) rescuing the Company as a going concern; or
 - (b) achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration); or
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-section (4), the administrator of a Company must perform his functions in the interests of the Company's creditors as a whole.
- (3) The administrator of a Company must perform his functions with the objective specified in sub-section (1)(a) unless he thinks either—

- (a) that it is not reasonably practicable to achieve that objective; or
 - (b) that the objective specified in sub-section (1)(b) would achieve a better result for the Company's creditors as a whole.
- (4) The administrator of a Company may perform his functions with the objective specified in sub-section (1)(c) only if—
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-section (1)(a) and (b); and
 - (b) he does not unnecessarily harm the interests of the creditors of the Company as a whole.

12. Administrator

The administrator of a Company must perform his functions as quickly and efficiently as is reasonably practicable.

13. Status of administrators

An administrator of a Company and an administrator of a Deed of Company Arrangement is an officer of the Court (whether or not he is appointed by the Court).

14. General restrictions

- (1) A person may be appointed as administrator of a Company or an administrator of a Deed of Company Arrangement only if he is registered as an insolvency practitioner under these Regulations.
- (2) A person may not be appointed as administrator of a Company which is in administration (subject to the provisions of Chapter 11 (*Replacing Administrator*) of Part 2 (*Administration*) about replacement and additional administrators).
- (3) A person may not be appointed as administrator of a Company which is in liquidation by virtue of—
 - (a) a resolution for voluntary winding up; or
 - (b) a winding-up order.
- (4) Sub-section (3)(a) is subject to Section 48(4) and (5) (*Application where Company in liquidation*).
- (5) Sub-section (3)(b) is subject to Section 48 (*Application where Company in liquidation*).

Chapter 2 - Appointment of Administrator by Court

15. Administration order

An administration order is an order appointing a person as the administrator of a Company.

16. **Conditions for making order**

The Court may make an administration order in relation to a Company only if satisfied—

- (a) that the Company is or is likely to become unable to pay its debts; and
- (b) that the administration order is reasonably likely to achieve the purpose of administration.

17. **Administration application**

(1) An application to the Court for an administration order in respect of a Company (an "**administration application**") may be made only by—

- (a) the Company;
- (b) the Directors of the Company;
- (c) one or more creditors of the Company; or
- (d) a combination of persons listed in paragraphs (a) to (c).

(2) As soon as is reasonably practicable after the making of an administration application the applicant shall notify—

- (a) any person who has appointed an administrative receiver of the Company;
- (b) any person who is or may be entitled to appoint an administrative receiver of the Company;
- (c) any person who is or may be entitled to appoint an administrator of the Company under Section 30 (*Power to appoint*);
- (d) if an administrative receiver has been appointed, on him;
- (e) if there is pending a petition for the winding-up of the Company, on the petitioner (and also on the provisional liquidator, if any);
- (f) on the person proposed as administrator; and
- (g) on the Company, if the application is made by anyone other than the Company.

(3) An administration application may not be withdrawn without the permission of the Court.

(4) In sub-section (1) "**creditor**" includes a contingent creditor and a prospective creditor.

18. **Witness statement in support of administration application**

(1) Where it is proposed to apply to the Court for an administration order to be made in relation to a Company, the administration application shall be in the prescribed form [2.1B] and a witness statement complying with Section 20 (*Content of administration application and witness statement*) must be prepared with a view to its being filed with the Court in support of the administration application.

- (2) If the administration application is to be made by the Company or by the Directors, the witness statement shall be made by one of the Directors, or the secretary of the Company, stating himself to make it on behalf of the Company or, as the case may be, on behalf of the Directors.
- (3) If the administration application is to be made by creditors, the witness statement shall be made by a person acting under the authority of them all, whether or not himself one of their number. In any case there must be stated in the witness statement the nature of his authority and the means of his knowledge of the matters to which the witness statement relates.

19. **Form of administration application**

- (1) If made by the Company or by the Directors, the administration application shall state the name of the Company and its address for service, which (in the absence of special reasons to the contrary) is that of the Company's registered office.
- (2) If the administration application is made by the Directors, it shall state that it is so made under Section 17(1)(b) (*Administration application*); but from and after making it, it is to be treated for all purposes as the administration application of the Company.
- (3) If made by a single creditor, the administration application shall state his name and address for service.
- (4) If the administration application is made by two or more creditors, it shall state that it is so made (naming them); but from and after making it, it is to be treated for all purposes as the administration application of only one of them, named in the administration application as applying on behalf of himself and other creditors. An address for service for that one shall be specified.
- (5) There shall be attached to the administration application a written statement which shall be in the prescribed form [2.2B]¹ by each of the persons proposed to be administrator of a Company stating—
 - (a) that he consents to accept appointment;
 - (b) details of any prior professional relationship(s) that he has had with the Company to which he is to be appointed as administrator; and
 - (c) his opinion that it is reasonably likely that the purpose of administration will be achieved.

20. **Content of administration application and witness statement**

- (1) The administration application shall contain a statement of the applicant's belief that the Company is, or is likely to become, unable to pay its debts, except where the applicant is the holder of a qualifying charge and is making the application in reliance on Section 46 (*Application by holder of qualifying charge*).
- (2) There shall be attached to the administration application a witness statement in support which shall contain—

¹ Various notices and filings in these Regulations will be implemented in practice by a suite of standard forms that will need to be finalised. Current references are to the English forms.

- (a) a statement of the Company's financial position, specifying (to the best of the applicant's knowledge and belief) the Company's assets and liabilities, including contingent and prospective liabilities;
 - (b) details of any security known or believed to be held by creditors of the Company, and whether in any case the security is such as to confer power on the holder to appoint an administrative receiver or to appoint an administrator under Section 30 (*Power to appoint*). If an administrative receiver has been appointed, that fact shall be stated;
 - (c) details of any Insolvency Proceedings in relation to the Company including any petition that has been presented for the winding up of the Company so far as known to the applicant;
 - (d) where it is intended to appoint a number of persons as administrators of a Company, details of the matters set out in Section 154(2) (*Joint administrators*) regarding the exercise of the function of the administrators of the Company; and
 - (e) any other matters which, in the opinion of those intending to make the administration application, will assist the Court in deciding whether to make such an order, so far as lying within the knowledge or belief of the applicant.
- (3) Where the administration application is made by the holder of a qualifying charge in reliance on Section 46 (*Application by holder of qualifying charge*), he shall give sufficient details in the witness statement in support to satisfy the Court that he is entitled to appoint an administrator of a Company under Section 30 (*Power to appoint*).

21. **Filing of administration application**

- (1) The administration application (and all supporting documents) shall be filed with the Court, with a sufficient number of copies for service and use as provided by Section 22 (*Service of administration application*) and in accordance with Part 8 (*Applications to the Court*) of Schedule 1 (*Interpretations*).
- (2) Each of the copies filed shall have applied to it the seal of the Court and be issued to the applicant; and on each copy there shall be endorsed the date and time of filing.
- (3) The Court shall fix a venue for the hearing of the administration application and this also shall be endorsed on each copy of the administration application issued under sub-section (2).
- (4) After the administration application is filed, it is the duty of the applicant to notify the Court in writing of the existence of any Insolvency Proceedings.

22. **Service of administration application**

- (1) In Section 17(2) (*Administration application*) and this Section, references to the administration application are to a copy of the administration application issued by the Court under Section 21(2) (*Filing of administration application*) together with the witness statement required by Section 20 (*Content of administration application and witness statement*) and the documents attached to the administration application.
- (2) Notification for the purposes of Section 17(2) (*Administration application*) shall be by way of service in accordance with Section 24 (*Manner in which service to be effected*), verified in accordance with Section 25 (*Proof of service*).

23. **Notice to officers charged with execution of writs or other process**

The applicant shall as soon as reasonably practicable after filing the administration application give notice of its being made to—

- (a) any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process against the Company or its property; and
- (b) any person who to his knowledge has distrained against the Company or its property.

24. **Manner in which service to be effected**

- (1) Service of the administration application in accordance with Section 22 (*Service of administration application*) shall be effected by the applicant, or his solicitor or legal representative, or by a person instructed by him or his solicitor or legal representative, not less than five (5) business days before the date fixed for the hearing.
- (2) Service shall be effected as follows—
 - (a) on the Company (subject to sub-section (3)), by delivering the documents to its registered office;
 - (b) on any other person (subject to sub-section (4)), by delivering the documents to his proper address;
 - (c) in either case, in such other manner as the Court may direct.
- (3) If delivery to a Company's registered office is not practicable, service may be effected by delivery to its last known principal place of business in the Global Market.
- (4) For the purposes of sub-section (2)(b), a person's proper address is any which he has previously notified as his address for service; but if he has not notified any such address, service may be effected by delivery to his usual or last known address.

25. **Proof of service**

- (1) Service of the application must be verified by a certificate of service.
- (2) The certificate of service must be sufficient to identify the administration application served and must specify—
 - (a) the name and registered number of the Company;
 - (b) the address of the registered office of the Company;
 - (c) the name of the applicant;
 - (d) the Court reference number;
 - (e) the date of the administration application;
 - (f) whether the copy served was a sealed copy;
 - (g) the date on which service was effected; and

- (h) the manner in which service was effected.
- (3) The certificate of service shall be filed with the Court as soon as reasonably practicable after service, and in any event not less than one (1) business day before the hearing of the administration application.
- 26. **Administration application to appoint specified person as administrator by holder of qualifying charge**
 - (1) Where the holder of a qualifying charge applies to the Court under Section 47(1)(b) (*Intervention by holder of a qualifying charge*), he shall produce to the Court—
 - (a) the written consent of all holders of any prior qualifying charge;
 - (b) a written statement in the prescribed form [2.2B] made by the specified person proposed by him as administrator of the Company; and
 - (c) sufficient evidence to satisfy the Court that he is entitled to appoint an administrator of the Company under Section 30 (*Power to appoint*).
 - (2) If an administration order is made appointing the specified person, the costs of the person who made the administration application and the applicant under Section 47(1)(b) (*Intervention by holder of a qualifying charge*) shall, unless the Court otherwise orders, be paid as an expense of the administration.
- 27. **Powers of Court**
 - (1) On hearing an administration application the Court may—
 - (a) make the administration order sought;
 - (b) dismiss the administration application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) treat the administration application as a winding-up petition and make any order which the Court could make under Section 213 (*Powers of Court on hearing of petition*);
 - (f) make any other order which the Court thinks appropriate.
 - (2) An appointment of an administrator of a Company by administration order takes effect—
 - (a) at a time appointed by the order; or
 - (b) where no time is appointed by the order, when the order is made.
 - (3) An interim order under sub-section (1)(d) may, in particular—
 - (a) restrict the exercise of a power of the Directors or the Company;

- (b) make provision conferring a discretion on the Court or on a person qualified to act as an insolvency practitioner in relation to the Company.
- (4) This Section is subject to Section 50 (*Effect of administrative receivership*).
28. **The hearing**
- (1) At the hearing of the administration application, any of the following may appear or be represented–
- (a) the applicant;
 - (b) the Company;
 - (c) one or more of the Directors;
 - (d) if an administrative receiver has been appointed, that person;
 - (e) any person who has presented a petition for the winding-up of the Company;
 - (f) the person proposed for appointment as administrator of the Company;
 - (g) any person that is the holder of a qualifying charge; or
 - (h) with the permission of the Court, any other person who appears to have an interest justifying his appearance.
- (2) If the Court makes an administration order, it shall be in the prescribed form [2.4B].
- (3) 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.
- (4) Where the Court makes an administration order in relation to a Company upon an administration application under Section 48 (*Application where Company in liquidation*), the Court shall include in the order–
- (a) in the case of a liquidator appointed in a voluntary winding-up, his removal from office;
 - (b) details concerning the release of the liquidator;
 - (c) provision for payment of the expenses of the liquidation;
 - (d) provisions regarding any indemnity given to the liquidator;
 - (e) provisions regarding the handling or realisation of any of the Company's property in the hands of or under the control of the liquidator;
 - (f) such provision as the Court thinks just with respect to matters arising in connection with the liquidation; and
 - (g) such other provisions as the Court shall think just.

29. **Notice of administration order**

- (1) If the Court makes an administration order, it shall as soon as reasonably practicable send two sealed copies of the order to the person who made the administration application.
- (2) The applicant shall send a sealed copy of the order as soon as reasonably practicable to the person appointed as administrator of a Company.
- (3) If the Court makes an order under Section 27(1)(d) (*Powers of Court*) or any other order under Section 27(1)(f) (*Powers of Court*), it shall give directions as to the persons to whom, and how, notice of that order is to be given.

Chapter 3 – Appointment of Administrator of a Company by Holder of Qualifying Charge

30. **Power to appoint**

- (1) The holder of a qualifying charge in respect of a Company's property may appoint an administrator of the Company.
- (2) For the purposes of sub-section (1) a charge qualifies if created by an instrument which—
 - (a) states that this sub-section applies to the charge;
 - (b) purports to empower the holder of the charge to appoint an administrator of the Company; or
 - (c) purports to empower the holder of the charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Section 161 (*Appointment and powers of receivers and administrative receivers*).
- (3) For the purposes of sub-section (1) a person is the holder of a qualifying charge in respect of a Company's property if he holds one or more debentures of the Company secured—
 - (a) by a qualifying charge which relates to the whole or substantially the whole of the Company's property; or
 - (b) by a number of qualifying charges and other forms of security which together relate to the whole or substantially the whole of the Company's property.

31. **Restrictions on power to appoint**

- (1) A person may not appoint an administrator of a Company under Section 30 (*Power to appoint*) unless—
 - (a) he has given at least two business days' written notice of the intention to appoint to the holder of any prior charge which satisfies Section 30(2) (*Power to appoint*); or
 - (b) the holder of any prior charge which satisfies Section 30(2) (*Power to appoint*) has consented in writing to the making of the appointment.
- (2) [One charge is prior to another for the purposes of this Section and Section 149 (*Substitution of administrator: competing qualifying charge-holder*) if—

- (a) it (or in the case of Section 30(3)(b) (*Power to appoint*), any charge or security forming part of it) is registered under section 786 (*Charges created by a company*) of the Companies Regulations and was created first; or
 - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each charge was party.]
- (3) An administrator of a Company may not be appointed under Section 30 (*Power to appoint*) while a charge on which the appointment relies is not enforceable.
- (4) An administrator of a Company may not be appointed under Section 30 (*Power to appoint*) if—
- (a) a provisional liquidator of the Company has been appointed under Section 217 (*Appointment of provisional liquidator or of liquidator following administration*); or
 - (b) an administrative receiver of the Company is in office.

32. **Notice of appointment**

- (1) A person who appoints an administrator of a Company under Section 30 (*Power to appoint*) shall file with the Court—
- (a) a notice of appointment in the prescribed form [2.6B]; and
 - (b) the administrator's written statement in the prescribed form [2.2B]; and
 - (c) either—
 - (i) evidence that the person making the appointment has given such notice as may be required by Section 31(1)(a) (*Restrictions on power to appoint*); or
 - (ii) copies of the written consent of all those required to give consent in accordance with Section 31(1)(b) (*Restrictions on power to appoint*); and
 - (d) a statement of those matters provided for in Section 154(2) (*Joint administrators*), if applicable.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is the holder of a qualifying charge in respect of the Company's property;
 - (b) that each charge relied on in making the appointment is (or was) enforceable on the date of the appointment; and
 - (c) that the appointment is in accordance with this Part 2 (*Administration*).
- (3) The notice of appointment must identify the administrator of the Company and must be accompanied by a statement by the administrator of the Company—
- (a) that he consents to the appointment;

- (b) that in his opinion the purpose of administration is reasonably likely to be achieved; and
 - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-section (3) an administrator of the Company may rely on information supplied by Directors of the Company (unless he has reason to doubt its accuracy).
 - (5) A statutory declaration under sub-section (2) must be made not more than five (5) business days before the form is filed with the Court.
 - (6) A person commits a contravention and is liable to a level [●] fine if in a statutory declaration under sub-section (2) he makes a statement—
 - (a) which is false; and
 - (b) which he does not reasonably believe to be true.

33. Notice of intention to appoint

- (1) The prescribed form for the notice of intention to appoint for the purposes of Section 55(2) (*Interim moratorium*) is the prescribed form [2.5B].
- (2) For the purposes of Section 55(2) (*Interim moratorium*), a copy of the prescribed form [2.5B] shall be filed with the Court at the same time as it is sent in accordance with Section 31(1) (*Restrictions on power to appoint*) to the holder of any prior qualifying charge.
- (3) The provisions of Section 24(2) to (4) (*Manner in which service to be effected*) shall apply to the sending of a notice under this Section as they apply to the manner in which service of an administration application is effected under that Section.

34. Notice of appointment

- (1) Written consent may be given by the holder of a prior qualifying charge where a notice of intention to appoint an administrator of a Company has been given and filed with the Court in accordance with Section 33 (*Notice of intention to appoint*), by completing the section provided on the prescribed form [2.5B] and returning to the appointor a copy of the form.
- (2) Where the holder of a prior qualifying charge does not choose to complete the section provided on the prescribed form [2.5B] to indicate his consent, or no such form has been sent to him, his written consent 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 charge held by him including the date it was registered and, where applicable, any financial limit and any deeds of priority;
 - (c) his name and address;
 - (d) the name and address of the holder of the qualifying 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 of the Company;
- (g) a statement of consent to the proposed appointment,

and it shall be authenticated and dated.

- (3) This Section is subject to Section 36 (*Appointment taking place out of Court business hours*), the provisions of which apply when an appointment is to be made out of Court business hours.
- (4) Three copies of the notice of appointment shall be filed with the Court and shall have applied to them the seal of the Court and be endorsed with the date and time of filing.
- (5) 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 sealed copies to the administrator of a Company.
- (6) Where, after receiving notice that an administration application has been made, the holder of a qualifying charge appoints an administrator of the Company in reliance on Section 30 (*Power to appoint*), he shall as soon as reasonably practicable send a copy of the notice of appointment to the person making the administration application and to the Court in which the application has been made.

35. Commencement of appointment

- (1) The appointment of an administrator of a Company under Section 30 (*Power to appoint*) takes effect when the requirements of Section 32 (*Notice of appointment*) are satisfied.
- (2) A person who appoints an administrator of a Company under Section 30 (*Power to appoint*)—
 - (a) shall notify the administrator of the Company and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of Section 32 (*Notice of appointment*) are satisfied; and
 - (b) commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with sub-section (a).

36. Appointment taking place out of Court business hours

- (1) The holder of a qualifying charge may file a notice of appointment with the Court, notwithstanding that the Court is not open for public business. When the Court is closed (and only when it is closed) a notice of appointment may be filed with the Court by faxing that form or sending it as an attachment to an e-mail in accordance with sub-sections (3) and (4). The notice of appointment shall be in the prescribed form [2.7B].
- (2) The filing of a notice in accordance with this Section shall have the same effect for all purposes as a notice of appointment filed in accordance with Section 34 (*Notice of appointment*) with the Court specified in the notice as having jurisdiction in the case.

- (3) The notice must be—
 - (a) faxed to a designated telephone number; or
 - (b) sent as an attachment by e-mail to a designated e-mail address,
which must be provided by the Court for that purpose.
- (4) The Court must publish the designated telephone number and e-mail address on the Court website and, on request to the Court, make them available in writing.
- (5) The appointor shall ensure that
 - (a) 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 form; or
 - (b) 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,
as the case may be; and the appointor must retain the report or hard copy.
- (6) The appointment shall take effect from the date and time of the fax transmission or sending of the e-mail. The appointor shall notify the administrator of the Company, as soon as reasonably practicable, that the notice has been filed.
- (7) The copy of the faxed notice of appointment, or the e-mail (or a hard copy of the e-mail) containing the notice of appointment, as (in either case) received by the Court, shall be forwarded as soon as reasonably practicable to the Court specified in the notice as the Court having jurisdiction in the case, to be placed on the relevant Court file.
- (8) The appointor shall take three copies of the notice of appointment that was faxed to the designated telephone number, together with the transmission report or hard copy required by sub-section (5) and all the necessary supporting documents listed on the prescribed form [2.7B], to the Court on the next day that the Court is open for business.
- (9) 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.
- (10) 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.
- (11) The administrator's appointment shall cease to have effect if the requirements of sub-section (8) are not completed within the time period indicated in that sub-section.
- (12) Where any question arises in respect of the date and time that the notice of appointment was filed with the Court it shall be 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 so filed.

- (13) 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 of a Company.

37. Invalid appointment: indemnity

- (1) This Section applies where—
- (a) a person purports to appoint an administrator of a Company under Section 30 (*Power to appoint*); and
 - (b) the appointment is discovered to be invalid.
- (2) The Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

Chapter 4 - Appointment of Administrator by Company or Directors

38. Power to appoint

- (1) A Company may appoint an administrator of the Company.
- (2) The Directors of a Company may appoint an administrator of the Company.

39. Restrictions on power to appoint

- (1) This Section applies where an administrator of a Company is appointed under Section 38 (*Power to appoint*).
- (2) An administrator of the Company may not be appointed under Section 38 (*Power to appoint*) during the period of 12 months beginning with the date on which the appointment referred to in sub-section (1) ceases to have effect.
- (3) An administrator of a Company may not be appointed under Section 38 (*Power to appoint*) if—
- (a) a petition for the winding up of the Company has been presented and is not yet disposed of;
 - (b) an administration application has been made and is not yet disposed of; or
 - (c) an administrative receiver of the Company is in office.

40. Notice of intention to appoint

- (1) A person who proposes to make an appointment under Section 38 (*Power to appoint*) shall give at least five business days' written notice to—
- (a) any person who is or may be entitled to appoint an administrative receiver of the Company; and
 - (b) any person who is or may be entitled to appoint an administrator of the Company under Section 30 (*Power to appoint*).

- (2) A person who proposes to make an appointment under Section 38 (*Power to appoint*) shall also give a copy of the notice of intention to appoint to—
 - (a) any enforcement officer who, to the knowledge of the person giving the notice, is charged with execution or other legal process against the Company;
 - (b) any person who, to the knowledge of the person giving the notice, has distrained against the Company or its property; and
 - (c) the Company, if the Company is not intending to make the appointment.
- (3) A notice under this Section must—
 - (a) identify the proposed administrator of the Company; and
 - (b) be in the prescribed form [2.8B].
- (4) A person who gives notice of intention to appoint under this Section shall file with the Court as soon as is reasonably practicable a copy of—
 - (a) the notice; and
 - (b) any document accompanying it.
- (5) The copy filed under sub-section (4) must be accompanied by a statutory declaration made by or on behalf of the person who proposes to make the appointment—
 - (a) that the Company is or is likely to become unable to pay its debts;
 - (b) that the Company is not in liquidation; and
 - (c) that, so far as the person making the statement is able to ascertain, the appointment is not prevented by Section 39 (*Restrictions on power to appoint*); and
 - (d) to such additional effect, and giving such information, as may be prescribed.
- (6) A statutory declaration under sub-section (5) must—
 - (a) be in the prescribed form [2.8B]; and
 - (b) be made not more than five (5) business days before the notice is filed with the Court.
- (7) A person commits a contravention and is liable to a level [●] fine if in a statutory declaration under sub-section (5) he makes a statement—
 - (a) which is false; and
 - (b) which he does not reasonably believe to be true.
- (8) An appointment may not be made under Section 38 (*Power to appoint*) unless the person who makes the appointment has complied with any requirement of this Section and—
 - (a) the period of notice specified in sub-section (1) has expired; or

- (b) each person to whom notice has been given under sub-section (1) has consented in writing to the making of the appointment.
- (9) An appointment may not be made under Section 38 (*Power to appoint*) after the period of ten business days beginning with the date on which the notice of intention to appoint is filed under sub-section (4).
- 41. Notice of an intention to appoint**
- (1) The provisions of Section 24(2) to (4) (*Manner in which service to be effected*) shall apply to the sending or giving of a notice under this Section as they apply to the manner in which service of an administration application is effected under that Section.
 - (2) The notice of intention to appoint shall be accompanied by either a copy of the resolution of the Company to appoint an administrator of the Company (where the Company intends to make the appointment) or a record of the decision of the Directors (where the Directors intend to make the appointment).
- 42. Notice of appointment**
- (1) A person who appoints an administrator of a Company under Section 38 (*Power to appoint*) shall file with the Court—
 - (a) a notice of appointment; and
 - (b) such other documents as are prescribed by Section 43 (*Notice of appointment under Section 41*).
 - (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
 - (a) that the person is entitled to make an appointment under Section 38 (*Power to appoint*);
 - (b) that the appointment is in accordance with this Part 2 (*Administration*); and
 - (c) that, so far as the person making the statement is able to ascertain, the statements made and information given in the statutory declaration filed with the notice of intention to appoint remain accurate.
 - (3) The notice of appointment must identify the administrator of the Company and must be accompanied by a statement by the administrator—
 - (a) that he consents to the appointment;
 - (b) that in his opinion the purpose of administration is reasonably likely to be achieved; and
 - (c) giving such other information and opinions as may be prescribed.
 - (4) For the purpose of a statement under sub-section (3) an administrator of a Company may rely on information supplied by Directors of the Company (unless he has reason to doubt its accuracy).

- (5) The notice of appointment shall be in the prescribed form [2.9B] or [2.10B], as appropriate. Any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-section (2) must be made not more than five (5) business days before the notice is filed with the Court.
- (7) A person commits a contravention and is liable to a level [●] fine if in a statutory declaration under sub-section (2) he makes a statement—
 - (a) which is false; and
 - (b) which he does not reasonably believe to be true.
- (8) In a case in which no person is entitled to notice of intention to appoint under Section 40(1) (*Notice of intention to appoint*) (and Section 40(8) and (9) (*Notice of intention to appoint*) therefore do not apply)—
 - (a) the statutory declaration accompanying the notice of appointment must include the statements and information required under Section 40(5) (*Notice of intention to appoint*); and
 - (b) Section 43(1)(c) (*Notice of appointment*) shall not apply.

43. **Notice of appointment under Section 41**

- (1) The copies of the notice filed with the Court shall be accompanied by—
 - (a) the written statement of the administrator of the Company in the prescribed form [2.2B];
 - (b) the written consent of all those persons to whom notice was given in accordance with Section 40(1) (*Notice of intention to appoint*) unless the period of notice set out in Section 40(1) (*Notice of intention to appoint*) has expired; and
 - (c) a statement of the matters provided for in Section 154(2) (*Joint administrators*), where applicable.
- (2) Where a notice of intention to appoint an administrator of a Company has not been given, the notice of appointment shall be accompanied by the documents specified in Section 41(2) (*Notice of an intention to appoint*).
- (3) Three copies of the notice of appointment shall be filed with the Court and shall have applied to them the seal of the Court and be endorsed with the date and time of filing.
- (4) 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 sealed copies to the administrator of the Company.

44. **Commencement of appointment**

- (1) The appointment of an administrator of a Company under Section 38 (*Power to appoint*) takes effect when the requirements of Section 42 (*Notice of appointment*) are satisfied.

- (2) A person who appoints an administrator of a Company under Section 38 (*Power to appoint*)—
- (a) shall notify the administrator of the Company and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of Section 42 (*Notice of appointment*) are satisfied; and
 - (b) commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with sub-section (a).
- (3) If before the requirements of Section 41 (*Notice of appointment*) are satisfied the Company enters administration by virtue of an administration order or an appointment under Section 30 (*Power to appoint*)—
- (a) the appointment under Section 38 (*Power to appoint*) shall not take effect; and
 - (b) sub-section (2) shall not apply.
- (4) The notice of appointment to be given by the administrator of a Company as soon as reasonably practicable after appointment under Section 57(2) (*Announcement of administrator's appointment*) shall be published in the Global Market and may be advertised in such other manner as the administrator of the Company thinks fit.

45. Invalid appointment: indemnity

- (1) This Section applies where—
- (a) a person purports to appoint an administrator of a Company under Section 38 (*Power to appoint*); and
 - (b) the appointment is discovered to be invalid.
- (2) The Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.

Chapter 5 - Administration Application (special cases)

46. Application by holder of qualifying charge

- (1) This Section applies where an administration application in respect of a Company—
- (a) is made by the holder of a qualifying charge in respect of the Company's property; and
 - (b) includes a statement that the application is made in reliance on this Section.
- (2) The Court may make an administration order—
- (a) whether or not satisfied that the Company is or is likely to become unable to pay its debts; but
 - (b) only if satisfied that the applicant could appoint an administrator of the Company under Section 30 (*Power to appoint*).

47. **Intervention by holder of qualifying charge**

- (1) This Section applies where—
- (a) an administration application in respect of a Company is made by a person who is not the holder of a qualifying charge in respect of the Company's property; and
 - (b) the holder of a qualifying charge in respect of the Company's property applies to the Court to have a specified person appointed as administrator of the Company (and not the person specified by the administration applicant).
- (2) The Court shall grant an application under sub-section (1)(b) unless the Court thinks it right to refuse the application because of the particular circumstances of the case.

48. **Application where Company in liquidation**

- (1) This Section applies where the holder of a qualifying charge in respect of a Company's property could appoint an administrator of the Company under Section 30 (*Power to appoint*) but for Section 14(3)(b) (*General restrictions*).
- (2) The holder of the qualifying charge may make an administration application.
- (3) If the Court makes an administration order on hearing an application made by virtue of sub-section (2)—
- (a) the Court shall discharge the winding-up order;
 - (b) the Court shall make provision for such matters as may be prescribed;
 - (c) the Court may make other consequential provision;
 - (d) the Court shall specify which of the powers under this Part 2 (*Administration*) are to be exercisable by the administrator of the Company; and
 - (e) this Part 2 (*Administration*) shall have effect with such modifications as the Court may specify.
- (4) The liquidator of a Company may make an administration application.
- (5) If the Court makes an administration order on hearing an application made by virtue of sub-section (4)—
- (a) the Court shall discharge any winding-up order in respect of the Company;
 - (b) the Court shall make provision for such matters as may be prescribed;
 - (c) the Court may make other consequential provision;
 - (d) the Court shall specify which of the powers under this Part 2 (*Administration*) are to be exercisable by the administrator of the Company; and
 - (e) this Part 2 (*Administration*) shall have effect with such modifications as the Court may specify.

49. **Application where Company in liquidation**

- (1) Where an administration application is made under Section 48 (*Application where Company in liquidation*), the witness statement required by Section 20 (*Content of administration application and witness statement*) shall contain—
- (a) full details of the existing Insolvency Proceedings, the name and address of the liquidator, the date he was appointed and by whom;
 - (b) the reasons why it has subsequently been considered appropriate that an administration application should be made;
 - (c) all other matters that would, in the opinion of the applicant, assist the Court in considering the need to make provisions in respect of matters arising in connection with the liquidation; and
 - (d) the details required in Section 20(2) (*Content of administration application and witness statement*).
- (2) Where the application is made by the holder of a qualifying charge he shall set out sufficient evidence in the witness statement required by Section 20 (*Content of administration application and witness statement*) to satisfy the Court that he is entitled to appoint an administrator of the Company under Section 30 (*Power to appoint*).

50. **Effect of administrative receivership**

- (1) Where there is an administrative receiver of a Company the Court must dismiss an administration application in respect of the Company unless—
- (a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order; or
 - (b) the Court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under Sections 262 (*Transaction at an undervalue*) to 264 (*Relevant time*) if an administration order were made.
- (2) Sub-section (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

Chapter 6 - Effect of Administration

51. **Dismissal of pending winding-up petition**

- (1) A petition for the winding up of a Company—
- (a) shall be dismissed on the making of an administration order in respect of the Company; and
 - (b) shall be suspended while the Company is in administration following an appointment under Section 30 (*Power to appoint*).
- (2) Sub-section (1)(b) does not apply to a petition presented under Section 210 (*Petition for winding up on grounds of interest of the Global Market*), or

- (3) Where an administrator of a Company becomes aware that a petition was presented under a provision referred to in sub-section (2) before his appointment, he shall apply to the Court for directions under Section 104(7) (*General powers*).

52. **Dismissal of administrative or other receiver**

- (1) When an administration order takes effect in respect of a Company any administrative receiver of the Company shall vacate office.
- (2) Where a Company is in administration, any receiver of part of the Company's property shall vacate office if the administrator of the Company requires him to.
- (3) Where an administrative receiver or receiver vacates office under sub-section (1) or (2) his remuneration shall be charged on and paid out of any property of the Company which was in his custody or under his control immediately before he vacated office.
- (4) In the application of sub-section (3)—
 - (a) "**remuneration**" includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the property of the Company;
 - (b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed; and
 - (c) the provision for payment is subject to Section 54 (*Moratorium on other legal process*).

53. **Moratorium on Insolvency Proceedings**

- (1) This Section applies to a Company in administration.
- (2) No resolution may be passed for the winding up of the Company.
- (3) No order may be made for the winding up of the Company.
- (4) Sub-section (3) does not apply to an order made on a petition presented under Section 210 (*Petition for winding up on grounds of interest of the Global Market*), or
- (5) If a petition presented under a provision referred to in sub-section (4) comes to the attention of the administrator of the Company, he shall apply to the Court for directions under Section 104(7) (*General powers*).

54. **Moratorium on other legal process**

- (1) This Section applies to a Company in administration.
- (2) No step may be taken to enforce security over the Company's property except—
 - (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (3) No step may be taken to repossess goods in the Company's possession under a hire-purchase agreement except—

- (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (4) A landlord may not exercise a right of re-entry in relation to premises let to the Company except—
- (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (5) No legal process (including legal proceedings) may be instituted or continued against the Company or property of the Company except—
- (a) with the consent of the administrator of the Company; or
 - (b) with the permission of the Court.
- (6) An administrative receiver of the Company may not be appointed.
- (7) Where the Court gives permission for a transaction under this Section it may impose a condition on or a requirement in connection with the transaction.
- (8) In this sub-section "**landlord**" includes a person to whom rent is payable.

55. **Interim moratorium**

- (1) This Section applies where an administration application in respect of a Company has been made and—
- (a) the application has not yet been granted or dismissed; or
 - (b) the application has been granted but the administration order has not yet taken effect.
- (2) This Section also applies from the time when a copy of notice of intention to appoint an administrator of a Company under Section 30 (*Power to appoint*) is filed with the Court until—
- (a) the appointment of the administrator of the Company takes effect; or
 - (b) the period of five business days beginning with the date of filing expires without an administrator of the Company having been appointed.
- (3) Sub-section (2) has effect in relation to a notice of intention to appoint only if it is in the prescribed form.
- (4) This Section also applies from the time when a copy of a notice of intention to appoint an administrator of a Company is filed with the Court under Section 40(4) (*Notice of intention to appoint*) until—
- (a) the appointment of the administrator of the Company takes effect; or
 - (b) the period specified in Section 40(9) (*Notice of intention to appoint*) expires without an administrator of the Company having been appointed.

- (5) The provisions of Sections 53 (*Moratorium on Insolvency Proceedings*) and 54 (*Moratorium on other legal process*) shall apply (ignoring any reference to the consent of the administrator of the Company).
- (6) If there is an administrative receiver of the Company when the administration application is made, the provisions of Sections 53 (*Moratorium on Insolvency Proceedings*) and 54 (*Moratorium on other legal process*) shall not begin to apply by virtue of this Section until the person by or on behalf of whom the receiver was appointed consents to the making of the administration order.
- (7) This Section does not prevent or require the permission of the Court for—
 - (a) the presentation of a petition for the winding up of the Company under a provision mentioned in Section 53(4) (*Moratorium on Insolvency Proceedings*);
 - (b) the appointment of an administrator of the Company under Section 30 (*Power to appoint*);
 - (c) the appointment of an administrative receiver of the Company; or
 - (d) the carrying out by an administrative receiver (whenever appointed) of his functions.

56. **Publicity**

- (1) While a Company is in administration, every business document issued by or on behalf of the Company or the administrator of the Company, and all the Company's websites, must state—
 - (a) the name of the administrator of the Company; and
 - (b) that the affairs, business and property of the Company are being managed by the administrator of the Company.
- (2) Any of the following persons commits a contravention and is liable to a level [•] fine if without reasonable excuse the person authorises or permits a contravention of sub-section (1)—
 - (a) the administrator of the Company;
 - (b) an officer of the Company; and
 - (c) the Company.
- (3) While a Company is subject to a Deed of Company Arrangement, every business document issued by or on behalf of the Company, and all the Company's websites must state that the Company is subject to a Deed of Company Arrangement, unless the Court otherwise grants leave.
- (4) Any of the following persons commits a contravention if without reasonable excuse the person authorises or permits a contravention of sub-section (3)—
 - (a) the administrator of the Deed of Company Arrangement;
 - (b) an officer of the Company; and

- (c) the Company.
- (5) The Court may only grant leave under sub-section (3) on the application of the administrator of the Deed of Company Arrangement or other interested party and only if it is satisfied that the granting of such leave will not result in a significant risk to the interests of the Company's creditors (including contingent or prospective creditors) as a whole.
- (6) In sub-sections (1) and (3) "**business document**" means—
 - (a) an invoice;
 - (b) an order for goods or services;
 - (c) a business letter; and
 - (d) an order form,whether in hard copy, electronic or any other form.

Chapter 7 - Process of Administration

57. Announcement of administrator's appointment

- (1) This Section applies where a person becomes the administrator of a Company.
- (2) As soon as is reasonably practicable the administrator shall—
 - (a) send a notice of his appointment to the Company; and
 - (b) publish a notice of his appointment on the Registrar's website or in an English language newspaper distributed in the United Arab Emirates and available in the Global Market.
- (3) As soon as is reasonably practicable the administrator shall—
 - (a) obtain a list of the Company's creditors; and
 - (b) send a notice of his appointment to each creditor of whose claim and address he is aware.
- (4) The administrator of the Company shall send a notice of his appointment to the Registrar before the end of the period of seven (7) days beginning with the date specified in sub-section (5).
- (5) The administrator of the Company shall, as soon as reasonably practicable after the date specified in sub-section (6) , give notice of his appointment—
 - (a) if a receiver or an administrative receiver has been appointed, to him;
 - (b) if there is pending a petition for the winding up of the Company, to the petitioner (and also to the provisional liquidator, if any);
 - (c) to any enforcement officer who, to the knowledge of the administrator of the Company, is charged with execution or other legal process against the Company; and

- (d) to any person who, to the administrator's knowledge, has distrained against the Company or its property.
- (6) The date for the purpose of sub-sections (4) and (5) is—
- (a) in the case of an administrator of the Company appointed by administration order, the date of the order;
 - (b) in the case of an administrator of the Company appointed under Section 30 (*Power to appoint*), the date on which he receives notice under Section 35(2) (*Commencement of appointment*); and
 - (c) in the case of an administrator of the Company appointed under Section 38 (*Power to appoint*), the date on which he receives notice under Section 44(2) (*Commencement of appointment*).
- (7) The Court may direct that sub-section (3)(b) or (5)—
- (a) shall not apply; or
 - (b) shall apply with the substitution of a different period.
- (8) An administrator of a Company commits a contravention and is liable to a level [•] fine if he fails without reasonable excuse to comply with a requirement of this Section.

58. Notification and advertisement of administrator's appointment

- (1) In addition to the standard contents, the notice under Section 57(5) (*Announcement of administrator's appointment*) must state—
- (a) that an administrator of the Company has been appointed;
 - (b) the date of the appointment; and
 - (c) the nature of the business of the Company.
- (2) Where, under a provision of this Part 2 (*Administration*), the administrator of a Company is required to send a notice of his appointment to any person other than the Registrar he shall do so in the prescribed form [2.12B].

59. Notice requiring Statement of Affairs

- (1) The administrator of a Company shall send notice in the prescribed form [2.13B] to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the Company's affairs.
- (2) The notice shall inform each of the relevant persons—
- (a) of the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) of the time within which the statement must be delivered;
 - (c) of the effect of Section 60(7) (*Statement of Company's affairs*); and

- (d) of the application to him, and to each other relevant person, of Section 260 (*Duty to cooperate with Office-holder*).
- (3) The administrator of a Company shall furnish each relevant person to whom he has sent notice in the prescribed form [2.13B] with the forms required for the preparation of the Statement of Affairs.
60. **Statement of Company's affairs**
- (1) The statement of Company's affairs must—
- (a) be verified by a statement of truth by the relevant person in accordance with the Court Procedural Rules;
 - (b) be in the prescribed form [2.14B], containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (2) In this Chapter "**relevant person**" means—
- (a) a person who is or has been an officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters administration;
 - (c) a person employed by the Company during that period; and
 - (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (3) For the purpose of sub-section (2) a reference to employment is a reference to employment through a contract of employment or a contract for services.
- (4) A person required to submit a Statement of Affairs must do so before the end of the period of 11 days beginning with the day on which he receives notice of the requirement.
- (5) The administrator of a Company may—
- (a) revoke a requirement under Section 59(1) (*Notice requiring Statement of Affairs*); or
 - (b) extend the period specified in sub-section (4) (whether before or after expiry).
- (6) If the administrator of a Company refuses a request to act under sub-section (5)—
- (a) the person whose request is refused may apply to the Court; and
 - (b) the Court may take action of a kind specified in sub-section (5).

- (7) A person commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with a requirement under Section 59(1) (*Notice requiring Statement of Affairs*).

61. Verification and filing

- (1) The administrator of a Company may require any relevant person to submit a statement of concurrence in the prescribed form [2.15B] stating that he concurs in the Statement of Affairs. Where the administrator of a Company does so, he shall inform the person making the Statement of Affairs of that fact.
- (2) The Statement of Affairs shall be delivered by the relevant person making the statement of truth, together with a copy, to the administrator of the Company. The relevant person shall also deliver a copy of the Statement of Affairs to all those persons whom the administrator of the Company has required to make a statement of concurrence.
- (3) A person required to submit a statement of concurrence shall do so before the end of the period of five (5) business days (or such other period as the administrator of the Company may agree) beginning with the day on which the Statement of Affairs being concurred with is received by him.
- (4) A statement of concurrence may be qualified in respect of matters dealt with in the Statement of Affairs, where the maker of the statement of concurrence is not in agreement with the relevant person, or he considers the Statement of Affairs to be erroneous or misleading, or he is without the direct knowledge necessary for concurring with it.
- (5) Every statement of concurrence shall be verified by a statement of truth and be delivered to the administrator of the Company by the person who makes it, together with a copy of it.
- (6) Subject to Section 62 (*Limited disclosure*), the administrator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the Statement of Affairs and any statement of concurrence.

62. Limited disclosure

- (1) Where the administrator of a Company thinks that it would prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person for the whole or part of the statement of the Company's affairs 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.
- (2) The Court may, on such application, order that the statement or, as the case may be, the specified part of it, shall not be filed with the Registrar.
- (3) The administrator of a Company shall as soon as reasonably practicable send to the Registrar a copy of the order and the Statement of Affairs (to the extent provided by the order) and any statement of concurrence.
- (4) If a creditor seeks disclosure of a Statement of Affairs or a specified part of it in relation to which an order has been made under this Section, he may apply to the Court for an order that the administrator of a Company disclose it or a specified part of it. The application shall be supported by written evidence in the form of a witness statement.
- (5) The applicant shall give the administrator of a Company notice of his application at least three (3) business days before the hearing.

- (6) The Court may make any order for disclosure 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 just.
- (7) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator of a Company shall, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (8) The administrator of a Company shall, as soon as reasonably practicable after the making of an order under sub-section (7), file with the Registrar a copy of the Statement of Affairs to the extent provided by the order.
- (9) When the Statement of Affairs is filed in accordance with sub-section (8), the administrator of a Company shall, where he has sent a statement of proposals under Section 65 (*Administrator's proposals*), provide the creditors with a copy of the Statement of Affairs as filed, or a summary thereof.
- (10) The provisions of Part [26] (*Disclosure and Inspection of Documents*) of the Court Procedural Rules shall not apply to an application under this Section.

63. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the administrator of a Company under Section 60(5) (*Statement of Company's affairs*) to give a release from the obligation imposed by Section 59(1) (*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.
- (2) A relevant person may, if he requests a release or extension of time and it is refused by the administrator of a Company, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five (5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.
- (4) The relevant person shall, at least 14 days before the hearing, send to the administrator of the Company a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The administrator of a Company may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.
- (6) If such a report is filed, a copy of it shall be sent by the administrator of the Company to the relevant person, not later than five (5) business days before the hearing.
- (7) Sealed copies of any order made on the application shall be sent by the Court to the relevant person and the administrator of the Company.
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the administration.

64. **Expense of Statement of Affairs**

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the administrator of the Company as an expense of the administration, any expenses incurred by the relevant person in so doing which the administrator of the Company considers reasonable.
- (2) Any decision by the administrator of a Company under this Section is subject to appeal to the Court.
- (3) Nothing in this Section 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 administrator of a Company.

65. **Administrator's proposals**

- (1) The administrator of a Company shall make a statement setting out proposals for achieving the purpose of administration.
- (2) A statement under sub-section (1) must, in particular—
 - (a) deal with such matters as may be prescribed; and
 - (b) where applicable, explain why the administrator of the Company thinks that the objective mentioned in Section 11(1)(a) or 11(1)(b) (*Purpose of Administration*) cannot be achieved.
- (3) Proposals under this Section may include—
 - (a) a proposal for a compromise or arrangement to be sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations; or
 - (b) a proposal for a Deed of Company Arrangement.
- (4) If the administrator of a Company proposes a Deed of Company Arrangement, the statement of his proposals shall include—
 - (a) a statement that in his opinion it would be in the creditors' interest for the Company to execute a Deed of Company Arrangement;
 - (b) the reasons for such opinion; and
 - (c) details of the proposed Deed of Company Arrangement.
- (5) The administrator shall send a copy of the statement of his proposals—
 - (a) to the Registrar;
 - (b) to every creditor of the Company of whose claim and address he is aware; and
 - (c) to every member of the Company of whose address he is aware.
- (6) The administrator shall comply with sub-section (5)—

- (a) as soon as is reasonably practicable after the Company enters administration; and
 - (b) in any event, before the end of the period of eight weeks beginning with the day on which the Company enters administration.
- (7) The administrator shall be taken to comply with sub-section (5)(c) if he publishes in the prescribed manner a notice 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.
- (8) An administrator commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with sub-section (6).
- (9) A period specified in this Section may be varied in accordance with Section 160 (*Extension of time limit*).

66. Administrator's statement of proposals

- (1) The statement of proposals of an administrator of a Company shall include, in addition to those matters set out in Section 65 (*Administrator's proposals*)–
- (a) details of the relevant Court reference number;
 - (b) the full name, registered address, registered number and any other trading names of the Company;
 - (c) details relating to his appointment as administrator, including the date of appointment and the person making the application or appointment and, where there are joint administrators, details of the matters set out in Section 154(2) (*Joint administrators*);
 - (d) the names of the Directors and secretary of the Company and details of any shareholdings in the Company they may have;
 - (e) an account of the circumstances giving rise to the appointment of the administrator of the Company;
 - (f) if a statement of the Company's affairs has been submitted, a copy or summary of it, with the comments of the administrator of the Company, if any;
 - (g) if an order limiting the disclosure of the Statement of Affairs (under Section 62 (*Limited disclosure*)) has been made, a statement of that fact, as well as–
 - (i) details of 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;
 - (h) if a full Statement of Affairs is not provided, the names, addresses and debts of the creditors including details of any security held;
 - (i) if no Statement of Affairs has been submitted, details of the financial position of the Company at the latest practicable date (which must, unless the Court otherwise orders, be a date not earlier than that on which the Company entered administration), a list of the Company's creditors including their names, addresses and details of their

debts, including any security held, and an explanation as to why there is no Statement of Affairs;

- (j) the basis upon which it is proposed that the remuneration of the administrator of the Company should be fixed under Section 118 (*Fixing of an administrator's remuneration*) and Schedule 12 (*Remuneration*);
 - (k) a statement complying with sub-section (3) of any pre-administration costs charged or incurred by the administrator of the Company or, to his knowledge, by any other person registered as an insolvency practitioner;
 - (l) a statement (which must comply with sub-section (4) where that sub-section applies) of how it is envisaged the purpose of the administration will be achieved and how it is proposed that the administration shall end;
 - (m) where the administrator of the Company has decided not to call a meeting of creditors, his reasons;
 - (n) the manner in which the affairs and business of the Company—
 - (i) have, since the date of the appointment of the administrator of the Company, been managed and financed, including, where any property has been disposed of, the reasons for such disposals and the terms upon which such disposals were made; and
 - (ii) will, if the proposals of the administrator of the Company are approved, continue to be managed and financed;
 - (o) such other information (if any) as the administrator of the Company thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.
- (2) In this Part—
- (a) "**pre-administration costs**" are—
 - (i) fees charged; and
 - (ii) expenses incurred,by the administrator of a Company, or another person registered as an insolvency practitioner, before the Company entered administration but with a view to its doing so; and
 - (b) "**unpaid pre-administration costs**" are pre-administration costs which had not been paid when the Company entered administration.
- (3) A statement of pre-administration costs complies with this Section if it includes—
- (a) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;
 - (b) details of the work done for which the fees were charged and expenses incurred;

- (c) an explanation of why the work was done before the Company entered administration and how it would further the achievement of an objective in Section 11(1) (*Purpose of administration*) in accordance with Sections 11(2) to 11(4) (*Purpose of administration*);
 - (d) a statement of the amount of the pre-administration costs, setting out separately—
 - (i) the fees charged by the administrator of the Company;
 - (ii) the expenses incurred by the administrator of the Company;
 - (iii) the fees charged (to his knowledge) by any other person registered as an insolvency practitioner (and, if more than one, by each separately); and
 - (iv) the expenses incurred (to his knowledge) by any other person as an insolvency practitioner (and, if more than one, by each separately);
 - (e) a statement of the amounts of pre-administration costs which have already been paid (set out separately as under paragraph (d));
 - (f) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under paragraph (d);
 - (g) a statement of the amounts of unpaid pre-administration costs (set out separately as under paragraph (d)); and
 - (h) a statement that the payment of unpaid pre-administration costs as an expense of the administration is—
 - (i) subject to approval under Section 117 (*Pre-administration costs*); and
 - (ii) not part of the proposals subject to approval under Section 73 (*Business and result of initial creditors' meeting*).
- (4) This sub-section applies where it is proposed that the administration will end by the Company moving to a creditors' voluntary liquidation; and in that case, the statement required by sub-section (1)(m) must include—
- (a) details of the proposed liquidator; and
 - (b) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with Section 131(6)(a) (*Moving from administration to creditors' voluntary liquidation*) and Section 132(2)(b) (*Moving from administration to creditors' voluntary liquidation*).
- (5) Where the Court orders, upon an application by the administrator of a Company under Section 160 (*Extension of time limit*), an extension of the period of time in Section 65(6) (*Administrator's proposals*), the administrator of the Company must as soon as reasonably practicable after the making of the order—
- (a) notify in the prescribed form [2.18B] every creditor of the Company and every member of the Company of whose address (in either case) the administrator of the Company is aware; and

- (b) send a copy of the notification to the Registrar.
- (6) Where the administrator of a Company has made a statement under Section 70(1) (*Requirement for initial creditors' meeting*) and has not called an initial meeting of creditors, the proposals sent out under this Section and Section 65 (*Administrator's proposals*) will (if no meeting has been requisitioned under Section 70(2) (*Requirement for initial creditors' meeting*)) within the period set out in Section 71 (*Meeting requisitioned by creditors*)) be deemed to have been approved by the creditors.
- (7) Where proposals are deemed under sub-section (6) to have been approved, the administrator of a Company must, as soon as reasonably practicable after expiry of the period set out in Section 71 (*Meeting requisitioned by creditors*) 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.
- (8) Where the administrator of a Company intends to apply to the Court (or file a notice under Section 124(2) (*Termination of administration where objective achieved*)) for the administration to cease at a time before he has sent a statement of his proposals to creditors in accordance with Section 65 (*Administrator's proposals*), he shall, at least seven (7) business days before he makes such an application (or files such a notice), send to all creditors of the Company (so far as he is aware of their addresses) a report containing the information required by sub-sections (1)(a) to (o) of this Section.
- (9) Where the administrator of a Company wishes to publish a notice under Section 65(7) (*Administrator's proposals*), the notice shall be advertised in such manner as he thinks fit.
- (10) In addition to the standard contents, the notice under sub-section (9) must state—
 - (a) that members can write for a copy of the statement of proposals for achieving the purpose of administration; and
 - (b) the address to which to write.
- (11) This notice must be published as soon as reasonably practicable after the administrator of the Company sends his statement of proposals to the Company's creditors but no later than eight (8) weeks (or such other period as may be agreed by the creditors or as the Court may order) from the date that the Company entered administration.

67. Limited disclosure of statement of proposals

- (1) Where the administrator of a Company thinks that it would prejudice the conduct of the administration or might reasonably be expected to lead to violence against any person for any of the matters specified in Section 66(1)(h) and 66(1)(i) (*Administrator's statement of proposals*) to be disclosed, the administrator of the Company may apply to the Court for an order of limited disclosure in respect of any specified part of the statement under this Section.
- (2) The Court may, on such application, order that some or all of the specified part of the statement must not be sent to the Registrar or to creditors or members of the Company as otherwise required by Section 65(4) (*Administrator's proposals*).
- (3) The administrator of a Company must as soon as reasonably practicable send to the persons specified in Section 65(4) (*Administrator's proposals*) the statement under Section 65

(Administrator's proposals) (to the extent provided by the order) and an indication of the nature of the matter in relation to which the order was made.

- (4) The administrator of the Company must also send a copy of the order to the Registrar.
- (5) A creditor who seeks disclosure of a part of a statement under Section 65 (*Administrator's proposals*) in relation to which an order has been made under this Section may apply to the Court for an order that the administrator of the Company disclose it. The application must be supported by written evidence in the form of a witness statement.
- (6) The applicant must give the administrator of the Company notice of the application at least three (3) business days before the hearing.
- (7) The Court may make any order for disclosure 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 just.
- (8) If there is a material change in circumstances rendering the limit on disclosure or any part of it unnecessary, the administrator of the Company must, as soon as reasonably practicable after the change, apply to the Court for the order or any part of it to be rescinded.
- (9) The administrator of a Company must, as soon as reasonably practicable after the making of an order under sub-section (8), send to the persons specified in Section 65(4) (*Administrator's proposals*) a copy of the statement under Section 65 (*Administrator's proposals*) to the extent provided by the order.
- (10) The provisions of Part [26] (*Disclosure and Inspection of Documents*) of the Court Procedural Rules do not apply to an application under this Section.

68. **Creditors' meetings**

In this Part 2 (*Administration*) "**creditors' meeting**" means a meeting of creditors of a Company summoned by the administrator of the Company in accordance with Schedule 6 (*Meetings and Correspondence*).

69. **Creditors' meetings generally**

- (1) This Section applies to creditors' meetings summoned by the administrator of the Company under—
 - (a) Section 70(1) (*Requirement for initial creditors' meeting*);
 - (b) Section 70(7) (*Requirement for initial creditors' meeting*);
 - (c) Section 74(2) (*Revision of administrator's proposals*);
 - (d) Section 80(1) (*Further creditors' meetings*); and
 - (e) Section 104(6) (*General powers*).
- (2) Notice of any of the meetings set out in sub-section (1) shall be in the prescribed form [2.20B].

70. **Requirement for initial creditors' meeting**

- (1) Each copy of an administrator's statement of proposals sent to a creditor under Section 65(4)(b) (*Administrator's proposals*) must be accompanied by an invitation to a creditors' meeting (an "**initial creditors' meeting**").
- (2) The date set for an initial creditors' meeting must be—
 - (a) as soon as is reasonably practicable after the Company enters administration; and
 - (b) in any event, within the period of ten weeks beginning with the date on which the Company enters administration.
- (3) An administrator of the Company shall present a copy of his statement of proposals to an initial creditors' meeting.
- (4) A period specified in this Section may be varied in accordance with Section 160 (*Extension of time limit*).
- (5) An administrator of a Company commits a contravention and is liable to a level [•] fine if he fails without reasonable excuse to comply with a requirement of this Section.
- (6) Sub-section (1) shall not apply where the statement of proposals states that the administrator of the Company thinks—
 - (a) that the Company has sufficient property to enable each creditor of the Company to be paid in full;
 - (b) that the Company has insufficient property to enable a distribution to be made to unsecured creditors; or
 - (c) that neither of the objectives specified in Section 11(1)(a) and (b) (*Purpose of administration*) can be achieved.
- (7) But the administrator of a Company shall summon an initial creditors' meeting if it is requested by creditors of the Company whose debts amount to at least ten (10)% of the total debts of the Company.
- (8) A meeting requested under sub-section (7) must be summoned for a date in the prescribed period.

71. **Meeting requisitioned by creditors**

The request for a creditors' meeting under Section 70(7) (*Requirement for initial creditors' meeting*) or Section 80(1) (*Further creditors' meetings*) or a meeting of creditors under Section 99 (*Meeting of creditors to consider variation or termination*) shall be in the prescribed form [2.21B] and be delivered in accordance with paragraph 13 (*Requisitioned Meetings*) of Schedule 6 (*Meetings and Correspondence*). A request for an initial creditors' meeting must be made within eight (8) business days of the date on which the statement of proposals of the administrator of the Company is sent out.

72. **Resolutions**

Any resolution is invalid if those voting against it include more than half in value of the creditors to whom notice of the meeting was sent and who are not, to the best of the chairman's belief, Connected Persons of the Company.

73. **Business and result of initial creditors' meeting**

- (1) An initial creditors' meeting to which an administrator's proposals are presented shall consider them and may—
 - (a) approve them without modification; or
 - (b) approve them with modification to which the administrator of the Company consents.
- (2) Subject to sub-section (1), the initial creditors' meeting may resolve that the Company execute a Deed of Company Arrangement specified in the resolution (even if it differs from the proposed Deed of Company Arrangement, details of which were included in the statement of proposals of the administrator of the Company).
- (3) After the conclusion of an initial creditors' meeting the administrator of the Company shall as soon as is reasonably practicable report any decision taken to—
 - (a) the Court;
 - (b) the Registrar; and
 - (c) such other persons as may be prescribed.
- (4) An administrator of a Company commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with sub-section (3).

74. **Revision of administrator's proposals**

- (1) This Section applies where—
 - (a) the proposals of an administrator of a Company have been approved (with or without modification) at an initial creditors' meeting;
 - (b) he proposes a revision to the proposals; and
 - (c) he thinks that the proposed revision is substantial.
- (2) The administrator of the Company shall—
 - (a) summon a creditors' meeting;
 - (b) send a statement in the prescribed form [2.22B] of the proposed revision with the notice of the meeting sent to each creditor;
 - (c) send a copy of the statement, within five (5) business days of sending out the statement in accordance with paragraph (b), to each member of the Company of whose address he is aware; and

- (d) present a copy of the statement to the meeting.
- (3) The administrator of a Company shall be taken to have complied with sub-section (2)(c) if he publishes (in such a manner as he thinks fit) a notice undertaking to provide a copy of the statement free of charge to any member of the Company who applies in writing to a specified address.
- (4) A notice under sub-section (3) must be published—
 - (a) in the prescribed manner; and
 - (b) within the prescribed period.
- (5) A creditors' meeting to which a proposed revision is presented shall consider it and may—
 - (a) approve it without modification; or
 - (b) approve it with modification to which the administrator of the Company consents.
- (6) Subject to sub-section (5), the creditors' meeting may resolve that the Company execute a Deed of Company Arrangement specified in the resolution (even if it differs from the proposed Deed of Company Arrangement, details of which were included in the statement of revised proposals of the administrator of the Company).
- (7) After the conclusion of a creditors' meeting the administrator of the Company shall as soon as is reasonably practicable report any decision taken to—
 - (a) the Court;
 - (b) the Registrar; and
 - (c) such other persons as may be prescribed.
- (8) An administrator of a Company commits a contravention and is liable to a level [•] fine if he fails without reasonable excuse to comply with sub-section (7).

75. Contents of the administrator's revised proposals

- (1) The statement of revised proposals shall include—
 - (a) the relevant Court reference number;
 - (b) the full name, registered address, registered number and any other trading names of the Company;
 - (c) details relating to his appointment as administrator of the Company, including the date of appointment and the person making the administration application or appointment;
 - (d) the names of the Directors and secretary of the Company and details of any shareholdings in the Company they may have;
 - (e) a summary of the initial proposals and the reason(s) for proposing a revision;

- (f) details of the proposed revision including details of the assessment (by the administrator of the Company) of the likely impact of the proposed revision upon creditors generally or upon each class of creditors (as the case may be);
- (g) if the proposed revision includes a proposal for a Deed of Company Arrangement, the matters described at Section 65(4) (*Administrator's proposals*);
- (h) where a proposed revision relates to the ending of the administration by a creditors' voluntary liquidation and the nomination of a person to be the proposed liquidator of the Company—
 - (i) details of the proposed liquidator;
 - (ii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator in accordance with Section 131(6)(a) (*Moving from administration to creditors' voluntary liquidation*) and Section 132(2)(b) (*Moving from administration to creditors' voluntary liquidation*); and
- (i) any other information that the administrator of the Company thinks necessary to enable creditors to decide whether or not to vote for the proposed revisions.

76. Failure to obtain approval of administrator's proposals

- (1) This Section applies where an administrator of a Company reports to the Court that—
 - (a) an initial creditors' meeting has failed to approve his proposals presented to it; or
 - (b) a creditors' meeting has failed to approve a revision of his proposals presented to it.
- (2) The Court may—
 - (a) provide that the appointment of an administrator of a Company shall cease to have effect from a specified time;
 - (b) adjourn the hearing conditionally or unconditionally;
 - (c) make an interim order;
 - (d) make an order on a petition for winding up suspended by virtue of Section 51(1)(b) (*Dismissal of pending winding-up petition*);
 - (e) make any other order (including an order making consequential provision) that the Court thinks appropriate.

77. Notice to creditors

- (1) As soon as reasonably practicable after the conclusion of a meeting of creditors to consider his proposals or revised proposals, the administrator of a Company shall—
 - (a) send notice in the prescribed form [2.23B] of the result of the meeting to every creditor and to every other person who received a copy of the original proposals;

- (b) attach a copy of the proposals considered at the meeting to the notice sent to each creditor who did not receive notice of the meeting but of whose claim the administrator of the Company has subsequently become aware; and
- (c) file with the Court a copy of the proposals considered at the meeting and notice of the result of the meeting.

78. **Reports to creditors**

(1) **"Progress report"** means a report which includes—

- (a) details of the relevant Court reference number;
- (b) full details of the Company's name, address of registered office and registered number;
- (c) full details of the name, address and date of appointment of the administrator of the Company and name and address of appointor, including any changes in Office-holder, and, in the case of joint administrators of a Company, their functions as set out in the statement made for the purposes of Section 154(2) (*Joint administrators*);
- (d) details of any extensions to the initial period of appointment;
- (e) details of the basis fixed for the remuneration of the administrator of the Company under Section 118 (*Fixing of administrator's remuneration*) and Schedule 12 (*Remuneration*) (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- (f) if the basis of remuneration has been fixed, a statement of—
 - (i) the remuneration charged by the administrator of the Company during the period of the report (subject to sub-section (3)); and
 - (ii) where the report is the first to be made after the basis has been fixed, the remuneration charged by the administrator of the Company during the periods covered by the previous reports (subject to sub-section (3)), together with a description of the things done by the administrator of the Company during those periods in respect of which the remuneration was charged, irrespective in either case of whether payment was made in respect of that remuneration during the period of the report;
- (g) a statement of the expenses incurred by the administrator of the Company during the period of the report, irrespective of whether payment was made in respect of them during that period;
- (h) details of progress during the period of the report, including a receipts and payments account (as detailed in sub-section (2));
- (i) details of any assets that remain to be realised;
- (j) a statement of the creditors' right to request information under Section 79 (*Creditors' request for further information*) and their right to challenge the remuneration and

expenses of the administrator of the Company under paragraph 9 of Schedule 12 (*Remuneration*); and

- (k) any other relevant information for the creditors.
- (2) A receipts and payments account must be in the form of an abstract showing receipts and payments during the period of the report.
 - (3) Where the basis for the remuneration is a set amount under Section 118 (*Fixing of an administrator's remuneration*) and Schedule 12 (*Remuneration*), it may be shown as that amount without any apportionment to the period of the report.
 - (4) Where the administrator of a Company has made a statement of pre-administration costs under Section 66(1)(k) (*Administrator's Statement of Affairs*)—
 - (a) if they are approved under Section 117 (*Pre-administration costs*), the first progress report after the approval must include a statement setting out the date of the approval and the amounts approved;
 - (b) each successive report, so long as any of the costs remain unapproved, must include a statement either—
 - (i) of any steps taken to get approval; or
 - (ii) that the administrator of the Company has decided, or (as the case may be) another insolvency practitioner entitled to seek approval has told the administrator of the Company of that insolvency practitioner's decision, not to seek approval.
 - (5) The progress report must, except where sub-section (6) or (7) applies, cover the period of six (6) months commencing on the date on which the Company entered administration and every subsequent period of six (6) months.
 - (6) The period to be covered by a progress report ends on the date when an administrator of a Company ceases to act, and the period to be covered by each subsequent progress report is each successive period of six (6) months beginning immediately after that date (subject to the further application of this sub-section when another administrator of the Company ceases to act).
 - (7) The sending of a progress report to creditors under Section 127 (*Application for extension of administration*) also satisfies sub-section (5) or (6) in respect of the period covered by that report; and the period to be covered by each subsequent progress report under this Section is each successive period of six (6) months beginning with the end of the period covered by the report under Section 127 (*Application for extension of administration*).
 - (8) The administrator of a Company must, within one (1) month of the end of the period covered by the report, send-
 - (a) a copy to the creditors attached to the prescribed form [2.24B]; and
 - (b) a copy to the Registrar,

but this sub-section does not apply when the period covered by the report is that of a final progress report under Section 120 (*Final progress reports*).

- (9) The Court may, on the application of the administrator of a Company, extend the period of one (1) month mentioned in sub-section (8), or make such other order in respect of the content of the report as it thinks just.
- (10) If the administrator of a Company makes default in complying with this Section, he commits a contravention and is liable to a level [●] fine and, for continued contravention, to a level [●] daily default fine.

79. Creditors' request for further information

- (1) If—
 - (a) within 21 days of receipt of a progress report under Section 78 (*Reports to creditors*)—
 - (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 21 days, any unsecured creditor,

makes a request in writing to the administrator of the Company for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by Section 78(1)(f) and (g) (*Reports to creditors*), the administrator of the Company must, within 14 days of receipt of the request, comply with sub-section (2).

- (2) The administrator of a Company complies with sub-section (1) by either—
 - (a) providing all of the information asked for; or
 - (b) so far as the administrator of the Company 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 might reasonably be expected to lead to violence against any person; or
 - (iii) the administrator of the Company 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-section (1), may apply to the Court within 21 days of—
 - (a) the giving by the administrator of the Company of reasons for not providing all of the information asked for; or
 - (b) the expiry of the 14 days provided for in sub-section (1),and the Court may make such order as it thinks just.

- (4) Without prejudice to the generality of sub-section (3), the order of the Court under that sub-section may extend the period of eight (8) weeks provided for in paragraph 9(3) (*Creditors' or members' claim that remuneration is, or other expenses are, excessive*) of Schedule 12 (*Remuneration*) by such further period as the Court thinks just.

80. Further creditors' meetings

- (1) The administrator of a Company shall summon a creditors' meeting if—
- (a) it is requested in the prescribed manner by creditors of the Company whose debts amount to at least ten (10)% of the total debts of the Company; or
 - (b) he is directed by the Court to summon a creditors' meeting.
- (2) An administrator of a Company commits a contravention and is liable to a level [•] fine if he fails without reasonable excuse to summon a creditors' meeting as required by this Section.

81. Creditors' committee

- (1) A creditors' meeting may establish a creditors' committee.
- (2) If such a creditors' committee is established—
- (a) the relevant provisions of Schedule 7 (*Creditors' Committees*) shall apply; and
 - (b) the creditors' committee may, on giving not less than seven (7) days' notice, require the administrator of a Company to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require

Chapter 8 - Deed of Company Arrangement

82. Effect of creditors' resolution

- (1) This Section applies where, at a meeting convened pursuant to Section 70 (*Requirement for initial creditors' meeting*) or Section 74(2) (*Revision of administrator's proposals*), a Company's creditors resolve that the Company execute a Deed of Company Arrangement.
- (2) The administrator of the Company is to be the administrator of the Deed of Company Arrangement, unless the creditors, by resolution passed at the meeting, appoint someone else to be administrator of the Deed of Company Arrangement.
- (3) The administrator of the Company must prepare an instrument setting out the terms of the Deed of Company Arrangement.
- (4) The instrument must also specify the following—
- (a) the administrator of the Deed of Company Arrangement;
 - (b) the property of the Company (whether or not already owned by the Company when it executes the Deed of Company Arrangement) that is to be available to pay creditors' claims;

- (c) the nature and duration of any moratorium period for which the Deed of Company Arrangement provides;
 - (d) to what extent the Company is to be released from its debts;
 - (e) the conditions (if any) for the Deed of Company Arrangement to come into operation;
 - (f) the conditions (if any) for the Deed of Company Arrangement to continue in operation;
 - (g) the circumstances in which the Deed of Company Arrangement terminates;
 - (h) the order in which proceeds of realising the property referred to in paragraph (b) are to be distributed among creditors bound by the Deed of Company Arrangement;
 - (i) the day (not later than the day when the administration began) on or before which claims must have arisen if they are to be admissible under the Deed of Company Arrangement.
- (5) The instrument is taken to include the prescribed provisions, except so far as it provides otherwise.

83. Execution of Deed of Company Arrangement

- (1) This Section applies where an instrument is prepared under Section 82 (*Effect of creditors' resolution*).
- (2) The Company must execute the instrument within—
- (a) 15 business days after the end of the meeting of creditors; or
 - (b) such further period as the Court allows on an application made within those 15 business days.
- (3) The proposed administrator of the Deed of Company Arrangement must execute the instrument before, or as soon as practicable after, the Company executes it.
- (4) When executed by both the Company and the proposed administrator, the instrument becomes a Deed of Company Arrangement.
- (5) As soon as practicable after a Deed of Company Arrangement is executed, the administrator of the Deed of Company Arrangement must—
- (a) send to each creditor of the Company a written notice of the execution of the Deed of Company Arrangement; and
 - (b) send to the Registrar a copy of the Deed of Company Arrangement.
- (6) If a Company contravenes sub-section (2), the proposed administrator of the Deed of Company Arrangement must, as soon as practicable thereafter—
- (a) send to the Registrar a notice that the Company has failed to execute the instrument within the required period; and

- (b) send such a notice to the Company's creditors.

84. Creditor etc. not to act inconsistently with deed before its execution

- (1) Where, at a meeting convened pursuant to Section 70 (*Requirement for initial creditors meeting*) or Section 74(2) (*Revision of administrator's proposals*), a Company's creditors resolve that the Company execute a Deed of Company Arrangement, this Section applies until—

- (a) the Deed of Company Arrangement is executed by both the Company and the administrator; or
- (b) the period within which Section 83(2) (*Execution of Deed of Company Arrangement*) requires the company to execute the Deed of Company Arrangement ends,

whichever happens sooner.

- (2) In so far as a person would be bound by the Deed of Company Arrangement if it had already been so executed, the person—

- (a) must not do anything inconsistent with the Deed of Company Arrangement, except with the leave of the Court; and
- (b) is subject to Section 87 (*Protection of Company's property*).

85. Effect of Deed of Company Arrangement on creditors

- (1) A Deed of Company Arrangement binds all creditors of the Company, so far as concerns claims arising on or before the day specified in the Deed of Company Arrangement under Section 82(4)(i) (*Effect of creditors' resolution*).

- (2) Sub-section (1) does not bind a secured creditor or prevent a secured creditor from realising or otherwise dealing with security, except so far as—

- (a) the Deed of Company Arrangement so provides in relation to a secured creditor who voted in favour of the resolution of creditors because of which the Company executed the Deed of Company Arrangement; or
- (b) the Court orders under Section 88(2) (*Court may limit rights*).

- (3) Sub-section (1) does not affect a right that an owner or lessor of property has in relation to that property, except so far as—

- (a) the Deed of Company Arrangement so provides in relation to an owner or lessor of property who voted in favour of the resolution of creditors because of which the Company executed the Deed of Company Arrangement; or
- (b) the Court orders under Section 88(4) (*Court may limit rights*).

- (4) Section [119] (*The members of a company*) of the Companies Regulations does not prevent a creditor of the Company from becoming a member of the Company as a result of the Deed of Company Arrangement requiring the creditor to accept an offer of shares in the Company.

86. **Giving priority to preferential creditors**

A Deed of Company Arrangement must contain a provision to the effect that, for the purposes of the application by the administrator of the property of the Company coming under his or her control under the Deed of Company Arrangement, any preferential creditors will be entitled to a priority at least equal to what they would have been entitled if the property were applied in accordance with Section 234 (*Preferential Debts*).

87. **Protection of company's property**

(1) Until a Deed of Company Arrangement terminates, this Section applies to a person bound by the Deed of Company Arrangement.

(2) The person cannot—

- (a) make an application for an order to wind up the Company; or
- (b) proceed with such an application made before the Deed of Company Arrangement became binding on the person.

(3) The person cannot—

- (a) begin or proceed with a proceeding against the Company or in relation to any of its property; or
- (b) begin or proceed with enforcement process in relation to property of the Company; except—
- (c) with the leave of the Court; and
- (d) in accordance with such terms (if any) as the Court imposes.

(4) In sub-section (3)—

property of a Company includes any property used or occupied by, or in the possession of the Company.

88. **Court may limit rights**

(1) This Section applies where—

- (a) at a meeting convened pursuant to Section 70 (*Requirement for initial creditors' meeting*), a Company's creditors have resolved that the company execute a Deed of Company Arrangement; or
- (b) a Company has executed such a Deed of Company Arrangement.

(2) The Court may order a secured creditor of the Company not to realise or otherwise deal with the security, except as permitted by the order.

- (3) The Court may only make an order under sub-section (2) if satisfied that—
- (a) for the creditor to realise or otherwise deal with the security would have a material adverse effect on achieving the purposes of the Deed of Company Arrangement; and
 - (b) having regard to—
 - (i) the terms of the Deed of Company Arrangement; and
 - (ii) the terms of the order; and
 - (iii) any other relevant matter,the creditor's interests will be adequately protected.
- (4) The Court may order the owner or lessor of property that is used or occupied by, or is in the possession of, the Company not to take possession of the property or otherwise recover it.
- (5) The Court may only make an order under sub-section (4) if satisfied that—
- (a) for the owner or lessor to take possession of the property or otherwise recover it would have a material adverse effect on achieving the purposes of the Deed of Company Arrangement; and
 - (b) having regard to—
 - (i) the terms of the Deed of Company Arrangement; and
 - (ii) the terms of the order; and
 - (iii) any other relevant matter;the interests of the owner or lessor will be adequately protected.
- (6) An order under this Section may be made subject to conditions.
- (7) An order under this Section may only be made on the application of—
- (a) if sub-section (1)(a) applies—the administrator of the Company; or
 - (b) if sub-section (1)(b) applies—the Deed of Company Arrangement's administrator.

89. Effect of Deed of Company Arrangement on Company, officers and members

A Deed of Company Arrangement also binds—

- (a) the Company; and
- (b) its officers and members; and
- (c) the administrator of the Deed of Company Arrangement.

90. Transfer of shares

- (1) The administrator of a Deed of Company Arrangement may transfer shares in the Company if the administrator has obtained—
 - (a) the written consent of the owner of the shares; or
 - (b) the leave of the Court.
- (2) A person is not entitled to oppose an application for leave under sub-section (1) unless the person is—
 - (a) a member of the Company; or
 - (b) a creditor of the Company; or
 - (c) any other interested person; or
 - (d) the Regulator.
- (3) The Court may only give leave under sub-section (1) if it is satisfied that the transfer would not unfairly prejudice the interests of members of the Company.

91. Extent of release of Company's debts

A Deed of Company arrangement releases the Company from a debt only in so far as—

- (a) the Deed of Company Arrangement provides for the release; and
- (b) the creditor concerned is bound by the Deed of Company Arrangement.

92. Guarantees and indemnities

Section 91 (*Extent of release of Company's debts*) does not affect a creditor's rights under a guarantee or indemnity.

93. Variation of Deed of Company Arrangement by creditors

A Deed of Company Arrangement may be varied by a resolution passed at a meeting of the creditors of the Company convened under Section 99 (*Meeting of creditors to consider variation or termination*), but only if the variation is not materially different from a proposed variation set out in the notice of the meeting.

94. Court may cancel variation

- (1) Where a Deed of Company Arrangement is varied under Section 93 (*Variation of Deed of Company Arrangement by creditors*), a creditor of the Company may apply to the Court for an order cancelling the variation.
- (2) On an application, the Court—
 - (a) may make an order cancelling the variation, or confirming it, either wholly or in part, on such conditions (if any) as the order specifies; and
 - (b) may make such other orders as it thinks appropriate.

95. When Deed of Company Arrangement terminates

A Deed of Company Arrangement terminates when—

- (a) the Court makes under Section 97 (*When Court may terminate Deed of Company Arrangement*) an order terminating the Deed of Company Arrangement; or
- (b) the Company's creditors pass a resolution terminating the Deed of Company Arrangement at a meeting that was convened under Section 99 (*Meeting of creditors to consider variation or termination*) by a notice setting out the proposed resolution; or
- (c) if the Deed of Company Arrangement specifies circumstances in which it is to terminate—those circumstances exist; or
- (d) the administrator of the Deed of Company Arrangement executes a notice of termination of the Deed of Company Arrangement in accordance with Section 100 (*Notice of termination of Deed of Company Arrangement*);

whichever happens first.

96. When creditors may terminate Deed of Company Arrangement

- (1) The creditors are not entitled to pass a resolution under Section 95(b) (*When Deed of Company Arrangement terminates*) unless—
 - (a) there has been a breach of the Deed of Company Arrangement; and
 - (b) the breach has not been rectified before the resolution is passed.
- (2) When a Deed of Company Arrangement terminates in accordance with sub-section (1), the administrator of the Deed of Company Arrangement must—
 - (a) send to the Registrar a notice of the termination; and
 - (b) send such a notice to each of the Company's creditors.

97. When Court may terminate Deed of Company Arrangement

- (1) The Court may make an order terminating a Deed of Company Arrangement if satisfied that—
 - (a) information about the Company's business, property, affairs or financial circumstances that—
 - (i) was false or misleading; and
 - (ii) can reasonably be expected to have been material to creditors of the Company in deciding whether to vote in favour of the resolution that the Company execute the Deed of Company Arrangement,
- was given to the administrator of the Company or to such creditors; or

- (b) such information was contained in a report or statement under Section 70(3) (*Requirement for initial creditors' meetings*) that accompanied a notice of the meeting at which the resolution was passed; or
 - (c) there was an omission from such a report or statement and the omission can reasonably be expected to have been material to such creditors in so deciding; or
 - (d) there has been a material contravention of the Deed of Company Arrangement by a person bound by the Deed of Company Arrangement; or
 - (e) effect cannot be given to the Deed of Company Arrangement without injustice or undue delay; or
 - (f) the Deed of Company Arrangement or a provision of it is, an act or omission done or made under the Deed of Company Arrangement was, or an act or omission proposed to be so done or made would be—
 - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more such creditors; or
 - (ii) contrary to the interests of the creditors of the Company as a whole; or
 - (g) the Deed of Company Arrangement should be terminated for some other reason.
- (2) An order may be made on the application of—
- (a) a creditor of the Company; or
 - (b) the Company; or
 - (c) the Regulator; or
 - (d) any other interested person.

98. Creditors may terminate Deed of Company Arrangement and resolve that Company be wound up

Where—

- (a) at a meeting convened under Section 99 (*Meeting of creditors to consider variation or termination*), the Company's creditors pass a resolution terminating the Deed of Company Arrangement; and
- (b) the notice of the meeting set out a proposed resolution that the Company be wound up,

the creditors may also resolve at the meeting that the Company be wound up.

99. Meeting of creditors to consider variation or termination

- (1) The administrator of a Deed of Company Arrangement—
 - (a) may at any time convene a meeting of the Company's creditors; and

- (b) must convene such a meeting if so requested in writing by creditors the value of whose claims against the Company is not less than ten (10)% of the value of all the creditors' claims against the Company.
- (2) The administrator of the Deed of Company Arrangement must convene the meeting by giving written notice of the meeting—
 - (a) to as many of the Company's creditors as reasonably practicable; and
 - (b) at least five (5) business days before the meeting.
- (3) The notice given to a creditor under sub-section (2) must—
 - (a) set out each resolution (if any) under Section 93 (*Variation of Deed of Company Arrangement by creditors*) or Section 95(b) (*When Deed of Company Arrangement terminates*) that the administrator of the Deed of Company Arrangement proposes that the meeting vote on; and
 - (b) if the meeting is convened under sub-section (1)(b), set out each proposed resolution under Section 93 (*Variation of Deed of Company Arrangement by creditors*) or Section 95(b) (*When Deed of Company Arrangement terminates*) that is set out in the request.
- (4) At a meeting convened under this Section, the administrator of the Deed of Company Arrangement is to preside.
- (5) A meeting convened under this Section may be adjourned from time to time.

100. Notice of termination of Deed of Company Arrangement

- (1) If a Company is subject to a Deed of Company Arrangement, and—
 - (a) the administrator of the Deed of Company Arrangement has applied all of the proceeds of the realisation of the assets available for the payment of creditors; or
 - (b) the administrator of the Deed of Company Arrangement has paid to the creditors—
 - (i) the sum of 100 cents in the dollar; or
 - (ii) any lesser sum determined by the creditors at a general meeting; or
 - (c) all of the following conditions are satisfied—
 - (i) the Company's obligations under the Deed of Company Arrangement have been fulfilled;
 - (ii) the obligations of any other party to the Deed of Company Arrangement have been fulfilled; and
 - (iii) creditors' claims under the Deed of Company Arrangement have been dealt with in accordance with the Deed of Company Arrangement,

the administrator of the Deed of Company Arrangement must—

- (d) certify to that effect in writing; and
- (e) within 28 days, lodge with the Registrar a notice of termination of the Deed of Company Arrangement.

(2) The notice of termination must be in the prescribed form.

101. **When Court may void or validate Deed of Company Arrangement**

(1) Where there is doubt, on a specific ground, whether a Deed of Company Arrangement was entered into in accordance with this Chapter or complies with this Chapter, the administrator of the Deed of Company Arrangement, a member or creditor of the Company, or the Registrar, may apply to the Court for an order under this Section.

(2) On an application, the Court may make an order declaring the Deed of Company Arrangement, or a provision of it, to be void or not to be void, as the case requires, on the ground specified in the application or some other ground.

(3) On an application, the Court may declare the Deed of Company Arrangement, or a provision of it, to be valid, despite a contravention of a provision of this Chapter, if the Court is satisfied that—

- (a) the provision was substantially complied with; and
- (b) no injustice will result for anyone bound by the Deed of Company Arrangement if the contravention is disregarded.

(4) Where the Court declares a provision of a Deed of Company Arrangement to be void, the Court may by order vary the Deed of Company Arrangement, but only with the consent of the administrator of the Deed of Company Arrangement.

102. **Effect of termination or avoidance**

The termination or avoidance, in whole or in part, of a Deed of Company Arrangement does not affect the previous operation of the Deed of Company Arrangement.

103. **Deed accounts**

(1) The administrator of a Deed of Company Arrangement must, within one month after—

- (a) the end of the 6-month period beginning on the date of his or her appointment; and
- (b) the end of each subsequent 6-month period during which he or she is the administrator of the Deed of Company Arrangement;

lodge an account that—

- (c) is in the prescribed form; and
- (d) is verified by a written statement; and
- (e) shows his or her receipts and payments during the relevant 6-month period; and

- (f) in the case of the second or subsequent account lodged under this sub-section—also shows the aggregate amount of receipts and payments during all preceding 6-month periods since his or her appointment.
- (2) A person who ceases to be the administrator of a Deed of Company Arrangement must, within one month after the cessation, lodge a final account that—
- (a) is in the prescribed form; and
 - (b) is verified by a written statement; and
 - (c) if he or she has previously been required to lodge an account under sub-section (1)—shows his or her receipts and payments during the period—
 - (i) beginning at the end of the 6-month period to which the most recent account under sub-section (1) related; and
 - (ii) ending at the cessation; and
 - (d) if he or she has previously been required to lodge an account under sub-section (1)—also shows the aggregate amount of receipts and payments during all previous 6-month periods since his or her appointment; and
 - (e) if he or she has not previously been required to lodge an account under sub-section (1)—shows his or her receipts and payments during the period beginning on—
 - (i) the date of his or her appointment; and
 - (ii) ending at the cessation.
- (3) If an account is lodged under sub-section (1) or (2), the Registrar may cause the account to be audited by a registered company auditor.
- (4) The auditor must prepare a report on the account.
- (5) For the purposes of the audit under sub-section (3), the administrator or former administrator must give the auditor such books and information as the auditor requires.
- (6) If the Registrar causes an account to be audited under sub-section (3)—
- (a) the Registrar must give the administrator or former administrator a copy of the report by the auditor; and
 - (b) Section [472] (*Auditor's general right to information*) of the Companies Regulations applies in relation to the report prepared by the auditor as if it were a document required to be lodged.
- (7) The costs of an audit under this Section are to be fixed by the Registrar, and are payable by the Company.

Chapter 9 - Functions of Administrator

104. General powers

- (1) The administrator of a Company may do anything necessary or expedient for the management of the affairs, business and property of the Company.
- (2) A provision of this Part 2 (*Administration*) which expressly permits the administrator of a Company to do a specified thing is without prejudice to the generality of sub-section (1).
- (3) A person who deals with the administrator of a Company in good faith and for value need not inquire whether the administrator is acting within his powers.
- (4) The administrator of a Company has the powers specified in Schedule 2 (*Powers of the Administrator*).
- (5) The administrator of a Company—
 - (a) may remove a Director of the Company; and
 - (b) may appoint a Director of the Company (whether or not to fill a vacancy).
- (6) The administrator of a Company or of a Deed of Company Arrangement may call a meeting of members or creditors of the Company.
- (7) The administrator of a Company or of a Deed of Company Arrangement may apply to the Court for directions in connection with his functions. The administrator of a Deed of Company Arrangement may also apply to the Court for directions about a matter arising in connection with the operation of, or giving effect to, the Deed of Company Arrangement.
- (8) A Company in administration or an officer of a Company in administration may not exercise a management power without the consent of the administrator of the Company.
- (9) For the purpose of sub-section (1)—
 - (a) "**management power**" means a power which could be exercised so as to interfere with the exercise of the administrator's powers;
 - (b) it is immaterial whether the power is conferred by an enactment or an instrument; and
 - (c) consent may be general or specific.

105. Distribution

- (1) The administrator of a Company may make a distribution to a creditor of the Company. Schedule 5 (*Proofs and Distributions*) shall apply to distributions made or proposed to be made by the administrator of a Company.
- (2) Section 232 (*Distribution of Company's property*) shall apply in relation to a distribution under this Section as it applies in relation to a winding up.
- (3) A payment may not be made by way of distribution under this Section to a creditor of the Company who is neither secured nor preferential unless the Court gives permission.

- (4) The administrator of a Company may make a payment otherwise than in accordance with sub-sections (1) to (3) or paragraph (13) of Schedule 2 (*Powers of the Administrator*) if he thinks it likely to assist achievement of the purpose of administration.

106. General duties

- (1) The administrator of a Company shall on his appointment take custody or control of all the property to which he thinks the Company is entitled.
- (2) Subject to sub-section (3), the administrator of a Company shall manage its affairs, business and property in accordance with—
- (a) any proposals approved under Section 73 (*Business and result of initial creditors' meeting*);
 - (b) any revision of those proposals which is made by him and which he does not consider substantial; and
 - (c) any revision of those proposals approved under Section 74 (*Revision of administrator's proposals*).
- (3) If the Court gives directions to the administrator of a Company in connection with any aspect of his management of the Company's affairs, business or property, the administrator of the Company shall comply with the directions.
- (4) The Court may give directions under sub-section (3) only if—
- (a) no proposals have been approved under Section 73 (*Business and result of initial creditors' meeting*);
 - (b) the directions are consistent with any proposals or revision approved under Section 73 (*Business and result of initial creditors' meeting*) or 74 (*Revision of administrator's proposals*);
 - (c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under Section 73 (*Business and result of initial creditors' meeting*) or 74 (*Revision of administrator's proposals*); or
 - (d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under Section 73 (*Business and result of initial creditors' meeting*) or 74 (*Revision of administrator's proposals*).

107. Administrator as agent of Company

In exercising his functions under these Regulations the administrator of a Company acts as its agent.

108. Charged property: floating charge

- (1) The administrator of a Company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

- (2) Where property is disposed of in reliance on sub-section (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.
- (3) In sub-section (2) "**acquired property**" means property of the Company which directly or indirectly represents the property disposed of.

109. **Charged property**

- (1) The Court may by order enable the administrator of a Company or of a Deed of Company Arrangement to dispose of property which is subject to security (other than in the case of an administrator of a Company a floating charge) as if it were not subject to the security.
- (2) An order under sub-section (1) may be made only—
 - (a) on the application of the administrator of the Company or of a Deed of Company Arrangement; and
 - (b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration or the Deed of Company Arrangement in respect of the Company.
- (3) An order under this Section is subject to the condition that there be applied towards discharging the sums secured by the security—
 - (a) the net proceeds of disposal of the property; and
 - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.
- (4) If an order under this Section relates to more than one security, application of money under sub-section (3) shall be in the order of the priorities of the securities.
- (5) An administrator of a Company or of a Deed of Company Arrangement who makes a successful application for an order under this Section shall send a copy of the order to the Registrar before the end of the period of 14 days starting with the date of the order.
- (6) An administrator of a Company or of a Deed of Company Arrangement commits a contravention and is liable to a level [•] fine if he fails to comply with sub-section (5) without reasonable excuse.

110. **Hire-purchase property**

- (1) The Court may by order enable the administrator of a Company or of a Deed of Company Arrangement to dispose of goods which are in the possession of the Company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the Company.
- (2) An order under sub-section (1) may be made only—
 - (a) on the application of the administrator of the Company or of a Deed of Company Arrangement; and

- (b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration or the Deed of Company Arrangement in respect of the Company.
- (3) An order under this Section is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—
 - (a) the net proceeds of disposal of the goods; and
 - (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.
- (4) An administrator of a Company or of a Deed of Company Arrangement who makes a successful application for an order under this Section shall send a copy of the order to the Registrar before the end of the period of 14 days starting with the date of the order.
- (5) An administrator of a Company or of a Deed of Company Arrangement commits a contravention and is liable to a level [•] fine if he fails without reasonable excuse to comply with sub-section (4).

111. **Disposal of charged property**

- (1) The following applies where the administrator of a Company or of a Deed of Company Arrangement applies to the Court under Section 109 (*Charged property*) or 110 (*Hire-purchase property*) for authority to dispose of property of the Company which is subject to a security, or goods in the possession of the Company under a hire purchase agreement.
- (2) The Court shall fix a venue for the hearing of the application, and the administrator of the Company or of a Deed of Company Arrangement shall as soon as reasonably practicable give notice of the venue to the person who is the holder of the security or, as the case may be, the owner under the agreement.
- (3) If an order is made under Section 109 (*Charged property*) or 110 (*Hire-purchase property*) the Court shall send two sealed copies to the administrator.
- (4) The administrator shall send one of them to that person who is the holder of the security or owner under the agreement.
- (5) The administrator must send a copy of the sealed order to the Registrar.

112. **Protection for secured or preferential creditor**

- (1) A statement of proposals of an administrator of a Company under Section 65 (*Administrator's proposals*) may not include any action which—
 - (a) affects the right of a secured creditor of the Company to enforce his security;
 - (b) would result in a preferential debt of the Company being paid otherwise than in priority to its non-preferential debts; or
 - (c) would result in one preferential creditor of the Company being paid a smaller proportion of his debt than another.

- (2) Sub-section (1) does not apply to—
- (a) action to which the relevant creditor consents; or
 - (b) a proposal for a compromise or arrangement to be sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations; or
 - (c) a proposal for a Deed of Company Arrangement.
- (3) The reference to a statement of proposals in sub-section (1) includes a reference to a statement as revised or modified.

113. Debts of insolvent Company to rank equally

Debts other than preferential debts rank equally between themselves in the administration and, after the preferential debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

114. Challenge to administrator's conduct

- (1) A creditor or member of a Company in administration or subject to a Deed of Company Arrangement may apply to the Court claiming that—
- (a) the administrator of the Company or of the Deed of Company Arrangement is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors); or
 - (b) the administrator of the Company or of the Deed of Company Arrangement proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).
- (2) A creditor or member of a Company in administration or subject to a Deed of Company Arrangement may apply to the Court claiming that the administrator of the Company or of the Deed of Company Arrangement is not performing his functions as quickly or as efficiently as is reasonably practicable.
- (3) The Court may—
- (a) grant relief;
 - (b) dismiss the application;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) make an interim order;
 - (e) make any other order it thinks appropriate.
- (4) In particular, an order under this Section may—
- (a) regulate the exercise by the administrator of his functions;
 - (b) require the administrator to do or not do a specified thing;

- (c) require a creditors' meeting or meeting of creditors to be held for a specified purpose;
 - (d) provide for the appointment of an administrator to cease to have effect;
 - (e) make consequential provision.
- (5) An order may be made on a claim under sub-section (1) whether or not the action complained of—
- (a) is within the powers of the administrator under these Regulations;
 - (b) was taken in reliance on an order under Section 109 (*Charge property*) or 110 (*Hire-purchase property*).
- (6) An order may not be made under this Section if it would impede or prevent the implementation by the administrator of a Company of—
- (a) a compromise or arrangement sanctioned under Part 25 (*Arrangements and Reconstructions*) of the Companies Regulations; or
 - (b) proposals or a revision approved under Section 73 (*Business and result of initial creditors' meeting*) or 74 (*Revision of administrator's proposals*) more than 28 days before the day on which the application for the order under this Section is made.

115. Misfeasance

- (1) The Court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a Company or of a Deed of Company Arrangement; or
 - (b) has been or has purported to be the administrator of a Company or of a Deed of Company Arrangement.
- (2) An examination under this Section may be held only on the application of—
- (a) the administrator of the Company or of a Deed of Company Arrangement;
 - (b) the liquidator of the Company;
 - (c) a creditor of the Company; or
 - (d) a contributory of the Company.
- (3) An application under sub-section (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the Company;
 - (b) has become accountable for money or other property of the Company;
 - (c) has breached a fiduciary or other duty in relation to the Company; or
 - (d) has been guilty of misfeasance.

- (4) On an examination under this Section into a person's conduct the Court may order him—
- (a) to repay, restore or account for money or property;
 - (b) to pay interest;
 - (c) to contribute a sum to the Company's property by way of compensation for breach of duty or misfeasance.
- (5) In sub-section (3) "**administrator**" includes a person who purports or has purported to be an administrator of a Company or of a Deed of Company Arrangement.
- (6) An application under sub-section (2) may be made in respect of an administrator who has been discharged under Section 151 (*Vacation of office: discharge from liability*) only with the permission of the Court.

116. **Expenses of the administration**

- (1) The expenses of the administration are payable in the following order of priority—
- (a) expenses properly incurred by the administrator of a Company in performing his functions in the administration of the Company;
 - (b) the cost of any security provided by the administrator of a Company in accordance with these Regulations;
 - (c) where an administration order was made, the costs of the applicant and any person appearing on the hearing of the application and where the administrator of a Company was appointed otherwise than by order of the Court, any costs and expenses of the appointor in connection with the making of the appointment and the costs and expenses incurred by any other person in giving notice of intention to appoint an administrator of the Company;
 - (d) any amount payable to a person employed or authorised, under Chapter 7 (*Process of Administration*) of this Part 2 (*Administration*), 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 of a Company 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 of the Company under this Section, [*but not including any payment of taxes in circumstances referred to in sub-section (i) below*]);
 - (g) the remuneration or emoluments of any person who has been employed by the administrator of a Company to perform any services for the Company, as required or authorised under these Regulations;
 - (h) the remuneration of the administrator of the Company the basis of which has been fixed under Section 118 (*Fixing of an administrator's remuneration*) and Schedule 12

(*Remuneration*) and unpaid pre-administration costs approved under Section 117 (*Pre-administration costs*);

- (i) [*the amount of any corporation tax on chargeable gains accruing on the realisation of any asset of the Company (without regard to whether the realisation is effected by the administrator of a Company, a secured creditor, or a receiver or manager appointed to deal with a security)]².*
- (2) The priorities laid down by sub-section (1) are subject to the power of the Court to make orders under sub-section (3) where the property is insufficient to satisfy the liabilities.
- (3) The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the expenses incurred in the administration in such order of priority as the Court thinks just.
- (4) For the purposes of Section 152(3) (*Vacation of office: discharge from liability*), the remuneration and expenses of a former administrator of the Company shall comprise all those items set out in sub-section (1).

117. **Pre-administration costs**

- (1) Where the administrator has made a statement of pre-administration costs under Section 66(1)(k) (*Administrator's statement of proposals*) the creditors' committee may determine whether and to what extent the unpaid pre-administration costs set out in the statement are approved for payment.
- (2) But if—
 - (a) there is no creditors' committee; or
 - (b) there is but it does not make the necessary determination; or
 - (c) it does do so but the administrator of the Company or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

sub-section (3) applies.

- (3) When this sub-section applies, determination of whether and to what extent the unpaid pre-administration costs are approved for payment shall be—
 - (a) by resolution of a meeting of creditors other than in a case falling in paragraph (b); or
 - (b) in a case where the administrator of the Company has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*)—
 - (i) by the approval of each secured creditor of the Company; or
 - (ii) if the administrator of the Company has made, or intends to make, a distribution to preferential creditors, by the approval of—
 - (aa) each secured creditor of the Company; and

² To be confirmed if references to corporation tax are required. Assuming tax residency in ADGM, there may be no corporation tax.

- (bb) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) The administrator of a Company must call a meeting of the creditors' committee or of creditors if so requested for the purposes of sub-sections (1) to (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-administration costs; and the administrator of the Company must give notice of the meeting within 28 days of receipt of the request.
 - (5) If—
 - (a) there is no determination under sub-section (1) or (3); or
 - (b) there is such a determination but the administrator of the Company or other insolvency practitioner who has charged fees or incurred expenses as pre-administration costs considers the amount determined to be insufficient,

the administrator of the Company (where the fees were charged or expenses incurred by him) or other insolvency practitioner (where the fees were charged or expenses incurred by that insolvency practitioner) may apply to the Court for a determination of whether and to what extent the unpaid pre-administration costs are approved for payment.
 - (6) Paragraphs 5(4), (5) and (7) (*Remuneration: recourse by administrator or liquidator to the Court*) of Schedule 12 (*Remuneration*) apply to an application under sub-section (5) as they do to an application under paragraph 5(1) (*Remuneration: recourse by administrator or liquidator to the Court*) of Schedule 12 (*Remuneration*) (references to the administrator of the Company being read as references to the insolvency practitioner who has charged fees or incurred expenses as pre-administration costs).
 - (7) Where the administrator of a Company fails to call a meeting of the creditors' committee or of creditors in accordance with sub-section (4), the other insolvency practitioner may apply to the Court for an order requiring the administrator of the Company to do so.

118. Fixing of an administrator's remuneration

An administrator is entitled to receive remuneration for his services as such. The relevant provisions of Schedule 12 (*Remuneration*) shall apply in the determination of the remuneration of an administrator.

Chapter 10 - Ending Administration

119. Automatic end of administration

- (1) The appointment of an administrator of a Company shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.
- (2) But—
 - (a) on the application of an administrator of a Company the Court may by order extend his term of office for a specified period; and
 - (b) the term of office of an administrator of a Company may be extended for a specified period not exceeding six months by consent.

- (3) An order of the Court under this Section—
- (a) may be made in respect of an administrator of a Company whose term of office has already been extended by order or by consent; but
 - (b) may not be made after the expiry of his term of office.
- (4) Where an order is made under this Section the administrator of a Company shall as soon as is reasonably practicable notify the Registrar.
- (5) An administrator of a Company who fails without reasonable excuse to comply with sub-section (4) commits a contravention and is liable to a level [●] fine.
- (6) In sub-section (2)(b) "**consent**" means consent of—
- (a) each secured creditor of the Company; and
 - (b) if the Company has unsecured debts, creditors whose debts amount to more than 50% of the Company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (7) But where the administrator of a Company has made a statement under sub-section (6)(b) "**consent**" means—
- (a) consent of each secured creditor of the Company; or
 - (b) if the administrator of a Company thinks that a distribution may be made to preferential creditors, consent of—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (8) Consent for the purposes of sub-section (2)(b) may be—
- (a) written; or
 - (b) signified at a creditors' meeting.
- (9) The term of office of an administrator of a Company—
- (a) may be extended by consent only once;
 - (b) may not be extended by consent after extension by order of the Court; and
 - (c) may not be extended by consent after expiry.
- (10) Where the term of office of an administrator of a Company is extended by consent he shall as soon as is reasonably practicable—
- (a) file notice of the extension with the Court; and
 - (b) notify the Registrar.

(11) An administrator of a Company who fails without reasonable excuse to comply with sub-section (10) commits a contravention and is liable to a level [●] fine.

(12) Notwithstanding the other provisions of this Section, the appointment of an administrator of a Company which is in administration shall cease to have effect when a Deed of Company Arrangement is executed by both the Company and the administrator of the Deed of Company Arrangement.

120. Final progress reports

(1) In this Chapter reference to a progress report is to a report in the form specified in Section 78 (*Reports to creditors*).

(2) The "**final progress report**" means a progress report which includes a summary of—

- (a) the administrator's proposals;
- (b) any major amendments to, or deviations from, those proposals;
- (c) the steps taken during the administration; and
- (d) the outcome.

121. Notice of automatic end of administration

(1) Where the appointment of an administrator of a Company has ceased to have effect, and the administrator of the Company is not required by any other Section to give notice of that fact, he shall, as soon as reasonably practicable, and in any event within five (5) business days of the date when the appointment has ceased, file a notice of automatic end of administration in prescribed form [2.30B] with the Court. The notice shall be accompanied by a final progress report.

(2) A copy of the notice and accompanying document shall be sent as soon as reasonably practicable to the Registrar, and to all other persons who received a copy of the administrator's proposals.

(3) If the administrator of a Company makes default in complying with this Section, he commits a contravention and is liable to a level [●] fine and, for continued contravention, to a level [●] daily default fine.

122. Court ending administration on application of administrator

(1) On the application of the administrator of a Company the Court may provide for the appointment of an administrator of the Company to cease to have effect from a specified time.

(2) The administrator of a Company shall make an application under this Section if—

- (a) he thinks the purpose of administration cannot be achieved in relation to the Company;
- (b) he thinks the Company should not have entered administration;
- (c) a creditors' meeting requires him to make an application under this Section;

- (d) (i) the administration is pursuant to an administration order; and
 - (ii) the administrator of the Company thinks that the purpose of administration has been sufficiently achieved in relation to the Company; or
 - (e) the Company contravenes Section 83(2) (*Execution of Deed of Company Arrangement*) by failing to execute a proposed Deed of Company Arrangement.
- (3) On an application under this Section the Court may—
- (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order;
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

123. Application to Court by administrator

- (1) An application to the Court under Section 122 (*Court ending administration on application of administrator*) for an order ending an administration shall have attached to it a progress report for the period since the last progress report (if any) or the date the Company entered administration and a statement indicating what the administrator of the Company thinks should be the next steps for the Company (if applicable).
- (2) Where the administrator of a Company 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.
- (3) When the administrator of a Company 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 (5) business days before the date that he intends to make his application; and
 - (b) attach to his application to Court a statement that he has notified the creditors, and copies of any response from creditors to that notification.
- (4) Where the administrator of a Company applies to Court under Section 122 (*Court ending administration on application of administrator*) in conjunction with a petition under Section 209 (*Application for winding up*) for an order to wind up the Company, he shall, in addition to the requirements of sub-section (3), notify the creditors whether he intends to seek appointment as liquidator.

124. Termination of administration where objective achieved

- (1) This Section applies where an administrator of a Company is appointed under Section 30 (*Power to appoint*) or 38 (*Power to appoint*).

- (2) If the administrator of a Company thinks that the purpose of administration has been sufficiently achieved in relation to the Company he may file a notice in the prescribed form [2.32B], accompanied by a final progress report,—
 - (a) with the Court; and
 - (b) with the Registrar.
- (3) The appointment of the administrator of the Company shall cease to have effect when the requirements of sub-section (2) are satisfied.
- (4) Where the administrator of a Company files a notice, as soon as practicable, and within five (5) business days, he shall send a copy of the notice (and the accompanying report) to every creditor of the Company of whose claim and address he is aware, to all those persons who were notified of his appointment and the Company.
- (5) The administrator of a Company is taken to have complied with sub-section (4) in relation to creditors if before the end of the prescribed period he publishes in the Global Market a notice (with standard content and stating the date that the administration ended) undertaking to provide a copy of the notice under sub-section (2) to any creditor of the Company who applies in writing to a specified address.
- (6) An administrator of a Company who fails without reasonable excuse to comply with sub-section (4) commits a contravention and is liable to a level [●] fine.

125. Court ending administration on application of creditor

- (1) On the application of a creditor of a Company the Court may provide for the appointment of an administrator of the Company to cease to have effect at a specified time.
- (2) An application under this Section must allege an improper motive—
 - (a) in the case of an administrator of a Company appointed by administration order, on the part of the applicant for the order; or
 - (b) in any other case, on the part of the person who appointed the administrator of the Company.
- (3) On an application under this Section the Court may—
 - (a) adjourn the hearing conditionally or unconditionally;
 - (b) dismiss the application;
 - (c) make an interim order;
 - (d) make any order it thinks appropriate (whether in addition to, in consequence of or instead of the order applied for).

126. Application to Court by creditor

- (1) Where a creditor applies to the Court to end the administration a copy of the application shall be served on the administrator of the Company and the person who either made the application for the administration order or made the appointment. Where the appointment

was made under Section 30 (*Power to appoint*), a copy of the application shall be served on the holder of the qualifying charge by virtue of which the appointment was made.

- (2) Service shall be effected not less than five (5) business days before the date fixed for the hearing. The administrator of the Company, applicant or appointor, or holder of the qualifying charge by virtue of which the appointment was made may appear at the hearing of the application.
- (3) Where the Court makes an order to end the administration, the Court shall send a copy of the order to the administrator of the Company.

127. Application for extension of administration

- (1) An application to the Court for an extension of administration shall be accompanied by a progress report for the period since the last progress report (if any) or the date the Company entered administration.
- (2) When the administrator of the Company requests an extension of the period of the administration by consent of creditors, his request shall be accompanied by a progress report for the period since the last progress report (if any) or the date the Company entered administration.
- (3) Where the Court makes an order extending the administration, the administrator of the Company must give notice of the order to the creditors as soon as reasonably practicable, together with a copy of the progress report which accompanied the application to the Court.
- (4) Where the period of the administration has been extended by consent of creditors, the administrator of the Company must give notice to the creditors as soon as reasonably practicable.

128. Time of end of administration

- (1) For the purposes of Section 123(2) (*Application to Court by administrator*), two copies of the notice shall be filed with the Court and shall contain a statement that a copy of the notice has been sent to the Registrar. The Court shall endorse each copy with the date and time of filing. The appointment shall cease to have effect from that date and time.
- (2) The Court shall give a sealed copy of the notice to the administrator of the Company.

129. Notification by administrator of Court order

- (1) Where the Court makes an order to end the administration, the administrator of the Company must send to the Registrar a copy of the Court order and a copy of his final progress report.
- (2) As soon as reasonably practicable, the administrator of the Company must send a copy of the notice and the final progress report to all other persons who received notice of his appointment.

130. Public interest winding-up

- (1) This Section applies where a winding-up order is made for the winding up of a Company in administration or which is subject to a Deed of Company Arrangement on a petition presented under Section 210 (*Petition for winding up on grounds of interests of the Global Market*).

- (2) This Section also applies where a provisional liquidator of a Company in administration or which is subject to a Deed of Company Arrangement is appointed following the presentation of a petition as described in sub-section (1).
- (3) The Court shall order—
 - (a) that the appointment of the administrator shall cease to have effect; or
 - (b) that the appointment of the administrator shall continue to have effect.
- (4) If the Court makes an order under sub-section (3)(b) it may also—
 - (a) specify which of the powers under these Regulations are to be exercisable by the administrator; and
 - (b) order that these Regulations shall have effect in relation to the administrator with specified modifications.

131. **Moving to creditors' voluntary liquidation**

- (1) This Section applies where—
 - (a) the administrator of a Company thinks—
 - (i) that the total amount which each secured creditor of the Company is likely to receive has been paid to him or set aside for him; and
 - (ii) that a distribution will be made to unsecured creditors of the Company (if there are any); or
 - (b) at a creditors' meeting convened pursuant to Section 99 (*Meeting of creditors to consider variation or termination*), a Company's creditors—
 - (i) pass a resolution terminating a Deed of Company Arrangement executed by the Company; and
 - (ii) also resolve at a particular time under Section 98 (*Creditors may terminate Deed of Company Arrangement and resolve that Company be wound up*) that the Company be wound up.
- (2) The administrator of the Company may, and the administrator of a Deed of Company Arrangement shall send to the Registrar a notice that this Section applies.
- (3) On receipt of a notice under sub-section (2) the Registrar shall register it.
- (4) If an administrator of a Company or of a Deed of Company Arrangement sends a notice under sub-section (2) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the Court; and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.

- (5) On the registration of a notice under sub-section (2)—
 - (a) if sent by an administrator of the Company, the appointment of an administrator of the Company shall cease to have effect; and
 - (b) the Company shall be wound up as if a resolution for voluntary winding up under Section 181 (*Circumstances in which a Company may be wound up voluntarily*) were passed on the day on which the notice is registered.
- (6) The liquidator for the purposes of the winding up shall be—
 - (a) a person nominated by the creditors of the Company in the prescribed manner and within the prescribed period; or
 - (b) if no person is nominated under paragraph (a), the administrator of the Company or of the Deed of Company Arrangement, as the case may be.
- (7) In the application of Part 4 (*Winding up*) to a winding up by virtue of this Section—
 - (a) Section 199 (*Notice of resolution to wind up*) shall not apply;
 - (b) Section 200 (*Commencement of winding up*) shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-section (3);
 - (c) Section 182 (*Statutory declaration of solvency*) shall not apply;
 - (d) Sections 193 (*Meeting of members and creditors*) and Section 194 (*Appointment of liquidator*) shall not apply;
 - (e) Section 215 (*Commencement of winding up*) shall apply as if the reference to the time of the passing of the resolution for voluntary winding up were a reference to the beginning of the date of registration of the notice under sub-section (3); and
 - (f) any creditors' committee which is in existence immediately before the Company ceases to be in administration shall continue in existence after that time as if appointed as a liquidation committee under Section 237 (*Liquidation Committee*).

132. **Moving to creditors' voluntary liquidation**

- (1) As soon as reasonably practicable after the day on which the Registrar registers the notice of moving to creditors' voluntary liquidation sent by the administrator of the Company or of the Deed of Company Arrangement, as the case may be, for the purposes of Section 131(3) (*Moving to creditors' voluntary liquidation*), the person who at that point ceases to be the administrator of the Company or of the Deed of Company Arrangement, as the case may be, must (whether he becomes the liquidator or not) send a final progress report or final account, as the case may be, to the Registrar and to all those who received notice of his appointment.
- (2) For the purposes of Section 131(6)(a) (*Moving to creditors' voluntary liquidation*), a person is nominated by the creditors as liquidator by—
 - (a) their approval of the statement of the proposed liquidator in the proposals or revised proposals of the administrator of the Company or the proposed resolutions included

in the notice given to creditors under Section 99 (*Meeting of creditors to consider variation or termination*); or

- (b) their nomination of a different person before their approval of the proposals or revised proposals or for the purposes of the proposed resolutions.

133. **Moving from administration to dissolution**

- (1) If the administrator of a Company thinks that the Company has no property which might permit a distribution to its creditors, he shall send a notice to that effect to the Registrar.
- (2) The Court may on the application of the administrator of a Company disapply sub-section (1) in respect of the Company.
- (3) On receipt of a notice under sub-section (1) the Registrar shall register it.
- (4) On the registration of a notice in respect of a Company under sub-section (1) the appointment of an administrator of the Company shall cease to have effect.
- (5) If an administrator of a Company sends a notice under sub-section (1) he shall as soon as is reasonably practicable—
 - (a) file a copy of the notice with the Court; and
 - (b) send a copy of the notice to each creditor of whose claim and address he is aware.
- (6) At the end of the period of three months beginning with the date of registration of a notice in respect of a Company under sub-section (1) the Company is deemed to be dissolved.
- (7) On an application in respect of a Company by the administrator of a Company or another interested person the Court may—
 - (a) extend the period specified in sub-section (6);
 - (b) suspend that period; or
 - (c) disapply sub-section (6).
- (8) Where an order is made under sub-section (7) in respect of a Company the administrator of the Company shall as soon as is reasonably practicable notify the Registrar.
- (9) An administrator of a Company commits a contravention and is liable to a level [●] fine if he fails without reasonable excuse to comply with sub-section (5).

134. **Moving from administration to dissolution**

- (1) Where, for the purposes of Section 133(1) (*Moving from administration to dissolution*), the administrator of a Company sends a notice of moving from administration to dissolution to the Registrar, the administrator of the Company must attach to that notice a final progress report.
- (2) As soon as reasonably practicable a copy of the notice and the attached document shall be sent to all other persons who received notice of the appointment of the administrator of the Company.

- (3) Where a Court makes an order under Section 133(7) (*Moving from administration to dissolution*) it shall, where the applicant is not the administrator of the Company, give a copy of the order to the administrator of the Company.

135. Discharge of administration order where administration ends

- (1) This Section applies where—
- (a) the Court makes an order under this Part 2 (*Administration*) providing for the appointment of an administrator of a Company to cease to have effect; and
 - (b) the administrator was appointed by administration order.
- (2) The Court shall discharge the administration order.

136. Notice to Registrar where administration ends

- (1) This Section applies where the Court makes an order under these Regulations providing for the appointment of an administrator to cease to have effect.
- (2) The administrator shall send a copy of the order to the Registrar within the period of 14 days beginning with the date of the order.
- (3) An administrator who fails without reasonable excuse to comply with sub-section (2) commits a contravention and is liable to a level [•] fine.

Chapter 11 - Replacing Administrator

137. Resignation of administrator

- (1) An administrator may resign only in prescribed circumstances.
- (2) Where an administrator may resign he may do so only—
- (a) in the case of an administrator of the Company appointed by administration order, by notice in writing to the Court;
 - (b) in the case of an administrator of the Company appointed under Section 30 (*Power to appoint*), by notice in writing to the holder of the qualifying charge by virtue of which the appointment was made;
 - (c) in the case of an administrator of the Company appointed under Section 38(1) (*Power to appoint*), by notice in writing to the Company;
 - (d) in the case of an administrator of the Company appointed under Section 38(2) (*Power to appoint*), by notice in writing to the Directors of the Company; or
 - (e) in the case of an administrator of a Deed of Company Arrangement, by notice in writing to the Company and the Court.

138. Grounds for resignation

- (1) The administrator may give notice of his resignation on grounds of ill health or because—

- (a) he intends ceasing to be an insolvency practitioner; or
 - (b) 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 may, with the permission of the Court, give notice of his resignation on grounds other than those specified in sub-section (1).

139. Notice of intention to resign

- (1) The administrator shall in all cases give at least five (5) business days' notice in the prescribed form [2.37B] of his intention to resign, or to apply for the Court's permission to do so, to the following persons—
- (a) in the case of an administrator of the Company—
 - (i) if there is a continuing administrator of the Company, to him; and
 - (ii) if there is a creditors' committee to it; but
 - (iii) if there is no such administrator and no creditors' committee, to the Company and its creditors.
 - (b) in the case of an administrator of a Deed of Company Arrangement, to the Company and its creditors.
- (2) Where the administrator of a Company was appointed by the holder of a qualifying charge under Section 30 (*Power to appoint*), the notice of intention to resign shall also be sent to all holders of prior qualifying charges, and to the person who appointed the administrator of the Company. A copy of the notice shall also be sent to the holder of the qualifying charge by virtue of which the appointment was made.
- (3) Where the administrator of the Company was appointed by the Company or the Directors of the Company under Section 38 (*Power to appoint*), a copy of the notice of intention to resign shall also be sent to the appointor and all holders of a qualifying charge.

140. Notice of resignation

- (1) The notice of resignation shall be in the prescribed form [2.38B].
- (2) Where the administrator of a Company was appointed under an administration order, the notice shall be filed with the Court, and a copy sent to the Registrar. A copy of the notice of resignation shall be sent not more than five (5) business days after it has been filed with the Court to all those to whom notice of intention to resign was sent.
- (3) Where the administrator of a Company was appointed by the holder of a qualifying charge under Section 30 (*Power to appoint*), a copy of the notice of resignation shall be filed with the Court and sent to the Registrar, and anyone else who received a copy of the notice of intention to resign, within five (5) business days of the notice of resignation being sent to the holder of the qualifying charge by virtue of which the appointment was made.
- (4) Where the administrator of a Company was appointed by the Company or the Directors under Section 38 (*Power to appoint*), a copy of the notice of resignation shall be filed with the

Court and sent to the Registrar and to anyone else who received notice of intention to resign within five (5) business days of the notice of resignation being sent to either the Company or the Directors that made the appointment.

- (5) In the case of an administrator of a Deed of Company Arrangement, a copy of the notice of resignation shall be filed with the Court and sent to the Registrar and to anyone else who received notice of his intention to resign within five (5) business days of the notice of resignation being filed with the Court.

141. Removal of administrator from office

The Court may by order remove an administrator from office.

142. Application to Court to remove administrator from office

- (1) Any application under Section 141 (*Removal of administrator from office*) shall state the grounds on which it is requested that the administrator should be removed from office.
- (2) Service of the notice of the application shall be effected on the administrator and, in the case of an administrator of a Company, the person who made the application for the administration order or the person who appointed the administrator, the creditors' committee (if any), the joint administrator (if any), and where there is neither a creditors' committee or joint administrator, to the Company and all the creditors, including any qualifying charge holders and, in the case of an administrator of a Deed of Company Arrangement, the joint administrator (if any), the Company and all the creditors, in each case not less than five (5) business days before the date fixed for the application to be heard. Where the appointment was made under Section 30 (*Power to appoint*), the notice shall be served on the holder of the qualifying charge by virtue of which the appointment was made.
- (3) Where 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 also within five (5) business days of the order being made send a copy of the order to all those to whom notice of the application was sent.
- (5) A copy of the order shall also be sent to the Registrar within the same time period.

143. Administrator ceasing to be qualified

- (1) The administrator of a Company or of a Deed of Company Arrangement shall vacate office if he ceases to be qualified to act as an insolvency practitioner in relation to the Company or a Deed of Company Arrangement.
- (2) Where an administrator vacates office by virtue of sub-section (1) he shall give notice in writing—
 - (a) in the case of an administrator of a Company appointed by administration order, to the Court;
 - (b) in the case of an administrator of a Company appointed under Section 30 (*Power to appoint*), to the holder of the qualifying charge by virtue of which the appointment was made;

- (c) in the case of an administrator of a Company appointed under Section 38(1) (*Power to appoint*), to the Company;
 - (d) in the case of an administrator of a Company appointed under Section 38(2) (*Power to appoint*), to the Directors of the Company; or
 - (e) in the case of an administrator of a Deed of Company Arrangement, to the Company, the creditors of the Company and the Court.
- (3) An administrator who fails without reasonable excuse to comply with sub-section (2) commits a contravention and is liable to a level [•] fine.

144. Notice of vacation of office when administrator ceases to be qualified to act

Where the administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the Company gives notice in accordance with Section 143 (*Administrator ceasing to be qualified*), he shall also give notice to the Registrar.

145. Administrator deceased

- (1) Subject as follows, where the administrator has died, it is the duty of his personal representatives to give notice of the fact to the Court, specifying the date of the death. This does not apply if notice has been given under either sub-section (2) or (3).
- (2) If the deceased administrator was a partner in or an employee of a firm, notice may be given by a partner in the firm who is registered to act as an insolvency practitioner.
- (3) Notice of the death may be given by any person producing to the Court the relevant death certificate or a copy of it.
- (4) Where a person gives notice to the Court under this Section, he shall also give notice to the Registrar.

146. Supplying vacancy in office of administrator

- (1) This Section applies where an administrator—
 - (a) dies;
 - (b) resigns;
 - (c) is removed from office under Section 141 (*Removal of administrator from office*); or
 - (d) vacates office under Section 143 (*Administrator ceasing to be qualified*).
- (2) Where the administrator of a Company was appointed by administration order, the Court may replace the administrator of the Company on an application under this Section made by—
 - (a) a creditors' committee of the Company;
 - (b) the Company;
 - (c) the Directors of the Company;

- (d) one or more creditors of the Company; or
 - (e) where more than one person was appointed to act jointly or concurrently as the administrator of the Company, any of those persons who remains in office.
- (3) But an application may be made in reliance on sub-section (2)(b) to (d) only where—
- (a) there is no creditors' committee of the Company;
 - (b) the Court is satisfied that the creditors' committee or a remaining administrator of the Company is not taking reasonable steps to make a replacement; or
 - (c) the Court is satisfied that for another reason it is right for the application to be made.
- (4) Where the administrator of the Company was appointed under Section 30 (*Power to appoint*) the holder of the qualifying charge by virtue of which the appointment was made may replace the administrator of the Company.
- (5) Where the administrator of the Company was appointed under Section 38(1) (*Power to appoint*) by the Company it may replace the administrator of the Company.
- (6) A replacement under sub-section (5) may be made only—
- (a) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property; or
 - (b) where consent is withheld, with the permission of the Court.
- (7) Where the administrator of the Company was appointed under Section 38(2) (*Power to appoint*) the Directors of the Company may replace the administrator of the Company.
- (8) A replacement under sub-section (7) may be made only—
- (a) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property; or
 - (b) where consent is withheld, with the permission of the Court.
- (9) The Court may replace an administrator of the Company on the application of a person listed in sub-section (2) if the Court—
- (a) is satisfied that a person who is entitled to replace the administrator of the Company under any of sub-sections (4), (5) or (7) is not taking reasonable steps to make a replacement; or
 - (b) that for another reason it is right for the Court to make the replacement.
- (10) The Court may replace an administrator of a Deed of Company Arrangement on the application of a creditor or creditors, or a liquidator or provisional liquidator, of the Company concerned.

147. Application to replace

- (1) Where an application is made to Court under Section 146(2), 146(9) or 146(10) (*Supplying vacancy in office of administrator*) to appoint a replacement administrator, the application shall be accompanied by a written statement in the prescribed form [2.2B] by the person proposed to be the replacement administrator.
- (2) Where the original administrator was appointed under an administration order, a copy of the application shall be served, in addition to those persons listed in Section 17(2) (*Administration application*), on the person who made the application for the administration order.
- (3) Where the application to Court is made under Section 146(9) (*Supplying vacancy in office of administrator*), the application shall be accompanied by a witness statement setting out the applicant's belief as to the matters set out in that sub-section.
- (4) Section 24 (*Manner in which service to be effected*) shall apply to the service of an application under Section 146(2), 146(9) or 146(10) (*Supplying vacancy in office of administrator*) as it applies to service in accordance with Section 22 (*Service of administration application*).
- (5) Sections 25 (*Proof of service*), 26 (*Administration application to appoint specified person as administrator by holder of qualifying charge*), 28 (*The hearing*), 29(1) and 29(2) (*Notice of administration order*) apply to an application under Section 146(2) or 146(9) (*Supplying vacancy in office of administrator*) and Sections 25 (*Proof of service*), 28 (*The hearing*) (but treating references to administrator of the Company as administrator of a Deed of Company Arrangement), 29(1) and 29(2) (*Notice of administration order*) apply to an application under Section 146(10) (*Supplying vacancy in office of administrator*).

148. Notification and advertisement of replacement administrator

- (1) Where a replacement administrator is appointed, the same provisions apply in respect of giving notice of, and advertising, the replacement appointment as in the case of the appointment (subject to sub-section (2)), and all statements, consents etc. as are required shall also be required in the case of the appointment of a replacement. All forms and notices shall clearly identify that the appointment is of a replacement administrator.
- (2) The replacement administrator shall send notice of the appointment to the Registrar.

149. Substitution of administrator: competing qualifying charge-holder

- (1) This Section applies where an administrator of a Company is appointed under Section 30 (*Power to appoint*) by the holder of a qualifying charge in respect of the Company's property.
- (2) The holder of a prior qualifying charge in respect of the Company's property may apply to the Court for the administrator to be replaced by an administrator nominated by the holder of the prior charge.

150. Substitution of administrator appointed by Company or Directors: creditors' meeting

- (1) This Section applies where—
 - (a) an administrator of a Company is appointed by a Company or Directors under Section 38 (*Power to appoint*); and

- (b) there is no holder of a qualifying charge in respect of the Company's property.
- (2) A creditors' meeting may replace the administrator of the Company.
- (3) A creditors' meeting may act under sub-section (2) only if the new administrator's written consent to act is presented to the meeting before the replacement is made.

151. Vacation of office: discharge from liability

- (1) Where a person ceases to be the administrator of a Company or of a Deed of Company Arrangement (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.
- (2) The discharge provided by sub-section (1) takes effect—
 - (a) in the case of an administrator who dies, on the filing with the Court of notice of his death;
 - (b) in the case of an administrator of a Company appointed under Section 30 (*Power to appoint*) or 38 (*Power to appoint*), at a time appointed by resolution of the creditors' committee or, if there is no committee, by resolution of the creditors; or
 - (c) in any case, at a time specified by the Court.
- (3) For the purpose of the application of sub-section (2)(b) in a case where the administrator of a Company has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*), a resolution shall be taken as passed if (and only if) passed with the approval of—
 - (a) each secured creditor of the Company; or
 - (b) if the administrator of the Company has made a distribution to preferential creditors or thinks that a distribution may be made to preferential creditors—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Discharge—
 - (a) applies to liability accrued before the discharge takes effect; and
 - (b) does not prevent the exercise of the Court's powers under Section 115 (*Misfeasance*).

152. Vacation of office: charges and liabilities

- (1) This Section applies where a person ceases to be the administrator of a Company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect).
- (2) In this Section—

- (a) **"the former administrator"** means the person referred to in sub-section (1); and
 - (b) **"cessation"** means the time when he ceases to be the Company's administrator.
- (3) The former administrator's remuneration and expenses shall be—
- (a) charged on and payable out of property of which he had custody or control immediately before cessation; [*and*
 - (b) *payable in priority to any security to which Section 108 (Charged property: floating charge) applies.*]
- (4) A sum payable in respect of a debt or liability arising out of a contract entered into by the former administrator or a predecessor before cessation shall be—
- (a) charged on and payable out of property of which the former administrator had custody or control immediately before cessation; and
 - (b) payable in priority to any charge arising under sub-section (3).
- (5) Sub-section (4) shall apply to a liability arising under a contract of employment which was adopted by the former administrator or a predecessor before cessation; and for that purpose—
- (a) action taken within the period of 14 days after an administrator's appointment shall not be taken to amount or contribute to the adoption of a contract;
 - (b) no account shall be taken of a liability which arises, or in so far as it arises, by reference to anything which is done or which occurs before the adoption of the contract of employment; and
 - (c) no account shall be taken of a liability to make a payment other than wages or salary.
- (6) In sub-section (5)(c) **"wages or salary"** includes—
- (a) a sum payable in respect of a period of holiday (for which purpose the sum shall be 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; and
 - (c) a sum payable in lieu of holiday.

153. Administrator's duties on vacating office

- (1) Where the administrator ceases to be in office as such, in consequence of removal, resignation or cesser of qualification as an insolvency practitioner, he is under obligation as soon as reasonably practicable to deliver up to the person succeeding him as administrator the property of the Company (after deduction of any expenses properly incurred and distributions made by him), in the case of an administrator of a Deed of Company Arrangement, put into and remaining in his possession pursuant to the Deed of Company Arrangement and further to deliver up to that person—

- (a) his records as administrator, including all relevant correspondence, proofs and other related papers; and
 - (b) the Company's books, papers and other records, to the extent within his control.
- (2) If the administrator makes default in complying with this Section, he commits a contravention and is liable to a level [●] fine and, for continued contravention, to a level [●] daily default fine.

Chapter 12 - General

154. **Joint administrators**

- (1) In this Part 2 (*Administration*)—
- (a) a reference to the appointment of an administrator of a Company or of a Deed of Company Arrangement includes a reference to the appointment of a number of persons to act jointly or concurrently as the administrator of a Company or of a Deed of Company Arrangement, respectively; and
 - (b) a reference to the appointment of a person as administrator of a Company or of a Deed of Company Arrangement includes a reference to the appointment of a person as one of a number of persons to act jointly or concurrently as the administrator of a Company or of a Deed of Company Arrangement, respectively.
- (2) The appointment of a number of persons to act as administrator of a Company or of a Deed of Company Arrangement must specify—
- (a) which functions (if any) are to be exercised by the persons appointed acting jointly; and
 - (b) which functions (if any) are to be exercised by any or all of the persons appointed.
- (3) This Section applies where two or more persons are appointed to act jointly as the administrator of a Company or of a Deed of Company Arrangement, as the case may be.
- (4) A reference to the administrator of the Company or of a Deed of Company Arrangement is a reference to those persons acting jointly.
- (5) However a reference to the administrator of a Company or of a Deed of Company Arrangement in Chapter 11 (*Replacing Administrator*) of this Part 2 (*Administration*) is a reference to any or all of the persons appointed to act jointly.
- (6) Where a contravention of omission is committed by the administrator, each of the persons appointed to act jointly—
- (a) commits the contravention; and
 - (b) may be proceeded against and punished individually to a level [●] fine.
- (7) The reference in Section 56(1)(a) (*Publicity*) to the name of the administrator of a Company is a reference to the name of each of the persons appointed to act jointly.

- (8) Where persons are appointed to act jointly in respect of only some of the functions of the administrator of a Company or of a Deed of Company Arrangement, this Section applies only in relation to those functions.

155. Concurrent administrators

- (1) This Section applies where two or more persons are appointed to act concurrently as the administrator of a Company or of a Deed of Company Arrangement.
- (2) A reference to the administrator of a Company or of a Deed of Company Arrangement in these Regulations is a reference to any of the persons appointed (or any combination of them).

156. Joint and concurrent administrators

- (1) Where a Company is in administration, a person may be appointed to act as administrator jointly or concurrently with the person or persons acting as the administrator of the Company.
- (2) Where a Company entered administration by administration order, an appointment under sub-section (1) must be made by the Court on the application of—
- (a) a person or group listed in Section 17(1)(a) to 17(1)(d) (*Administration application*); or
 - (b) the person or persons acting as the administrator of the Company.
- (3) Where a Company entered administration by virtue of an appointment under Section 30 (*Power to appoint*), an appointment under sub-section (1) must be made by—
- (a) the holder of the qualifying charge by virtue of which the appointment was made; or
 - (b) the Court on the application of the person or persons acting as the administrator of the Company.
- (4) Where a Company entered administration by virtue of an appointment under Section 38(1) (*Power to appoint*), an appointment under sub-section (1) above must be made either by the Court on the application of the person or persons acting as the administrator of the Company or—
- (a) by the Company; and
 - (b) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property or, where consent is withheld, with the permission of the Court.
- (5) Where a Company entered administration by virtue of an appointment under Section 38(2) (*Power to appoint*), an appointment under sub-section (1) must be made either by the Court on the application of the person or persons acting as the administrator of the Company or—
- (a) by the Directors of the Company; and
 - (b) with the consent of each person who is the holder of a qualifying charge in respect of the Company's property or, where consent is withheld, with the permission of the Court.

- (6) An appointment under sub-section (1) may be made only with the consent of the person or persons acting as the administrator of the Company.
- (7) Where a Company is subject to a Deed of Company Arrangement, a person may be appointed to act as an administrator jointly or concurrently with the person or persons acting as the administrator of the Deed of Company Arrangement by resolution of the creditors of the Company at a meeting of creditors convened pursuant to Section 99 (*Meeting of creditors to consider variation or termination*), subject to such appointment obtaining the consent of the person or persons acting as the administrator of the Deed of Company Arrangement.

157. Notification and advertisement of joint administrator

- (1) Where, after an initial appointment has been made, an additional person or persons are to be appointed as joint administrator the same Sections shall apply in respect of giving notice of and advertising the appointment as in the case of the initial appointment, subject to sub-section (2).
- (2) The additional administrator shall send notice of the appointment to the Registrar.

158. Presumption of validity

An act of the administrator of a Company or of a Deed of Company Arrangement is valid in spite of a defect in his appointment or qualification.

159. Majority decision of Directors

A reference in this Part 2 (*Administration*) to something done by the Directors of a Company includes a reference to the same thing done by a majority of the Directors of a Company.

160. Extension of time limit

- (1) Where a provision of this Part 2 (*Administration*) provides that a period may be varied in accordance with this Section, the period may be varied in respect of a Company—
 - (a) by the Court; and
 - (b) on the application of the administrator of the Company, if the Company is in administration, or the administrator of the Deed of Company Arrangement, if the Company is subject to a Deed of Company Arrangement.
- (2) A time period may be extended in respect of a Company under this Section—
 - (a) more than once; and
 - (b) after expiry.
- (3) A period specified in Section 65(6) (*Administrator's proposals*), paragraph 6 (*Notice of meetings: when and to whom delivered*) of Schedule 6 (*Meetings and Correspondence*) or Section 70(2) (*Requirement for initial creditors' meeting*) may be varied in respect of a Company by the administrator of the Company or, in the case of a Company which is subject to a Deed of Company Arrangement and the relevant period specified in paragraph 6 (*Notice of meetings: when and to whom delivered*) of Schedule 6 (*Meetings and Correspondence*), by the administrator of the Deed of Company Arrangement, with consent.

- (4) In sub-section (3) "**consent**" means consent of—
- (a) each secured creditor of the Company; and
 - (b) if the Company has unsecured debts, creditors whose debts amount to more than 50% of the Company's unsecured debts, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (5) But where the administrator of a Company has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*) "**consent**" means—
- (a) consent of each secured creditor of the Company; or
 - (b) if the administrator thinks that a distribution may be made to preferential creditors; consent of—
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the total preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold consent.
- (6) Consent for the purposes of sub-section (3) may be—
- (a) written; or
 - (b) signified at a creditors' meeting.
- (7) The power to extend under sub-section (2)—
- (a) may be exercised in respect of a period only once;
 - (b) may not be used to extend a period by more than 28 days;
 - (c) may not be used to extend a period which has been extended by the Court; and
 - (d) may not be used to extend a period after expiry.
- (8) Where a period is extended under this Section, a reference to the period shall be taken as a reference to the period as extended.

PART 3: RECEIVERSHIP

Chapter 1 – General

161. Appointment and powers of receivers and administrative receivers

- (1) Where a Company grants a person powers contained in an instrument to appoint an Office-holder to get in and sell any part of its property and to apply the proceeds in reduction of a debt due to that other person, the Office-holder, once appointed, shall be a "**receiver**" and shall be subject to these Regulations in his performance of that function.
- (2) A receiver may be appointed under, and has all of the powers conferred upon him by, such instrument, save as provided in these Regulations.
- (3) In these Regulations, "**administrative receiver**" means a receiver appointed under powers contained in an instrument which constitutes a qualifying charge, in respect of the property of a Company which consists of the whole or substantially the whole of the property of that Company, or who would be such a receiver but for the appointment of some other person as the receiver of part of that Company's property. An administrative receiver has, in addition to the powers contained in the instrument appointing him in accordance with sub-section (1), the powers set out in Schedule 3 (*Powers of Administrative Receiver*).
- (4) In Schedule 3 (*Powers of Administrative Receiver*), references to the property of the Company are to the property of which the administrative receiver is, but for the appointment of some other person as the receiver of part of the Company's property, the administrative receiver.
- (5) The document appointing a person as a receiver of a Company's property—
 - (a) must fix the amount to be paid by way of remuneration to the person who has been appointed receiver or provide the basis on which the amount of remuneration will be determined; and
 - (b) is of no effect until it is accepted by the receiver in writing.
- (6) A receiver or administrative receiver appointed over property of a Company in the Global Market must be a person who is registered as an insolvency practitioner under these Regulations.
- (7) Where the appointment of a person as the receiver of a Company's property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise) the Court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.
- (8) The holder of a qualifying charge in respect of a Company's property may not appoint an administrative receiver of the Company except in the following circumstances—
 - (a) in pursuance of an agreement which is or forms part of a capital market arrangement provided that—
 - (i) a party incurs or, when the agreement was entered into was expected to incur under the arrangement a debt of at least \$[●] million; and

- (ii) involving the issue of a capital market investment; or
- (b) in relation to a project company of a project which includes step in rights and is a financed project.

Chapter 2 – Provisions Applicable to Receivership and Administrative Receivership

162. Notification that receiver has been appointed

- (1) When a receiver of any property of a Company has been appointed, every invoice, order for goods or services or business letter (whether in hard copy, electronic, or any other form) issued by or on behalf of the Company and all of the Company's websites, shall contain a statement that a receiver has been appointed.
- (2) If default is made in complying with sub-section (1), the Company and any officer of the Company who knowingly and wilfully authorises or permits the default commits a contravention and is liable to a level [●] fine.

163. Liability for Contracts

- (1) A receiver is—
 - (a) personally liable on any contract entered into by him in the performance of his functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him in the performance of those functions; and
 - (b) entitled in respect of that liability to an indemnity out of the assets.
- (2) For the purposes of sub-section (1), the receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within fourteen (14) days after his appointment.
- (3) Sub-section (1) does not limit any right to indemnity which the receiver would have apart from that sub-section, nor limit the receiver's liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

164. Distribution of moneys

- (1) Subject to Section 177 (*Power to dispose of charged property*), any moneys received by the receiver shall be applied in the following order of priority—
 - (a) in satisfaction of all costs and expenses incurred by any receiver and of all remuneration due to any receiver;
 - (b) in payment of any debts or claims secured by a security, having priority to the security by virtue of which the receiver was appointed;
 - (c) in payment of any debts or claims secured by the security by virtue of which the receiver was appointed; and
 - (d) in payment of the surplus (if any) to the Company or person who is otherwise entitled to the property.

165. Duties of receiver

- (1) A receiver shall—
 - (a) act in good faith in carrying out his functions;
 - (b) manage any property of the Company with due diligence; and
 - (c) when exercising a power of sale of property of the Company, use reasonable care to obtain the best price reasonably obtainable in the circumstances.
- (2) A receiver is not obliged to act in accordance with sub-section (1)(b) where to do so would prejudice the interests of the persons by whom or on whose behalf he was appointed.

166. Accounts

- (1) The receiver shall—
 - (a) within two (2) months after the end of twelve (12) months from the date of his appointment, and after every subsequent period of twelve (12) months; and
 - (b) within two (2) months after he ceases to act as receiver,send to the Registrar, to the Company and to the person by whom he was appointed, accounts detailing his receipts and payments as receiver.
- (2) The accounts are to be in the form of an abstract showing—
 - (a) receipts and payments during the relevant period of twelve (12) months; or
 - (b) where the receiver has ceased to act, receipts and payments during the period from the end of the last twelve (12) month period to the time when he so ceased (alternatively, if there has been no previous accounts, receipts and payments in the period since his appointment as administrative receiver).
- (3) A receiver who makes default in complying with this Section commits a contravention and is liable to a level [●] fine.

167. Application to Court for directions

- (1) A receiver of the property of a Company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver has been so appointed, may apply to the Court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver.
- (2) On such an application under sub-section (1), the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.

168. Vacation of office

- (1) A receiver of a Company may at any time be removed from office by order of the Court (but not otherwise) and may resign his office by giving notice of his resignation in the manner prescribed in sub-section (4).

- (2) A receiver must vacate office if he ceases to be registered as an insolvency practitioner under Part 10 (*Insolvency Practitioners*).
- (3) At the time a receiver vacates office—
 - (a) his remuneration and any expenses properly incurred by him; and
 - (b) any indemnity to which he is entitled out of the assets of the Company,
 shall be paid out of any property of the Company which is 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 he was appointed.
- (4) Before resigning or otherwise vacating his office a receiver shall give at least seven (7) days' notice of his intention to do so to—
 - (a) the person by whom he was appointed; and
 - (b) the Company or any liquidator appointed to it.
- (5) A notice given under sub-section (4) shall specify the date on which the receiver intends his resignation to take effect.
- (6) When a receiver vacates office in accordance with this Section he shall, within fourteen (14) days after his vacation of office, send a notice to that effect to the Registrar.
- (7) If a receiver without reasonable excuse fails to comply with sub-sections (2) or (6), he commits a contravention and is liable to a level [●] fine.

Chapter 3 – Provisions applicable to administrative receivers only

169. Agent of the Company

The administrative receiver of a Company is deemed to be the Company's agent, unless and until the Company goes into liquidation.

170. Committee of creditors

- (1) When a meeting of creditors is summoned under Section 178(2) (*Meeting of creditors*), the meeting may if it thinks fit, establish a committee of creditors to exercise the functions conferred on it by or under these Regulations.
- (2) If such a creditors' committee is established—
 - (a) the relevant provisions of Schedule 8 (*Creditors' Committees*) shall apply; and
 - (b) the creditors' committee may, on giving not less than seven (7) days' notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

171. Notice and advertisement of appointment

- (1) When an administrative receiver is appointed, he shall—

- (a) within seven (7) days of his appointment, give notice of his appointment to the Company and to the Registrar;
 - (b) within twenty-eight (28) days of his appointment, send a notice of his appointment to the creditors of the Company (so far as he is aware of their addresses).
- (2) The administrative receiver must also publish in the Global Market in such manner as he thinks appropriate, the following information—
- (a) that an administrative receiver has been appointed;
 - (b) the registered name of the Company, as at the date of the appointment, and its registered number;
 - (c) any other name with which the Company has been registered in the twelve (12) months preceding that date;
 - (d) any name under which the Company has traded at any time in those twelve (12) months, if substantially different from its then registered name;
 - (e) the name and address of the receiver and the date of his appointment;
 - (f) the name of the person by whom the appointment was made;
 - (g) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;
 - (h) the nature of the business of the Company; and
 - (i) a brief description of the assets of the Company to which the receiver has been appointed.
- (3) If the administrative receiver without reasonable excuse fails to comply with this Section, he commits a contravention and is liable to a level [●] fine.

172. No duty to enquire as to power of administrative receiver

A person dealing with an administrative receiver in good faith and for value is not concerned to enquire whether the administrative receiver is acting within his powers.

173. Notice requiring Statement of Affairs

- (1) An administrative receiver may require a Statement of Affairs to be made out and submitted to him. Where an administrative receiver determines that it is required, he shall send notice to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the Company's affairs.
- (2) The notice shall inform each of the relevant persons of—
 - (a) the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) the time within which the statement must be delivered;
 - (c) the effect of Section 174(5) (*Statement of Company's affairs*); and

- (d) the application to him, and each other relevant person, of Section 260 (*Duty to co-operate with Office-holder*).
- (3) The administrative receiver shall furnish each relevant person to whom he has sent notice with the forms required [Form 3.2] for the preparation of the Statement of Affairs.
- (4) For the purposes of sub-section (1) above "**relevant person**" means—
 - (a) a person who is or has been officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters administration;
 - (c) a person employed by the Company during that period; and
 - (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (5) For the purposes of sub-section (4) a reference to employment is a reference to employment through a contract of employment or a contract for services.

174. **Statement of Company's affairs**

- (1) The Statement of Affairs must—
 - (a) be verified by a statement of truth by the relevant person in accordance with the Court Procedural Rules;
 - (b) be in the prescribed form [Form 3.2] containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.
- (2) A person required to submit a Statement of Affairs under Section 173(1) (*Notice Requiring Statement of Affairs*) must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver
- (3) The administrative receiver may—
 - (a) release a person from a requirement to provide a Statement of Affairs under Section 173(1) (*Notice Requiring Statement of Affairs*); or
 - (b) extend the period specified in sub-section (2) (whether before or after expiry).

- (4) If the administrative receiver refuses to act under sub-section (3), the court, if it thinks fit, may exercise it.
- (5) If a person fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a level [•] fine

175. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the administrative receiver under Section 174(3) (*Statement of Company's affairs*) to give a release from the obligation imposed by Section 173(1) (*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.
- (2) A relevant person may, if he requests a release or extension of time and it is refused by the administrative receiver, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five (5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.
- (4) The relevant person shall, at least 14 days before the hearing, send to the administrative receiver a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The administrative receiver may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.
- (6) If such a report is filed, a copy of it shall be sent by the administrative receiver to the relevant person, not later than five (5) business days before the hearing.
- (7) Sealed copies of any order made on the application shall be sent by the Court to the relevant person and the administrative receiver.
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the administrative receivership.

176. Expense of Statement of Affairs

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the administrative receiver as an expense of the administrative receivership, any expenses incurred by the relevant person in so doing which the administrative receiver considers reasonable.
- (2) Any decision by the administrative receiver under this Section is subject to appeal to the Court.
- (3) Nothing in this Section 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 administrative receiver.

177. **Power to dispose of charged property**

- (1) Where, on an application by the administrative receiver, the Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to 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 property as if it were not subject to the security.
- (2) Sub-section (1) does not apply to a security held by the person by whom the administrative receiver was appointed, or any security which has priority over that security interest.
- (3) It shall be a condition of an order under this Section that—
 - (a) the net proceeds of the disposal; and
 - (b) such sum as may be required to make good the deficiency between the net proceeds of the disposal and the net amount which would be realised on a sale of the property in the open market by a willing vendor,shall be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of sub-section (3) relates to two or more securities, that condition shall require the net proceeds of the disposal and, where sub-section (3)(b) applies, the sums mentioned in that sub-section to be applied towards discharging the sums secured by those securities in the order of their priorities.
- (5) If an order is made under this Section, the administrative receiver shall immediately give notice of it to the person who is the secured creditor if such person has not been a party to the proceedings before the Court.
- (6) The administrative receiver shall send to the Registrar a copy of the order within fourteen (14) days of it being made.
- (7) If the administrative receiver fails to comply with sub-section (6) without reasonable excuse, he commits a contravention and is liable to a level [●] fine.
- (8) In this Section, "**relevant property**" in relation to the administrative receiver, means the property of which he is or, but for the appointment of some other person as the receiver of part of the Company's property, would be the receiver.

178. **Meeting of creditors**

- (1) The administrative receiver shall, within three (3) months after his appointment, send to the Registrar, to any liquidator of the Company and to every creditor of the Company of whose claim and address he is aware, a report detailing—
 - (a) the events leading up to his appointment, so far as he is aware of them;
 - (b) the disposal or the proposed disposal by him of any property of the Company and the carrying on or proposed carrying on by him of any business of the Company;
 - (c) the amounts of principal and interest payable to the Secured Parties by whom or on whose behalf he was appointed;

- (d) the amount (if any) likely to be available for the payment of other creditors; and
 - (e) a summary of any Statement of Affairs submitted to him.
- (2) The administrative receiver shall summon a meeting of creditors of the Company in accordance with Schedule 6 (*Creditors' Meetings Correspondence and Meetings*) to consider the contents of his report referred to in sub-section (1).
- (3) An administrative receiver who makes default in complying with this Section, without reasonable excuse, commits a contravention and is liable to a level [●] fine.

PART 4: WINDING UP

Chapter 1 – General

179. Alternative modes of winding up

The winding up of a Company may be either voluntary or by the Court.

180. Concurrent proceedings

- (1) Subject to sub-section (2), there may be a winding up of a Company and a receiver appointed to the property of the Company at the same time.
- (2) When a Company is being wound up—
 - (a) any agency of a receiver for the Company is terminated;
 - (b) the liquidator's powers with respect to the property of the Company excludes any property to which a receiver has been appointed for the period of the receiver's appointment; and
 - (c) the liquidator may exercise any of his powers under Part 4 (*Winding Up*) notwithstanding the appointment of a receiver.

Chapter 2 – Voluntary winding up

181. Circumstances in which a Company may be wound up voluntarily

- (1) A Company may be wound up voluntarily—
 - (a) in circumstances as may be provided for in the Articles of the Company; or
 - (b) if the Company resolves by Special Resolution that it should be wound up voluntarily.
- (2) Before a Company passes a resolution for voluntary winding up it must give at least five business days' prior written notice of the proposed date for the passing of such resolution to the holder of any qualifying charge to which Section 30 (*Power to appoint*) applies (unless such holder consents in writing to the earlier passing of such resolution).

182. Statutory declaration of solvency

- (1) Where it is proposed to wind up a Company voluntarily, the Directors (or, in the case of a Company having more than two Directors, the majority of them) may at a meeting of the board of Directors make a statutory declaration to the effect that they have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full, together with interest, within such period, not exceeding twelve (12) months from the commencement of the winding up, as may be specified in the declaration.

- (2) Such a declaration must be made within the five (5) weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution.
- (3) Where a Director makes a declaration under this Section without having reasonable grounds for the opinion that the Company will be able to pay its debts in full, together with interest at the official interest rate, within the period specified, he commits a contravention and is liable to a level [●] fine.
- (4) If the Company is wound up in pursuance of a resolution passed within five (5) weeks after the making of the declaration, and its debts are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the Director did not have reasonable grounds for his opinion.

183. **Distinction between "members' voluntary winding up" and "creditors' voluntary winding up"**

A winding up in the case of which a Directors' statutory declaration under Section 182 (*Statutory declaration of solvency*) has been made is a "**members' voluntary winding up**"; and a winding up in the case of which such a declaration has not been made is a "**creditors' voluntary winding up**".

Chapter 3 – Members' voluntary winding up

184. **Application of this Chapter**

This Chapter applies in relation to a members' voluntary winding up.

185. **Appointment of liquidator**

In a members' voluntary winding up, the Company at a general meeting shall appoint one or more liquidators for the purpose of winding up the Company's affairs and distributing its assets.

186. **Director's powers**

On the appointment of a liquidator all the powers of the Directors cease, except so far as the Company at a general meeting or the liquidator sanctions their continuance.

187. **Vacancy in office of liquidator**

If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the Company, the Company at a general meeting may, subject to any arrangement with its creditors, fill the vacancy. For that purpose, a general meeting may be convened by any Member or, if there was more than one liquidator, by a continuing liquidator.

188. **Progress report to members at year's end**

- (1) In the event of the winding up of the Company continuing for more than one (1) year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—

- (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding up, during the preceding year; and
 - (b) send a copy of the progress report to the members and to the Registrar.
- (2) A progress report is not required for any period which ends after the liquidator has sent a final report to members under Section 189 (*Final meeting prior to dissolution*).
 - (3) If the liquidator fails to comply with this Section, he commits a contravention and is liable to a level [●] fine.

189. Final meeting prior to dissolution

- (1) As soon as the Company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company for the purpose of laying before it the account, and giving an explanation of it.
- (2) Notice of the meeting shall be published in the Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one (1) month before it.
- (3) Within seven (7) calendar days of the meeting, the liquidator shall send to the Registrar a copy of the account and a return of the meeting.
- (4) If the copy is not sent or the return is not made in accordance with sub-section (3), the liquidator commits a contravention and is liable to a level [●] fine.

190. Effect of Company's insolvency

- (1) If the liquidator is of the opinion that the Company will be unable to pay its debts in full within the period stated in the Directors' statutory declaration under Section 182 (*Statutory declaration of solvency*), he must summon a meeting of creditors, and shall give not less than seven (7) days' notice of the meeting.
- (2) Notice of the meeting shall be published in the Global Market in such manner as the liquidator thinks appropriate.
- (3) The liquidator shall also make out a Statement of Affairs of the Company and lay that statement before the creditors' meeting, at which the liquidator will attend and preside.
- (4) If the liquidator without reasonable excuse fails to comply with this Section, he commits a contravention and is liable to a level [●] fine.

191. Conversion to creditors' voluntary winding up

As from the day on which the creditors' meeting is held under Section 190 (*Effect of Company's insolvency*), these Regulations have effect as if—

- (a) the Directors' statutory declaration under Section 182 (*Statutory declaration of solvency*) had not been made; and

- (b) the creditors' meeting and the general meeting of the Company at which it was resolved that the Company be wound up voluntarily were the meetings mentioned in Section 193 (*Meetings of members and creditors*),

and accordingly the winding up becomes a creditors' voluntary winding up.

Chapter 4 – Creditors' voluntary winding up

192. Application of this Chapter

- (1) Subject to sub-section (2), this Chapter applies in relation to a creditors' voluntary winding up.
- (2) Sections 193 (*Meetings of members and creditors*) and 194 (*Appointment of liquidator*) do not apply where, under Section 191 (*Conversion to creditors' voluntary winding up*), a members' voluntary winding up has become a creditors' voluntary winding up.

193. Meetings of members and creditors

- (1) The Company shall—
 - (a) cause a general meeting of the Company to be summoned at which the resolution for voluntary winding up is to be proposed;
 - (b) cause a meeting of its creditors to be summoned in accordance with the provisions of Schedule 6 (*Creditors' Meetings Correspondence and Meetings*).
- (2) The Directors of the Company shall make out a Statement of Affairs of the Company and lay that statement before the creditors' meeting.
- (3) If the Company or Directors, each without reasonable excuse, fails to comply with this Section, they commit a contravention and is liable to a level [●] fine.

194. Appointment of liquidator

- (1) The creditors and the Company at their respective meetings mentioned in Section 193 (*Meetings of members and creditors*) may nominate a person to be liquidator.
- (2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the Company.
- (3) The creditors' voluntary winding up is deemed to commence at the time specified in Section 200 (*Commencement of winding up*).

195. Directors' powers

On the appointment of a liquidator, all the powers of the Directors cease, except so far as the Liquidation Committee (or, if there is no such Liquidation Committee, the creditors) sanction their continuance.

196. **Vacancy in office of liquidator**

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the Court) the creditors may resolve at a meeting of creditors to fill the vacancy.

197. **Progress report to members and creditors at year's end**

- (1) If the winding up of the Company continues for more than one year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—
 - (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding up, during the preceding year; and
 - (b) send a copy of the progress report to the members and creditors of the Company and to the Registrar.
- (2) A progress report is not required for any period which ends after the liquidator has sent a final report to members and creditors under Section 198 (*Final meeting prior to dissolution*).
- (3) If the liquidator fails to comply with this Section, he commits a contravention and is liable to a level [●] fine.

198. **Final meeting prior to dissolution**

- (1) As soon as the Company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company and a meeting of the creditors (to be held on the same day) for the purpose of laying the account before the meetings and giving an explanation of it.
- (2) Notice of each meeting shall be published in the Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one month before it.
- (3) Within seven (7) days of the meetings the liquidator shall send to the Registrar a copy of the account and a return of the meetings.
- (4) If the copy is not sent or the return is not made in accordance with sub-section (3), the liquidator commits a contravention and is liable to a level [●] fine.

Chapter 5 – Provisions applying to both kinds of voluntary winding up

199. **Notice of resolution to wind up**

- (1) When a Company has passed a resolution for voluntary winding up, the Company shall, within seven (7) days after the passing of the resolution, publish notice of the resolution in the Global Market in such manner as it thinks appropriate.
- (2) If default is made in complying with sub-section (1), the Company and every officer of it who is in default commits a contravention and is liable to a level [●] fine.

200. Commencement of winding up

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up by the Company at a general meeting.

201. Notice by liquidator of his appointment

- (1) The liquidator shall, within seven (7) days of his appointment, publish notice of his appointment in the Global Market in such manner as he thinks appropriate, and deliver to the Registrar for registration, a notice of his appointment.
- (2) If the liquidator fails, without reasonable excuse, to comply with sub-section (1), he commits a contravention and is liable to a level [●] fine.

202. Effect on business and status of Company

- (1) The Company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.
- (2) However, the corporate state and corporate powers of the Company, notwithstanding anything to the contrary in its Articles, continue until the Company is dissolved.

203. Avoidance of share transfers after winding up resolution

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the Company's members made after the commencement of a voluntary winding up, is void.

204. Court's power to control proceedings

- (1) If the Court, on the application of the liquidator in a voluntary winding up, so directs, no action or proceeding shall be proceeded with or commenced against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.
- (2) If from any cause whatsoever there is no liquidator acting, the Court may appoint a liquidator.

205. Saving for certain rights

The voluntary winding up of a Company does not bar the right of any creditor or other person to apply to have it wound up by the Court.

Chapter 6 – Compulsory winding up

206. Circumstances in which a Company may be wound up by the Court

A Company may be wound up by the Court if—

- (a) the Company has by Special Resolution resolved that the Company be wound up by the Court;
- (b) the Company is unable to pay its debts;
- (c) the Court may make such an order pursuant to any provision of or under Global Market legislation; or

- (d) the Court is of the opinion that it is just and equitable that the Company should be wound up.

207. Definition of inability to pay debts

- (1) A Company is deemed unable to pay its debts—
 - (a) if a creditor to whom the Company is indebted in a sum exceeding \$2,000 then due has served on the Company a written demand, by leaving it at the Company's registered office, requiring the Company to pay the sum so due and the Company has for three (3) weeks thereafter neglected to pay the sum or to agree terms in relation to its payment to the reasonable satisfaction of the creditor; or
 - (b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part; or
 - (c) if it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due.
- (2) A Company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the Company's current assets is less than the amount of its current liabilities, taking into account its contingent and prospective liabilities.

208. The statutory demand

- (1) A written demand served by a creditor on a Company under Section 207(1)(a) (*Definition of inability to pay debts*) of these Regulations is known in winding up proceedings as a "**statutory demand**".
- (2) The statutory demand must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.
- (3) The statutory demand must include the following—
 - (a) the amount of the debt and the way in which it arises;
 - (b) an explanation of the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the Company;
 - (c) information as to how the debt may be paid and the time within which it must be complied with;
 - (d) a statement that the Company has the right to make an application to the Court for an injunction restraining the creditor from presenting or advertising a petition for the winding up of the Company; and
 - (e) information as to the identity of a person whom the Company can contact to secure or compound the debt to the creditor's satisfaction, including an address and telephone number.

209. Application for winding up

- (1) Subject to any provision of Global Market legislation to the contrary, a petition to the Court for the winding up of a Company may only be presented by the Company, or the Directors, or

by any creditor or creditors (including any contingent or prospective creditor or creditors) or by a contributory or contributories.

- (2) A contributory is not entitled to present a winding-up petition unless either—
- (a) the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for at least six (6) months during the 18 months before the commencement of the winding-up, or have devolved on him through the death of a former holder; or
 - (b) he is a person who is liable under Section 228 (*Liability to contribute of past and present members*) to contribute to a Company's assets in the event of its being wound up; but in such a case, he may only petition on either of the grounds set out in Section 206(b) and (d) (*Circumstances in which a Company may be wound up by the Court*).

210. Petition for winding up on grounds of interests of the Global Market

The Regulator may present a petition to the Court for a Company to be wound up if the Regulator is of the opinion that—

- (a) the Company is unable to pay its debts;
- (b) it is just and equitable that the Company should be wound up;
- (c) the Company has committed a serious contravention of any regulation of the Global Market; or
- (d) it is expedient in the interests of the Global Market that the Company should be wound up.

211. Presentation and service of petition

- (1) A winding up order may be made by the Court upon the presentation by any relevant person of a petition.
- (2) The petition shall be filed in Court and served on the Company at its registered office (if the petitioner is not the Company).
- (3) If the Company is a person authorised under the Financial Market Regulations and the petitioner is not the Regulator, one copy must be sent by the petitioner to the Regulator.
- (4) If any Office-holder has been appointed in respect of the assets of the Company or any of them, a copy of the petition shall be sent by the petitioner to such Office-holder.
- (5) If the Company intends to oppose the petition, it must notify the Court of this fact not less than seven (7) days before the date fixed for the hearing.
- (6) Where a petition is filed at the instance of a Company's administrator the petition shall-
 - (a) be expressed to be the petition of the Company by its administrator,
 - (b) state the name of the administrator, the Court case number and the date that the Company entered administration; and

- (c) where applicable, contain an application under Section 122 (*Court ending administration on application of administrator*), requesting that the appointment of the administrator shall cease to have effect.
- (7) Where a petition contains a request for the appointment of a person as liquidator in accordance with Section 217(3) (*Appointment of provisional liquidator or of liquidator following administration*) the person whose appointment is sought shall, not less than two (2) business days before the return day for the petition, file in Court a report including particulars of-
- (a) a date on which he notified creditors of the Company, either in writing or at a meeting or creditors, of the intention to seek his appointment as liquidator, such date to be at least seven (7) business days before the day on which the report under this paragraph is filed; and
 - (b) details of any response from creditors to that notification, including any objections to his appointment.

212. Advertisement of petition

- (1) The petition shall be published in the Global Market in such manner as directed by the Court, not less than seven (7) business days after service of the petition on the Company.
- (2) The notice must state—
 - (a) that a petition has been presented for the winding up of the Company;
 - (b) the name and address of the petitioner;
 - (c) the date on which the petition was presented;
 - (d) the venue fixed for the hearing of the petition;
 - (e) the name and address of the petitioner's legal representatives (if any); and
 - (f) that any person intending to appear at the hearing (whether to support or to oppose the petition) must give the petitioner notice of that intention, no later than 16:00 hours on the business day before the day appointed for the hearing.

213. Powers of Court on hearing of petition

- (1) On hearing a winding up petition the Court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit.
- (2) Where the Court orders that the Company be wound up, the Court shall identify in the winding up order the person who is to act as liquidator of the Company, and that person shall take office immediately upon the order being made.

214. Notice of winding up order

- (1) When a winding up order has been made, the Court shall immediately give notice of the fact to the Company, the petitioner, [the Regulator (in the case of an Authorised Participant)] and any other person represented at the hearing of the petition.

- (2) On the making of a winding up order, the liquidator must within seven (7) days—
 - (a) send a copy of the order to the Registrar; and
 - (b) publish notice of the order in the Global Market in such manner as he thinks fit.
- (3) If a liquidator fails without reasonable excuse to comply with sub-section (2) he commits a contravention and is liable to a level [●] fine.

215. Commencement of winding up

- (1) If, before the presentation of a petition for the winding up of a Company by the Court, a resolution has been passed by the Company for voluntary winding up, the winding up of the Company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.
- (2) Where the Court makes a winding up order by virtue of Section 27(1)(e) (*Powers of Court*), the winding up is deemed to commence on the making of the order.
- (3) In any other case, the winding up of a Company by the Court is deemed to commence at the time of the presentation of the petition for the winding up.

216. Consequences of winding up order

- (1) When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.
- (2) After the presentation of a winding up petition—
 - (a) no person may attach, sequester or otherwise appropriate the assets of the Company, and any such activity is, unless the Court otherwise orders, void; and
 - (b) any disposition of the Company's property, and any transfer of shares, or alteration in the status of the Company's members is, unless the Court otherwise orders, void,

except that this sub-section (2) shall only take effect if a winding up order is made in respect of the Company on the winding up petition and sub-section (2)(b) has no effect in respect of anything done by an administrator of a Company while a winding up petition is suspended under Section 51(1)(b) (*Dismissal of pending winding-up petition*).

217. Appointment of provisional liquidator or of liquidator following administration

- (1) The Court may, at any time after the presentation of a winding up petition, appoint a liquidator provisionally to carry on such functions as the Court may confer on him. The powers of such a liquidator may be limited by the order appointing him.
- (2) When a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.

- (3) Where a winding up order is made immediately upon the appointment of an administrator ceasing to have effect, the Court may appoint as liquidator of the Company the person whose appointment as administrator has ceased to have effect.
- (4) Where a liquidator is appointed in accordance with sub-section (3) or upon registration of a notice under Section 131(2) (*Moving from administration to creditors' voluntary liquidation*) and that person becomes aware of creditors not formerly known to him in his capacity as administrator, he shall send to those creditors a copy of any statement or report sent by him to creditors under Section 65 (*Administrator's proposals*), so noted as to indicate that it is being sent under this Section.

218. Power to stay winding up

- (1) The Court may at any time after an order for winding up is made, on the application of the liquidator or any creditor or contributory, make an order staying the proceedings on such terms and conditions as the Court thinks fit.
- (2) The Company must, as soon as reasonably practicable, forward a copy of any order made under sub-section (1) to the Registrar.
- (3) If the Company fails to comply with sub-section (2), it commits a contravention and is liable to a level [●] fine.

219. Progress report to contributories and creditors

- (1) If the winding up of the Company continues for more than one (1) year, the liquidator must, within two (2) months after the end of twelve (12) months commencing on the date on which the liquidator is appointed, and after every subsequent twelve (12) months until the liquidator ceases to act—
 - (a) produce a progress report providing an account of his acts and dealings, and of the conduct of the winding up, during the preceding year; and
 - (b) send a copy of the progress report to contributories and creditors of the Company and to the Registrar.
- (2) If the liquidator fails to comply with sub-section (1), he commits a contravention.

220. Duty to summon final meeting

- (1) If it appears to the liquidator of a Company that the winding up of the Company is for practical purposes complete, the liquidator must summon a final meeting of the Company's creditors to receive the liquidators' report of the winding up.
- (2) Notice of the meeting shall be published in the Global Market in such manner as the liquidator thinks appropriate, specifying the time, place and object of the meeting and published at least one (1) month before it.
- (3) Within seven (7) days of the meeting, the liquidator shall send to the Registrar a copy of the liquidator's report and a return of the meeting.
- (4) If the copy is not sent or the return is not made in accordance with sub-section (3), the liquidator commits a contravention and is liable to a level [●] fine.

Chapter 7 – Provisions of general application in winding up

221. General functions in winding up by the Court

The functions of the liquidator of a Company are to ensure that the property of the Company is collected or otherwise secured, realised and distributed to the Company's creditors and, if there is a surplus, to the persons entitled to it.

222. Property of the Company

- (1) The liquidator or the provisional liquidator (as the case may be) shall take into his custody or under his control all the property to which the Company is or appears to be entitled to.
- (2) In these Regulations, "**property**" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent arising out of, or incidental to, property but does not include Client Assets or other property held by the Company on trust for a person.
- (3) The liquidator or provisional liquidator shall take steps to discharge the obligations of the Company with respect to—
 - (a) Client Assets, in accordance with the Financial Market Regulations and The Abu Dhabi Global Market Rulebook; and
 - (b) trust property of the Company, in accordance with the terms of the trust.
- (4) When a Company is being wound up by the Court, the Court may, on the application of the liquidator, direct that all or any part of the property of whatsoever description belonging to the Company or held by trustees on its behalf shall vest in the liquidator by his official name; and thereupon the property to which the order relates vests accordingly.

223. Notification that Company is in liquidation

- (1) When a Company is being wound up, every invoice, order for goods or services or business letter (whether in hard copy, electronic or any other form) issued by or on behalf of the Company and all the Company's websites, shall contain a statement that the Company is being wound up.
- (2) If the Company fails to comply with sub-section (1), it and any officer who knowingly and wilfully authorises or permits the failure to comply, commits a contravention and is liable to a level [•] fine.

224. Powers of liquidator

- (1) Any liquidator may exercise any of the powers specified in Part 1 of Schedule 4 (*Powers of Liquidator in a Winding-Up*) —
 - (a) in the case of a members' voluntary winding up, with the sanction of a Special Resolution of the Company; and
 - (b) in the case of a creditors' voluntary winding up or where the Company is being wound up by the Court, with the sanction of the Court, the Liquidation Committee or a meeting of the Company's creditors.

- (2) Any liquidator may, without sanction, exercise any of the general powers specified in Part 2 of Schedule 4 (*Powers of Liquidator in a Winding-Up*).
- (3) Sub-section (4) applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the Company.
- (4) The powers conferred on the liquidator by this Section shall not be exercised during the period before the holding of the creditors' meeting under Section 193 (*Meetings of members and creditors*), save for the power of the liquidator to do all such things as may be necessary for the protection or preservation of the Company's property.
- (5) If the liquidator fails without reasonable excuse to comply with sub-section (4) he commits a contravention and is liable to a level [•] fine.

225. Power to disclaim onerous property

- (1) The liquidator may, by giving notice which identifies the property disclaimed, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this Section—
 - (a) any unprofitable contract; and
 - (b) any other property of the Company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) A disclaimer under this Section—
 - (a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the Company in or in respect of the property disclaimed; but
 - (b) does not except so far as is necessary for the purpose of releasing the Company from any liability, affect the rights or liabilities of any other person.
- (4) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Section is deemed a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.
- (5) The liquidator must send a copy of the notice of disclaimer to the Registrar and to every person who (to his knowledge)—
 - (a) claims an interest in the disclaimed property; or
 - (b) is under any liability in respect of the property, not being a liability discharged by the disclaimer.
- (6) Any disclaimer of property by the liquidator does not take effect unless a copy of the notice of disclaimer has been served (so far as the liquidator is aware of their addresses) on every person claiming under the Company as underlessee or mortgagee.
- (7) Any disclaimer of property by the liquidator is presumed valid and effective, unless it is proved that he has been in breach of his duty with respect to the giving of notice of disclaimer.

- (8) The liquidator must include in the liquidator's records of the insolvency a record of—
- (a) the persons to whom that liquidator has sent or given copies of the notice of disclaimer under this Section, showing their names and addresses and the nature of their respective interests;
 - (b) the dates on which the copies of the notice of disclaimer were sent or given to those persons; and
 - (c) the date on which a copy of the notice of disclaimer was sent to the Registrar.
- (9) If the liquidator fails without reasonable excuse to comply with sub-section (5) he commits a contravention and is liable to a level [•] fine.

226. Liquidator may summon meetings

The liquidator may summon meetings of creditors or contributories for the purposes of reporting on matters in the winding up or ascertaining their wishes in accordance with the provisions of Schedule 6 (*Creditors' Meetings Correspondence and Meetings*).

227. Settling list of contributories, debts and calls

- (1) At any time after a winding up order has been made, the Court—
- (a) shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required, and shall cause the Company's property to be collected and applied in discharge of its liabilities;
 - (b) may make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him to the Company, exclusive of any money payable by him by virtue of any call;
 - (c) may make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the Company's debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves and make an order for payment of any calls so made; and
 - (d) shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.
- (2) In a winding up by the Court, the powers of the Court described in sub-section (1) are discharged by the liquidator as an officer of the Court, subject to its control.
- (3) In a voluntary winding up, the liquidator may exercise the Court's powers described in sub-section (1).

228. Liability to contribute of past and present members

- (1) Subject to sub-section (2), when a Company is wound up, every present and past member is liable to contribute to its assets to any amount sufficient for the payment of its debts and liabilities, and the expenses of the winding up, and for the adjustment of the rights of contributories among themselves.

- (2) A past or present member is not liable to contribute—
- (a) if he has ceased to be member for one (1) year or more before the commencement of the winding up;
 - (b) in respect of any debt or liability of the Company contracted after he ceased to be a member;
 - (c) if it appears to the Court that the existing members are able to satisfy the contributions required to be made by them;
 - (d) in the case of a Company limited by shares a sum more than an amount (if any) unpaid on the shares in respect of which he is liable as a past or present member;
 - (e) in the case of a Company limited by guarantee, no contribution is required from any member exceeding the amount undertaken to be contributed by him to the Company's assets in the event of the Company being wound up.
- (3) A sum due to any member of the Company (in his character as a member) by way of dividends, profits or otherwise is not deemed to be a debt of the Company, payable to that member in a case of competition between himself and any other creditor not a member of the Company, but any such sum may be taken into account for the purpose of the final adjustment of rights of contributories among themselves.

229. Limited Company formerly unlimited

- (1) This Section applies in the case of a Company being wound up which was at some former time registered as an unlimited Company but has re-registered as a limited Company.
- (2) Notwithstanding Section 228(2)(a) (*Liability to contribute of past and present members*), a past or present member of the Company, who was a member of the Company at the time of re-registration, is liable to contribute to the assets of the Company in respect of debts and liabilities contracted before re-registration if the winding up commences within the period of three (3) years beginning with the day on which the Company was re-registered.
- (3) Subject to Section 228(2)(a) (*Liability to contribute of past and present members*) and sub-section (2) if no persons who were members of the Company at the time of re-registration are existing members of the Company, a person who at the time of re-registration was a present or past member is liable to contribute under sub-section (2) notwithstanding that the existing members have satisfied the contributions required to be made by them under Section 228(2)(c) (*Liability to contribute of past and present members*).
- (4) There is no limit on the amount which a person who, at the time of re-registration, was a past or present member of the Company is liable to contribute as above.

230. Unlimited Company formerly limited

- (1) This Section applies in the case of a Company being wound up which was at some former time registered as a limited Company but has been re-registered as an unlimited Company.
- (2) A person who, at the time when the application for the Company to be re-registered as an unlimited Company was lodged, was a past member of the Company and did not after that again become a member of it, is not liable to contribute to the assets of the Company more than he would have been liable to contribute had the Company not been re-registered.

231. **Company's books to be evidence**

Where a Company is being wound up, all books and papers of the Company and of the liquidators are, as between the contributories of the Company, prima facie evidence of the truth of all matters purporting to be recorded in them.

232. **Distribution of Company's property**

(1) Subject to Sections 268 (*Insolvency of clearing and settlement intermediaries or Authorised Market Institutions*) and **Error! Reference source not found.** (*Client Assets*), the Company's assets shall on the winding up be applied in satisfaction of the following liabilities in the order of priority of—

- (a) all expenses properly incurred in the winding up in accordance with Section 233 (*General rule as to priority of expenses*);
- (b) any Preferential Debts of the Company in accordance with Section 234 (*Preferential Debts*); and
- (c) the remainder of the Company's liabilities in accordance with Section 235 (*Debts of insolvent Company to rank equally*); and

subject to that application, shall (unless the Articles otherwise provide) be distributed among the members according to their rights and interests in the Company.

233. **General rule as to priority of expenses**

(1) The expenses of the winding up are payable out of the assets in the following order of priority—

- (a) expenses which are properly chargeable or incurred by the provisional liquidator in carrying out the functions conferred on him by the Court;
- (b) expenses or costs which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the Company or otherwise relating to the conduct of any legal proceedings which he has power to bring or defend whether in his own name or the name of the Company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;
- (c) any fees payable to the Court or to any official body in relation to the proceedings;
- (d) the cost of any security provided by a provisional liquidator or liquidator in accordance with these Regulations;
- (e) the remuneration of the provisional liquidator (if any);
- (f) any deposit lodged on an application for the appointment of a provisional liquidator;
- (g) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the Court;
- (h) any amount payable to a person employed to assist in the preparation of a Statement of Affairs or of accounts;

- (i) 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 for an extension of time for submitting such a statement;
 - (j) any necessary disbursements by the liquidator in the course of his administration (including any expenses incurred by members of the Liquidation Committee or their representatives and allowed by the liquidator under Schedule 7 (*Creditors' Committees*));
 - (k) the remuneration or emoluments of any person who has been employed by the liquidator to perform any services for the Company, as required or authorised by these Regulations;
 - (l) the remuneration of the liquidator; and
 - (m) any other expenses properly chargeable by the liquidator in carrying out his functions in the liquidation.
- (2) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.
- (3) Nothing in these Regulations affects the power of any Court, in proceedings by or against the Company, to order costs to be paid by the Company, or the liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid.

234. Preferential Debts

- (1) Preferential Debts rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.
- (2) "**Preferential Debts**" means the debts listed in Schedule 8 (*Preferential Debts*), and references to preferential creditors shall be read accordingly.

235. Debts of insolvent Company to rank equally

- (1) Debts, other than the expenses of the winding up and Preferential Debts, rank equally between themselves in the winding up and, after the Preferential Debts, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (2) Sub-section (1) applies whether or not the Company is unable to pay its debts.

236. Fixing of liquidator's remuneration

The liquidator is entitled to receive remuneration for his services as such. The relevant provisions in Schedule 12 (*Remuneration*) shall apply in the determination of the remuneration of the liquidator.

237. **Liquidation committee**

- (1) In any Insolvency Proceedings, the creditors may, at any meeting convened by the Office-holder, appoint a Liquidation Committee to exercise the functions conferred on it by these Regulations.
- (2) If such a Liquidation Committee is appointed, the relevant provisions of Schedule 7 (*Creditors' Committees*) shall apply.
- (3) This Section does not apply to a members' winding up.

238. **Notice requiring Statement of Affairs**

- (1) Where a liquidator is required to produce a Statement of Affairs under Section 190(3) (*Effect of Company's Insolvency*) he shall do so using the prescribed form [Form 4.18]. Where a liquidator determines that it is required, he shall send a notice to each relevant person whom he determines appropriate requiring him to prepare and submit a statement of the Company's affairs.
- (2) The notice shall inform each of the relevant persons of—
 - (a) the names and addresses of all others (if any) to whom the same notice has been sent;
 - (b) the time within which the statement must be delivered;
 - (c) the effect of Section 239(5) (*Statement of Company's affairs*); and
 - (d) the application to him, and each other relevant person, of Section 260 (*Duty to co-operate with Office-holder*).
- (3) The liquidator shall furnish each relevant person to whom he has sent notice with the forms required [Form 4.18] for the preparation of the Statement of Affairs.
- (4) For the purposes of sub-section (1) above "**relevant person**" means—
 - (a) a person who is or has been officer of the Company;
 - (b) a person who took part in the formation of the Company during the period of one year ending with the date on which the Company enters administration;
 - (c) a person employed by the Company during that period; and
 - (d) a person who is or has been during that period an officer or employee of a Company which is or has been during that year an officer of the Company.
- (5) For the purposes of sub-section (4) a reference to employment is a reference to employment through a contract of employment or a contract for services.

239. **Statement of Company's Affairs**

- (1) The Statement of Affairs must—
 - (a) be verified by a statement of truth by the relevant person in accordance with the Court Procedural Rules;

- (b) be in the prescribed form [4.18] containing all the particulars required by that form;
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed
- (2) A person required to submit a Statement of Affairs under Section 238 (*Notice requiring Statement of Affairs*) must do so before the end of the period of 21 days beginning with the day after that on which the prescribed notice of the requirement is given to them by the administrative receiver.
- (3) The liquidator may—
- (a) release a person from a requirement to provide a Statement of Affairs under Section 238 (*Notice requiring Statement of Affairs*); or
 - (b) extend the period specified in sub-section (4) (whether before or after expiry).
- (4) If the liquidator refuses to act under sub-section (5), the court, if it thinks fit, may exercise it.
- (5) If a person fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a level [●] fine.

240. Statement of Company's affairs by Directors

- (1) Where a director is required to produce a Statement of Affairs under Section 193(2) (*Meetings of members and creditors*) he shall do so using the prescribed form [Form 4.19].
- (2) The directors shall cause that statement to be laid before the creditors' meeting and appoint one of their number to preside over the meeting.
- (3) The statement of affairs must—
- (a) be verified by a statement of truth by some or all of the directors in accordance with the Court Procedural Rules;
 - (b) be in the prescribed form [Form 4.19];
 - (c) give particulars of the Company's property, debts and liabilities;
 - (d) give the names and addresses of the Company's creditors;
 - (e) specify the security held by each creditor;
 - (f) give the date on which each security was granted; and
 - (g) contain such other information as may be prescribed.

- (4) If a director fails without reasonable excuse to comply with this Section, he commits a contravention and is liable to a level [●] fine.

241. Release from duty to submit Statement of Affairs; extension of time

- (1) The power of the liquidator under Section 239 (*Statement of Company's affairs*) to give a release from the obligation imposed by Section 238(1) (*Notice requiring Statement of Affairs*), or to grant an extension of time, may be exercised at his own discretion, or at the request of any relevant person.
- (2) A relevant person may, if he requests a release or extension of time and it is refused by the liquidator, apply to the Court for it.
- (3) The Court may, if it thinks that no sufficient cause is shown for the application, dismiss it without a hearing but it shall not do so without giving the relevant person at least five (5) business days' notice, upon receipt of which the relevant person may request the Court to list the application for a without notice hearing. If the application is not dismissed the Court shall fix a venue for it to be heard, and give notice to the relevant person accordingly.
- (4) The relevant person shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application and of any evidence which he (the relevant person) intends to adduce in support of it.
- (5) The liquidator may appear and be heard on the application and, whether or not he appears, he may file a written report of any matters which he considers ought to be drawn to the Court's attention.
- (6) If such a report is filed, a copy of it shall be sent by the liquidator to the relevant person, not later than five (5) business days before the hearing.
- (7) Sealed copies of any order made on the application shall be sent by the Court to the relevant person and the liquidator.
- (8) On any application under this Section the relevant person's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made as an expense of the winding up.

242. Expense of Statement of Affairs

- (1) A relevant person making the Statement of Affairs of the Company or statement of concurrence shall be allowed, and paid by the liquidator as an expense of the winding up, any expenses incurred by the relevant person in so doing which the liquidator considers reasonable.
- (2) Any decision by the liquidator under this Section is subject to appeal to the Court.
- (3) Nothing in this Section 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 liquidator.

243. Submission of accounts

- (1) The liquidator shall be entitled to demand from an officer of the Company, access to and copies of the accounts and the books and records of the Company of such nature and for such period as he sees fit.
- (2) Where a person is required to furnish accounts under sub-section (1), the liquidator may authorise an allowance, payable out of the assets of the Company, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

244. Further disclosure

The liquidator may at any time require any person to submit (in writing) further information amplifying, modifying or explaining any matter contained in a Statement of Affairs, or in accounts submitted in pursuance of these Regulations.

245. Removal or resignation of liquidator

- (1) The Court may, on cause shown, remove a liquidator or provisional liquidator and appoint another.
- (2) A liquidator may only resign his office if he ceases to be a person who is registered as an insolvency practitioner or there is some conflict of interest or change of personal circumstance which precludes or makes impracticable the further discharge by him of the duties of liquidator.
- (3) A liquidator may resign his office by giving twenty-eight (28) days' notice of his resignation to the members and creditors of the Company and to the Registrar, together with a progress report providing an account of his acts and dealings, and of the conduct of the winding up, since his last progress report or, if there is no such progress report, since his appointment.

246. Reference of questions to Court

- (1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a Company.
- (2) In addition, the Court may, on the liquidator's application, relieve him of any duty imposed on him by these Regulations, or authorise him to carry out the duty in a way other than as required by these Regulations.
- (3) In considering whether to act under sub-section (2), the Court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or members, or any particular class of them.
- (4) The Court may make such order on the application as it thinks just.

247. Meetings to ascertain wishes of creditors or contributories

- (1) The Court may—
 - (a) as to all matters relating to the winding up of a Company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence); and

- (b) if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in accordance with Schedule 6 (*Creditors' Meetings*) or in such other manner as the Court directs, and appoint a person to act as chairman of any such meeting and report the result of it to the Court.
- (2) In the case of creditors, regard shall be had to the value of each creditor's debt.
- (3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory.

Chapter 8 – Distributions to creditors

248. Distributions to creditors

Schedule 5 (*Proofs and Distributions*) shall apply to distributions made or proposed to be made by the liquidator and to creditors proving their debts.

PART 5: PROTECTION OF ASSETS IN LIQUIDATION AND ADMINISTRATION

Chapter 1 – Contraventions by Directors and others

249. Fraud in anticipation of winding up

- (1) When a Company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, any person, being a past or present officer of the Company, commits a contravention and is liable to a level [●] fine if, within the twelve (12) months immediately preceding the commencement of the winding up, he has—
- (a) concealed any part of the Company's property to the value of \$200 or more, or concealed any debt due to or from the Company;
 - (b) fraudulently removed any part of the Company's property to the value of \$200 or more;
 - (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the Company's property or affairs;
 - (d) made any false entry in any book or paper affecting or relating to the Company's property or affairs;
 - (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the Company's property or affairs; or
 - (f) pawned, pledged or disposed of any property of the Company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the Company's business),

in each case with the intention of defrauding the creditors of the Company or concealing the state of affairs of the Company from any person, or to defeat the law.

- (2) Sub-section (1) is deemed to also apply to such a person if, within the twelve (12) period, he has been privy to the doing by others of any of the things mentioned in sub-section (1) with the requisite intent.

250. Transactions in fraud of creditors

- (1) When a Company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, a person commits a contravention and is liable to a level [●] fine if he, being at the time an officer of the Company—
- (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the Company's property; or
 - (b) has concealed or removed any part of the Company's property since, or within two (2) months before, the date of any unsatisfied judgment or order for the payment of money obtained against the Company.
- (2) A person is not guilty of a contravention if—

- (a) he carried out the conduct under sub-section (1)(a) above more than five years before the commencement of the winding up; or
- (b) he proves that, at the time of the conduct constituting a breach of these Regulations he had no intent to defraud the Company's creditors.

251. Misconduct in course of winding up

When a Company is being wound up, a past or present officer of a Company commits a contravention and is liable to a level [●] fine if he—

- (a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the Company's property, and how and to whom and for what consideration and when the Company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the Company's business);
- (b) does not deliver up to the liquidator (or as he directs) all such part of the Company's property as is 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 he 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 winding up, fails to inform the liquidator as soon as practicable;
- (e) after the commencement of the winding up, prevents the production of any book or paper relating to the Company's property or affairs; or
- (f) after the commencement of the winding up, he attempts to account for any part of the Company's property by fictitious losses or expenses,

and, except in the case of paragraph (f), he does so with the intention of defrauding creditors of the Company.

252. Falsification of Company's books

When a Company is being wound up, an officer or contributory of the Company commits a contravention and is liable to a level [●] fine if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the Company with intent to defraud or deceive any person.

253. Material omissions from statement relating to Company's affairs

When a Company is being wound up, any past or present officer of the Company commits a contravention and is liable to a level [●] fine if he makes any material omission in any statement relating to the Company's affairs (including a Statement of Affairs) with the intention of defrauding the creditors of the Company.

254. False representations to creditors

Any past or present officer of the Company commits a contravention and is liable to a level [●] fine if—

- (a) when a Company is being wound up, 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 winding up; or
- (b) prior to the winding up, he has made any false representation or committed any other fraud for that purpose.

255. Summary remedy against delinquent Directors, liquidators

(1) Sub-section (3) applies if in the course of the winding up of a Company it appears that a person who—

- (a) is or has been an officer of the Company;
- (b) is a liquidator or administrative receiver of the Company; or
- (c) is or has been concerned, or has taken part in the promotion, formation or management of the Company,

has misapplied or retained, or become accountable for, any money or other property of the Company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the Company.

(2) Sub-section (1) includes, in the case of a person who has acted as a liquidator of the Company, any misfeasance or breach of any fiduciary duty in connection with the carrying out of his functions as a liquidator of the Company.

(3) The Court may, on the application of the Registrar, the liquidator or of any creditor or contributory, examine into the conduct of the person falling within sub-section (1) and compel him to—

- (a) repay, restore or account for the money or property or any part of it, with interest at such rate as the Court thinks just; or
- (b) contribute such sum to the Company's assets by way of compensation in respect of misfeasance or breach of fiduciary or other duty as the Court thinks just.

256. Fraudulent trading

(1) If in the course of the winding up of a Company it appears that any business of the Company has been carried on with intent to defraud creditors of the Company or creditors of any other person, or for any fraudulent purpose, sub-section (2) applies.

(2) The Court, on the application of the liquidator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned are liable to make such contributions (if any) to the Company's assets as the Court thinks proper.

257. Wrongful trading

- (1) Subject to sub-section (3) below, if in the course of the winding up of a Company it appears that sub-section (2) applies in relation to any person being a past or present Director of the Company, the Court may declare that person is to be liable to make such contribution (if any) to the Company's assets as the Court thinks fit.
- (2) This sub-section (2) applies if—
 - (a) the Company has gone into an insolvent liquidation; and
 - (b) at some time before the commencement of the winding up of the Company, the person knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation; and
 - (c) the person was a Director of the Company at that time.
- (3) Sub-section (1) shall not apply to any person if the Court is satisfied that after the Director first knew or ought to have concluded that there was no reasonable prospect of the Company avoiding going into insolvent liquidation, he took every step with a view to minimising the potential loss to the Company's creditors as (assuming him to have concluded that there was no reasonable prospect that the Company would avoid going into insolvent liquidation) he ought to have taken.
- (4) For the purposes of this Section, the facts which a Director of the Company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, 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 (including functions which he does not carry out but which have been entrusted to him); and
 - (b) the general knowledge, skill and experience that Director has.
- (5) The liquidator shall be entitled to bring an application to the Court under this Section.
- (6) In this Section, Director includes a shadow director.

258. Proceedings under Sections 256 and 257

Where the Court makes a declaration under either Section 256 (*Fraudulent trading*) or Section 257 (*Wrongful trading*), it has wide powers to give such further directions as it thinks proper for giving effect to the declaration.

Chapter 2 – Powers of Office-holders to obtain information

259. Getting in the Company's property

- (1) This Section applies in the case of a Company where—
 - (a) the Company enters administration;
 - (b) the Company becomes subject to a Deed of Company Arrangement;

- (c) [a receiver or] administrative receiver is appointed;
- (d) the Company goes into liquidation; or
- (e) a provisional liquidator is appointed,

and the "**Office-holder**" means [*the receiver,*] the administrator of the Company, the administrator of the Deed of Company Arrangement, the administrative receiver, the liquidator or the provisional liquidator, as the case may be.

- (2) Where any person has in his possession or control any property, books, papers or records to which the Company appears to be entitled, the Court may, on application by an Office-holder, require that person immediately (or within such period as the Court may direct) to pay, deliver, convey, surrender or transfer the property, books, papers or records to the Office-holder.
- (3) If, it appears to the Court, on consideration of any evidence obtained pursuant to Section 261 (*Inquiry into Company's dealings*), that any person is indebted to the Company, the Court may, on the application of the Office-holder, order that person to pay to the Office-holder, at such time and in such manner as the Court may direct, the whole or any part of the amount due, whether in full discharge of the debt or otherwise, as the Court thinks fit.
- (4) Where the Office-holder—
 - (a) seizes or disposes of any property which is not property of the Company; and
 - (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the Office-holder 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 has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

260. **Duty to co-operate with Office-holder**

- (1) Where an Office-holder has been appointed to a Company, he may require any of the persons identified in sub-section (2) to—
 - (a) give to the Office-holder such information concerning the Company and its promotion, formation, business, dealings, affairs or property as the Office-holder may at any time after the commencement of Insolvency Proceedings reasonably require; and
 - (b) attend on the Office-holder at such times as the latter may reasonably require.
- (2) The persons who must co-operate with the Office-holder are—
 - (a) those who are or have at any time been a Director or secretary of the Company;
 - (b) those who have taken part in the formation of the Company at any time;
 - (c) those who are or have been at any time in the employment of the Company;

- (d) those who are or have at any time been a Director or secretary of, or in the employment of, another Company which is or was at any time a Director or secretary of the Company; and
 - (e) in the case of a Company being wound up by the Court, any person who has acted as receiver, administrator, administrative receiver, provisional liquidator or liquidator of the Company.
- (3) A person who fails to comply with this Section, without reasonable excuse, commits a contravention and is liable to a level [•] fine.

261. Inquiry into Company's dealings

On the application of the Office-holder, the Court may order any person involved with the Company to appear before it or to produce to it or to the Office-holder an account of his dealings with the Company contained in a witness statement verified by a statement of truth including any information concerning the promotion, formation, business, dealings, affairs or property of the Company or any books, papers or records in his possession or under his control relating to the Company or to any such dealings. A person involved with the Company shall include a Director or secretary of the Company, any person known or suspected to have in his possession any property of the Company or supposed to be indebted to the Company and any person whom the court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the Company.

Chapter 3 – Voidable transactions

262. Transactions at an undervalue

- (1) Where a Company is in administration or winding up and has at a relevant time (as defined in Section 264 (*Relevant time*)) entered into a transaction with any person at an undervalue, the Court may, on application of the administrator or the liquidator, make an order restoring the position to what it would have been if the Company had not entered into that transaction.
- (2) A Company enters into a transaction with a person at an undervalue if—
 - (a) it makes a gift to that person or otherwise [receives] no consideration under the transaction; or
 - (b) [receives] consideration under the transaction with a value, in money or money's worth, which is significantly less than the value, in money or money's worth, of the consideration provided by the Company.
- (3) The Court shall not make an order under sub-section (1) in respect of a transaction at an undervalue if it is satisfied—
 - (a) that the Company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the Company.
- (4) Where a Company has entered into a transaction at an undervalue with another person and the Court is satisfied the entry into the transaction by the Company was for the purpose of—

- (a) putting assets beyond the reach of a person who is making, or may at some time make a claim against it; or
- (b) otherwise prejudicing the interests of such a person in relation to a claim which he is making or may make,

[the Court may make an order restoring the position to what it would have been if the Company had not entered into that transaction or protecting the interests of any victim of the transaction but having regard to the interests of persons who acquired any interest in property in good faith, for value and without notice of the relevant circumstances.]

- (5) An application under sub-section (4) shall only be made by a liquidator or administrator of the Company or (with leave of the Court) a victim of the transaction.
- (6) References to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it.

263. **Preferences**

- (1) Where a Company is in administration or winding up and has at a relevant time (as defined in Section 264 (*Relevant time*)) given a preference to any person, the Court may, on application of an administrator or a liquidator, make an order restoring the position to what it would have been if the Company had not given that preference.
- (2) A Company gives a preference to a person if—
 - (a) that person is one of the Company's creditors or a surety or guarantor for any of the Company's debts or other liabilities; and
 - (b) the Company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the Company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (3) The Court shall not make an order under sub-section (1) in respect of a preference given to any person unless the Company which gave the preference was influenced in deciding to give it by a desire to put the person in the better position described in sub-section (2)(b).
- (4) A Company which has given a preference to a Connected Person (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by a desire to put the Connected Person in the better position described in sub-section (2)(b).

264. **Relevant time**

- (1) The time at which a Company enters into a transaction at an undervalue or gives a preference is a "**relevant time**" if the transaction is entered into, or the preference is given—
 - (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is a Connected Person (otherwise than by reason only of being its employee), at a time in the period of two (2) years ending with the onset of insolvency;

- (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six (6) months ending with the onset of insolvency;
 - (c) in either case, at a time between the making of an administration application in respect of the Company and the making of an administration order on that application;
 - (d) in either case, at a time between the filing with the court of a copy of a notice of intention to appoint an administrator under Part 2 (*Administration*) and the making of an appointment under that Part; and
 - (e) in either case, at a time between the presentation of a petition for the making of a winding up order in relation to the Company and the making of such an order on that petition.
- (2) Where a Company enters into a transaction at an undervalue or gives a preference at a time mentioned in sub-sections (a) or (b) above, that time is not a relevant time for the purposes of Sections 262 (*Transactions at an undervalue*) and 263 (*Preferences*) unless the Company—
- (a) is at that time unable to pay its debts within the meaning of Section 207 (*Definition of inability to pay debts*); or
 - (b) becomes unable to pay its debts within the meaning of Section 207 (*Definition of inability to pay debts*) in consequence of the transaction or preference,

but the requirements of this sub-section (2) are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue which is entered into by a Company with a person who is a Connected Person.

- (3) In this Part 5 (*Protection of Assets in Liquidation and Administration*), the "**onset of insolvency**" means—
- (a) in a case where Section 262 (*Transactions at an undervalue*) or 263 (*Preferences*) applies by reason of an administrator of a Company being appointed by an administration order, the date on which the administration application is made;
 - (b) in a case where Section 262 (*Transactions at an undervalue*) or 263 (*Preferences*) applies by reason of an administrator of a Company being appointed under Part 2 (*Administration*) following filing with the Court of a copy of a notice of intention to appoint under that Part, the date on which the copy of the notice is filed;
 - (c) in a case where Section 262 (*Transactions at an undervalue*) or 263 (*Preferences*) applies by reason of an administrator of a Company being appointed otherwise than as mentioned in paragraphs (a) or (b), the date on which the appointment takes effect;
 - (d) in a case where Section 262 (*Transactions at an undervalue*) or 263 (*Preferences*) applies by reason of a Company going into liquidation at a time when the appointment of an administrator ceases to have effect, the date on which the Company entered administration (or, if relevant, the date on which the application for the administration order was made or a copy of the notice of intention to appoint was filed); and

- (e) in a case where Section 262 (*Transactions at an undervalue*) or 263 (*Preferences*) applies by reason of a Company going into liquidation at any other time, the date of the commencement of winding up.

PART 6: APPLICATION OF INSOLVENCY LAW TO AUTHORISED PARTICIPANTS AND OTHER ENTITIES

Chapter 1 – Application of these Regulations to certain entities

265. Limited Liability Partnerships

- (1) Subject to sub-section (2), the provisions of these Regulations shall apply to a Limited Liability Partnership.
- (2) These Regulations shall apply to a Limited Liability Partnership, except where the context otherwise requires, with the following modifications—
 - (a) references to a Company shall include references to a Limited Liability Partnership;
 - (b) references to a Director or to an officer of a Company shall include references to a member of a Limited Liability Partnership;
 - (c) references to the Companies Regulations shall include references to the equivalent provisions of the Limited Liability Partnership Regulations (if any) as apply to a Limited Liability Partnership;
 - (d) references to the Articles of a Company shall include references to the Limited Liability Partnership Agreement of a Limited Liability Partnership; and
 - (e) such further modifications as the context requires for the purpose of giving effect to these Regulations as applied by this Section.

266. Protected Cell Companies

- (1) Subject to sub-section (2), the provisions of these Regulations shall apply to a Protected Cell Company.
- (2) These Regulations shall apply to a Protected Cell Company, except where the context requires, with the following modifications—
 - (a) Part 2 (*Administration*) and Part 3 (*Receivership*) of these Regulations shall not apply to a Protected Cell Company;
 - (b) the modifications contained in the provisions of Schedule 11 (*Supplemental provisions applicable to protected cell companies*);
 - (c) references to a Company shall include references to a Protected Cell Company; and
 - (d) further modifications as the context requires for the purpose of giving effect to these Regulations as applied by this Section.

267. Powers of the Board of Directors of the Global Market

The Board of Directors of the Global Market may, by any other regulations, orders or rules, provide that such provisions of these Regulations as may be specified in such regulations, orders or rules shall apply in relation to entities other than Companies with such modifications as may be so specified.

Chapter 2 – Conflict with other Global Market legislation

268. **Insolvency of clearing and settlement intermediaries or authorised market institutions; client assets**

- (1) Any provision of the rules of a market institution authorised by Financial Market Regulations relating to the finality of acquisitions or dispositions effected pursuant to such rules shall—
 - (a) to the extent of any inconsistency with any other applicable law, regulation or rule, prevail in respect of determining claims to assets held by, on behalf of, or subject to the control of, such market institution; and
 - (b) have effect and prevail over these Regulations and any other insolvency legislation of the Global Market notwithstanding the commencement of an insolvency proceeding in respect of such market institution or any party to a contract for the acquisition or disposal of an asset to which such rules apply.
- (2) The rules relating to client assets and client monies applicable to persons authorised pursuant to the Financial Market Regulations shall not be regarded as invalid on the ground of inconsistency with these Regulations or any other insolvency legislation of the Global Market relating to the distribution of property of a Company on an administration, Deed of Company Arrangement or a winding up and those rules shall, to the extent of any inconsistency, prevail.

269. **Alteration, Suspension or Disapplication of Regulations in relation to regulated entities**

Any provision of these Regulations may be altered, supplemented, suspended or disappplied in respect of entities regulated under the Financial Market Regulations or other legislation relating to entities effecting or carrying out contracts of insurance, banking business or the provision of any other financial services [*in accordance with Section 8 (Amendments, alterations and supplements).*]

PART 7: CROSS-BORDER INSOLVENCY

Chapter 1 – Winding up of non-Global Market Companies and Branches

270. Application of this Part to "unregistered company"

For the purposes of this Part 7 (*Cross-border Insolvency*), "unregistered company" includes a Branch, an association or a non-Global Market Company but does not include a Company within the meaning of the Companies Regulations.

271. Winding up of unregistered companies

- (1) Subject to the provisions of this Part 7 (*Cross-border Insolvency*), any unregistered company may be wound up under these Regulations and all the provisions of these Regulations about winding up apply to an unregistered company with the modifications set out in this Part 7 (*Cross-border Insolvency*).
- (2) All the provisions of these Regulations about receivers and administrative receivers apply to an unregistered company if the instrument by virtue of which the receiver or administrative receiver is appointed is expressed to be governed by Global Market legislation.
- (3) Subject to sub-section (4), an unregistered company shall only be wound up under these Regulations by the Court.
- (4) An unregistered company may only be wound up by these Regulations if—
 - (a) it has a sufficient connection with the Global Market, which may (but does not have to) consist of it owning assets located within the Global Market;
 - (b) there is a reasonable prospect that the winding up order will benefit the persons applying for the winding up order; and
 - (c) the Court has jurisdiction over one or more persons interested in the distribution of the assets of such unregistered company.
- (5) The circumstances in which an unregistered company may be wound up are as follows—
 - (a) if the unregistered company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the unregistered company is unable to pay its debts; or
 - (c) if the Court is of the opinion that it is just and equitable that the unregistered company should be wound up.
- (6) A winding up of an unregistered company under this Part 7 (*Cross-border Insolvency*) shall be conducted on a universal basis and shall extend to all property and rights of the unregistered company worldwide in so far as the liquidator is able to enforce against such property and rights located outside of the Global Market.

- (7) Where foreign proceeding and winding up proceedings under this Section are taking place concurrently regarding an unregistered company, the liquidator may apply to Court at any time for directions on—
- (a) the conduct of the winding up proceedings and if such proceedings are to be conducted as 'ancillary proceedings' to the foreign proceedings; and
 - (b) the realisation of assets located in the Global Market and any remittal of such assets to the foreign proceedings.
- (8) The insolvency law of the Global Market shall apply to the conduct of any winding up proceedings commenced under these Regulations, whether conducted as ancillary proceedings to foreign proceedings or otherwise.

272. Inability to pay debts: unpaid creditor for \$2,000 or more

- (1) An unregistered company is deemed (for the purpose of Section 271 (*Winding up of unregistered companies*)) unable to pay its debts if there is a creditor, by assignment or otherwise, to whom the unregistered company is indebted in a sum exceeding \$2,000 then due and—
- (a) the creditor has served on the unregistered company, by leaving at its principal place of business, or by delivering to the secretary or some Director, manager or principal officer of the unregistered company, or by otherwise serving in such manner as the Court may approve or direct, a written demand in the prescribed form requiring the unregistered company to pay the sum due; and
 - (b) the unregistered company has for three (3) weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the creditor's satisfaction.
- (2) The money sum of the time being specified in sub-section (1) is subject to increase or reduction by these Regulations; but no increase in the sum so specified affects any case in which the winding up petition was presented before the coming into force of the increase.

273. Inability to pay debts: other cases

- (1) An unregistered company is deemed (for purposes of Section 271 (*Winding up of unregistered companies*)) unable to pay its debts—
- (a) if execution or other process issued on a judgment, decree or order obtained in any court in favour of a creditor against the unregistered company or any member of it as such, or any person authorised to be sued as nominal defendant on behalf of the unregistered company, is returned unsatisfied; or
 - (b) if it is otherwise proved to the satisfaction of the Court that the unregistered company is unable to pay its debts as they fall due.
- (2) An unregistered company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the non-Global Market Company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

274. **Company incorporated outside the Global Market may be wound up though dissolved**

Where a company incorporated outside the Global Market which has been carrying on business in the Global Market ceases to carry on business in the Global Market, it may be wound up as an unregistered company under this Part 7 (*Cross-border Insolvency*), notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

275. **Outstanding property of a defunct unregistered company**

- (1) This Section applies where, after the dissolution of an unregistered company, outstanding property of the unregistered company remains in the Global Market.
- (2) All property and rights of the unregistered company vests in the Global Market in accordance with Section 303 (*Property of dissolved Company*).

Chapter 2 – Recognition of foreign insolvency proceedings

276. **UNCITRAL Model Law to have force of law**

- (1) The UNCITRAL Model Law shall have the force of law in the Global Market in the form set out in Schedule 10 (*Application of UNCITRAL Model Law*) (which contains the UNCITRAL Model Law with certain modifications to adapt it for application in the Global Market).
- (2) Without prejudice to any practice of the Court as to the matters which may be considered apart from this sub-section, the following documents may be considered in ascertaining the meaning or effect of any provision of the UNCITRAL Model Law as set out in Schedule 10 (*Application of UNCITRAL Model Law*)—
 - (a) the UNCITRAL Model Law;
 - (b) any documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the UNCITRAL Model Law; and
 - (c) the Guide to Enactment of the UNCITRAL Model Law (UNCITRAL document A/CN.9/442) prepared at the request of the United Nations Commission on International Trade Law made in May 1997.

277. **Modification of insolvency law of the Global Market**

- (1) These Regulations shall apply with such modifications as the context requires for the purpose of giving effect to the provisions of Schedule 10 (*Application of UNCITRAL Model Law*).
- (2) In the case of any conflict between any provision of these Regulations and Schedule 10 (*Application of UNCITRAL Model Law*), the latter shall prevail.

278. **Part 10 to be disapplied**

Nothing in Part 10 (*Insolvency Practitioners*) applies to anything done by a foreign representative—

- (a) under or by virtue of these Regulations; and
- (b) in relation to relief granted or cooperation provided under these Regulations.

279. **Overriding provisions**

The Court shall not grant any relief, or modify any relief already granted, or provide any co-operation or coordination, under or by virtue of any of the provisions of Schedule 10 (Application of UNCITRAL Model Law) if and to the extent that such relief or modified relief or cooperation or coordination would—

- (a) be prohibited under or by virtue of—
 - (i) the Financial Market Regulations or the business rules of any market institution authorised under the Financial Market Regulations; or
 - (ii) the provisions of Part 8 (Financial Markets and Netting);in the case of a proceeding under these Regulations; or
- (b) interfere with or be inconsistent with any rights of a collateral-taker under Part 8 (*Financial Markets and Netting*) which could be exercised in the case of such a proceeding.

PART 8: FINANCIAL MARKETS AND NETTING

Chapter 1 –Qualified Financial Contract

280. Enforceability of a Qualified Financial Contract

A qualified financial contract shall not be and shall be deemed never to have been void or unenforceable by reason of the laws of the Global Market relating to games, gaming, gambling, wagering or lotteries.

Chapter 2 – Netting

281. Netting Provisions to take effect in accordance with their terms

- (1) The provisions of a netting agreement will be enforceable in accordance with their terms, including against an insolvent party, and, where applicable, against a guarantor or other person providing security for a party (including a guarantor or other person that is insolvent) and will not be stayed, avoided or otherwise limited by—
 - (a) the appointment of, or any application for the appointment of, or notice relating to the appointment of, an Office-holder or any action of an Office-holder; or
 - (b) any other provision of law relating to administration, liquidation, bankruptcy, reorganisation, composition with creditors, receivership, conservatorship or any other insolvency proceeding an insolvent party may be subject to; or
 - (c) any other provision of law that may be applicable to an insolvent party,subject to the conditions contained in the applicable netting agreement.
- (2) After commencement of Insolvency Proceedings in relation to a party, the only obligation, if any, of either party to make payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net obligation to the other party as determined in accordance with the terms of the applicable netting agreement.
- (3) After commencement of Insolvency Proceedings in relation to a party, the only right, if any, of either party to receive payment or delivery under or pursuant to a netting agreement or under or pursuant to any qualified financial contract or contract or transaction to which that netting agreement applies shall be equal to its net entitlement with respect to the other party as determined in accordance with the terms of the applicable netting agreement.
- (4) Any powers of an Office-holder to assume or repudiate individual contracts or transactions will not prevent the termination, liquidation, acceleration and/or conversion of all payment or delivery obligations or entitlements, and all obligations or entitlements relating to the making of payments or deliveries under one or more qualified financial contracts entered into under or in connection with a netting agreement, and will apply, if at all, only to the net amount or net entitlement due in respect of all such qualified financial contracts in accordance with the terms of such netting agreement.
- (5) The provisions of a netting agreement which provide for the determination of a net balance of the close-out values, market values, liquidation values, replacement values or other relevant

values calculated in respect of accelerated and/or terminated payment or delivery obligations or entitlements or accelerated and/or terminated obligations or entitlements relating to the making of payments or deliveries in either case, under one or more qualified financial contracts entered into thereunder or to which such netting agreement applies (including a payment or delivery in respect of a contract or transaction required to be entered into under or pursuant to such provisions) will not be affected by any applicable insolvency laws limiting the exercise of rights to set off, offset or net out obligations, payment amounts or termination values owed between an insolvent party and another party.

282. Voidable transactions

An Office-holder of an insolvent party may not avoid or render ineffective—

- (a) any payment, delivery, transfer, substitution or exchange of cash, collateral or any other interests or property under or in connection with a netting agreement from the insolvent party to the non-insolvent party; or
- (b) any obligation incurred by the insolvent party and owing to the non-insolvent party under or in connection with a netting agreement or to which a netting agreement applies to make any payment, transfer, delivery, substitution or exchange of cash, collateral or any other interests or property; or
- (c) any transaction entered into by the insolvent party in accordance with the terms of such netting agreement in order to give effect to the netting provided for by such netting agreement;

on the grounds of it constituting a preference for the purposes of Section 263 (*Preferences*) or a transaction at an undervalue for the purposes of Section 262 (*Transactions at an Undervalue*) by the insolvent party to or for the benefit of the non-insolvent party, unless there is clear and convincing evidence that the non-insolvent party made such transfer, payment, delivery, substitution or exchange or incurred such obligation or entered into such transaction with actual intent to hinder, delay, or defraud any person to which the insolvent party was indebted or became indebted, on or after the date such transfer, payment, delivery, substitution or exchange was made or such obligation was incurred or such transaction was entered into.

283. Preemption and confirmation of disapplication of certain provisions of these Regulations to netting agreements

- (1) No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, Office-holder or otherwise, shall limit or delay application of otherwise enforceable netting agreements and transactions entered into thereunder or pursuant thereto or to which an otherwise enforceable netting agreement applies.
- (2) Without prejudice to the foregoing provisions of this Chapter 2 (*Netting*) —
 - (a) in relation to winding up proceedings of a party to a netting agreement, Section 216(2) (*Consequences of winding up order*) shall not apply (if it would otherwise do so)—
 - (i) to any property or security subject to a disposition or transfer or created or otherwise arising under a netting agreement; or

- (ii) to prevent a netting under a Netting Agreement taking effect in accordance with its terms;
- (b) Section 203 (*Avoidance of share transfers after winding up resolution*) shall not apply (if it would otherwise do so) to any transfer of shares under a netting agreement;
- (c) Section 225 (*Power to disclaim onerous property*) shall not apply to a netting agreement where a party to such netting agreement is subject to winding up proceedings;
- (d) paragraphs 24 (*Administration: mutual dealings and set off*) and 25 (*Winding Up: mutual dealings and set off*) of Schedule 5 (*Proofs and Distributions*) shall not apply (if it would otherwise do so) to prevent a netting under a Netting Agreement taking effect in accordance with its terms;
- (e) the following Sections shall not apply to any security created or otherwise arising under a collateral arrangement—
 - (i) Section 54(2) (*Moratorium on other legal process*) including that provision as applied by Section 55 (*Interim moratorium*);
 - (ii) Section 88(2) (*Court may limit rights*);
 - (iii) Section 105(2) (*Distribution*);
 - (iv) Section 108 (*Charged property: floating charge*) and 109 (*Charged property*); and
 - (v) Section 152(3) and (4) (*Vacation of office: charges and liabilities*); and
- (f) Section 52(2) (*Dismissal of administrative or other receiver*) shall not apply to a receiver appointed under a charge created or otherwise arising under a collateral arrangement.

Chapter 3 –Collateral Arrangements

284. No recharacterisation

A title transfer collateral arrangement which is not expressed to be by way of security shall not be recharacterised as security over collateral and shall take effect in accordance with its terms.

285. Realisation and liquidation of collateral

Unless otherwise agreed by the parties, the realization, appropriation and/or liquidation of collateral under a collateral arrangement shall take effect or occur without any requirement that prior notice shall be given to, or consent be received from, any party, person or entity, provided that this Section is without prejudice to any applicable provision of law requiring that the realization, appropriation and/or liquidation of collateral is conducted in a commercially reasonable manner.

286. No formal act required

- (1) Other than as set out herein, no formal act shall be necessary for the attachment, perfection or enforcement of a collateral arrangement which is by way of security over collateral to the extent required under Global Market legislation.
- (2) *[Disapplication of relevant laws relating to security filings – to be inserted if applicable.]*

287. Right of use of a collateral-taker in collateral and obligation to return equivalent assets

- (1) If a collateral arrangement which is by way of security over collateral provides for the collateral-taker to use and dispose of any collateral provided under the collateral arrangement, as if it were the owner of it, the collateral-taker may do so in accordance with the terms of the arrangement.
- (2) The exercise by a collateral-taker of a right of use as described in sub-section (1) shall not render invalid or unenforceable any right of the collateral-taker under such a collateral arrangement.
- (3) If a collateral-taker exercises such a right of use, it is obliged to replace the original collateral by transferring equivalent collateral on or before the due date for the performance of the relevant obligations covered by the arrangement or, if the arrangement so provides, it may set off the value of the equivalent collateral against or apply it in discharge of the relevant obligations in accordance with the terms of the arrangement.
- (4) The equivalent collateral which is transferred in discharge of an obligation as described in sub-section (3), shall be subject to the same terms of the collateral arrangement as the original collateral was subject to and shall be treated as having been provided under the collateral arrangement at the same time as the original collateral was first provided.
- (5) If a collateral-taker has an outstanding obligation to replace the original collateral with equivalent collateral, that obligation may be the subject of a netting under the applicable netting agreement in accordance with its terms.

288. Appropriation

- (1) Without prejudice to the foregoing Sections of this Part 8 (*Financial Markets and Netting*), if the collateral arrangement provides for realisation by appropriation of the collateral the subject of such arrangement, then the collateral-taker may so realise the collateral in accordance with the terms of the applicable netting agreement without any order for foreclosure from the Court, as the collateral-taker's own property and setting off its value against, or applying its value in or towards the discharge of, the relevant obligations.
- (2) Upon the exercise by the collateral-taker of the power to appropriate the collateral, the equity of redemption of the collateral-provider shall be extinguished and all legal and beneficial interest of the collateral-provider in the collateral shall vest in the collateral-taker.
- (3) Upon the exercise by a collateral-taker of the power to appropriate the collateral in accordance with sub-section (1), the collateral-taker must value the collateral in accordance with the terms of the arrangement and in any event in a commercially reasonable manner.
- (4) Where a collateral-taker exercises such a power and the value of the collateral appropriated differs from the amount of the relevant obligations, then as the case may be, either—

- (a) the collateral-taker must account to the collateral-provider for the amount by which the value of the collateral exceeds the relevant obligations; or
- (b) the collateral-provider will remain liable to the collateral-taker for any amount by which the value of the collateral is less than the relevant obligations.

Chapter 4 – Interpretation

289. Netting agreement containing other provisions

For the purposes of this Part 8 (*Financial Markets and Netting*), a netting agreement shall be deemed to be a netting agreement notwithstanding the fact that such netting agreement may contain provisions relating to agreements, contracts or transactions that are not qualified financial contracts, provided, however, that, for the purposes of this Part 8 (*Financial Markets and Netting*), such netting agreement shall be deemed to be a netting agreement only with respect to those agreements, contracts or transactions that fall within the definition of "qualified financial contract".

290. Collateral arrangement containing other provisions

For the purposes of this Part 8 (*Financial Markets and Netting*), a collateral arrangement shall be deemed to be a collateral arrangement notwithstanding the fact that such collateral arrangement may contain provisions relating to agreements, contracts or transactions that are not a netting agreement or qualified financial contract entered into thereunder, provided, however, that, for the purposes of this Part 8 (*Financial Markets and Netting*), such collateral arrangement shall be deemed to be a collateral arrangement only with respect to those agreements, contracts or transactions that fall within the definition of "netting agreement" or "qualified financial contract" entered into thereunder.

291. Single agreement

For the purposes of this Part 8 (*Financial Markets and Netting*), a netting agreement and all qualified financial contracts entered into thereunder shall constitute a single agreement.

292. Application of this Part

This Part 8 (*Financial Markets and Netting*) applies to any qualifying financial contract, netting agreement or collateral arrangement (including any title transfer collateral arrangement) which is governed by the laws of the Global Market or which is entered into by a person incorporated or registered in the Global Market or organised under a law of the Global Market, irrespective of the date on which such qualified financial contract, netting agreement or collateral arrangement was entered into.

PART 9: CONTRAVENTIONS AND FINES

293. Contraventions and administrative notice of fine

- (1) Where—
 - (a) a provision of these Regulations provides that a failure to comply with a provision constitutes a contravention and prescribes the level of the fine in relation to the contravention; and
 - (b) the Registrar considers that a person has committed such a contravention,

the Registrar may impose by written notice given to the person a fine, in respect of the contravention, of such amount as it considers appropriate but not exceeding the amount of the maximum fine specified in respect of each contravention.
- (2) If a person is knowingly concerned in such a contravention committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded with and dealt with under sub-section (1).
- (3) Where the Registrar decides to impose a fine pursuant to sub-section (1), the Registrar will give the person a written notice—
 - (a) alleging that the person has committed the contravention and giving particulars of the facts alleged by the Registrar to constitute a contravention;
 - (b) setting out the fine imposed by the Registrar in respect of the contravention;
 - (c) specifying the period during which the fine may be paid; and
 - (d) providing an address for filing a notice of objection by the person.
- (4) If, within the period specified in the notice—
 - (a) the person pays the prescribed fine to the Registrar, then no proceedings may be commenced by the Registrar against the person in respect of the relevant contravention, but the Registrar may take action in relation to any continuing obligation that remains outstanding; or
 - (b) the person objects to the imposition of the fine or has not paid the prescribed fine to the Registrar, then the Registrar may apply to the Court for, and the Court may so order, the payment of the fine or so much of the fine as is not paid and make any further order as the Court sees fit for recovery of the fine.
- (5) A certificate that purports to be signed by the Registrar and states that a written notice was given to a person pursuant to sub-section (1) imposing a fine on the basis of specific facts is—
 - (a) conclusive evidence of the giving of the notice to the person; and
 - (b) *prima facie* evidence of the facts contained in the notice,

in any proceedings commenced under sub-section (2).

- (6) Nothing in this Section limits the powers that the Registrar may otherwise have in relation to a failure to comply with these Regulations.

294. **Maximum fines**

- (1) For the purposes of Section 293(1) (*Contraventions and administrative notice of fine*) the level of fine applicable to any contravention under these Regulations shall be as set out in Schedule 9 (*Contraventions*).
- (2) The Registrar may by order increase or reduce the level of the fine applicable to a contravention as specified in these Regulations.

PART 10: INSOLVENCY PRACTITIONERS

295. Restrictions on service as liquidator, administrator or receiver

- (1) No person may be appointed as or serve as a receiver, an administrative receiver, an administrator, a liquidator or provisional liquidator of a Company or an administrator of a Deed of Company Arrangement under these Regulations or any other Global Market legislation unless he is registered as an insolvency practitioner under this Part 10 (*Insolvency Practitioners*).
- (2) Without limiting the generality of sub-section (1), no insolvency practitioner may be appointed by the Court as—
 - (a) liquidator under Section 214 (*Notice of winding up order*); or
 - (b) provisional liquidator under Section 217 (*Appointment of provisional liquidator or liquidator after administration*),unless he is further registered as an official liquidator under this Part 10 (*Insolvency Practitioners*).
- (3) The registration of an insolvency practitioner as an official liquidator constitutes an acknowledgement of that insolvency practitioner that he will accept any appointment made by the Court as a liquidator or provisional liquidator to a Company in accordance with the provisions of any rules of procedure as may be made by the Court.

296. Qualification and registration of insolvency practitioners

- (1) In these Regulations, unless expressed otherwise, a reference to—
 - (a) an "**insolvency practitioner**" is a reference to an insolvency practitioner who is registered under these Regulations; and
 - (b) an "**official liquidator**" is a reference to an official liquidator who is registered under these Regulations.
- (2) Any person who is a member of a professional body recognised by the Global Market for the purpose is qualified to act as an insolvency practitioner under these Regulations.
- (3) The Court may make an order to the effect that a person may act as an insolvency practitioner. If such an order is made the person is deemed to have been a qualified insolvency practitioner at all material times.
- (4) The Registrar may in his absolute discretion refuse to grant an application for registration.
- (5) The Registrar may cancel the registration of an insolvency practitioner or of an official liquidator on that person's request or as otherwise provided under these Regulations.

297. Individual application to the Global Market

- (1) A person may apply to the Global Market to be approved as an insolvency practitioner. An application for approval shall be made in such form as the Global Market may prescribe from time to time.
- (2) The Global Market may prescribe such conditions to, or restrictions on, the grant of an approval as it sees fit. A person in respect of whom an approval is in force shall comply with such conditions or restrictions.
- (3) A person who has received an approval is qualified as an insolvency practitioner, subject to the terms of such approval, provided that such approval has not been suspended, revoked or lapsed.
- (4) The Global Market may suspend or revoke an approval under this Section if it considers suspension or revocation to be in the best interests of the Global Market.

298. Register of insolvency practitioners and official liquidators

- (1) The Registrar shall publish and maintain registers of current and past registrations of insolvency practitioners and official liquidators.
- (2) The Registrar shall make a reasonably current version of any registers maintained under this Section freely available for viewing by the public during the normal business hours of the Registrar.

299. Obligation of disclosure to the Registrar

- (1) Subject to sub-section (2), an insolvency practitioner appointed to a Company or to a Deed of Company Arrangement shall disclose to the Registrar any matter which reasonably tends to show one of the following—
 - (a) a breach, or likely breach of a provision of these Regulations or other legislation administered by the Registrar; or
 - (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation,

which may be attributable to the conduct of the relevant Company or of its officers, employees or agents.

- (2) Sub-section (1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) Any provision in an agreement between a Company and an officer, employee, agent or insolvency practitioner is void in so far as it purports to hinder any person from causing or assisting a Company to comply with an obligation under sub-section (1).
- (4) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an insolvency practitioner to comply with an obligation under sub-section (1).

- (5) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in sub-section (1).
- (6) Without limiting the application of any other provision of these Regulations, an insolvency practitioner does not contravene any duty to which he is subject merely because he gives to the Registrar—
- (a) a notification as required under this Section; or
 - (b) any other information or opinion in relation to any such matter,
- if the insolvency practitioner is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the Registrar.

300. **Supervision of insolvency practitioners**

- (1) The Court may, on application of the Registrar, and upon being satisfied that an insolvency practitioner—
- (a) has contravened a provision of these Regulations or other legislation administered by the Registrar;
 - (b) has failed, whether within or outside the Global Market, to carry out or perform duties or functions adequately or properly; or
 - (c) is otherwise not a fit and proper person to remain registered as an insolvency practitioner or, where applicable, as an official liquidator,

make one or more of the following orders—

- (i) an order that the Registrar may cancel, or suspend for a specified period, the registration of the insolvency practitioner or as an official liquidator;
 - (ii) an order imposing conditions or restrictions on the future conduct of the insolvency practitioner;
 - (iii) an order requiring the insolvency practitioner to do, or refrain from doing, any act or thing; or
 - (iv) any other order as the Court sees fit.
- (2) For the avoidance of doubt—
- (a) any cancellation or suspension of the registration of a person as an insolvency practitioner is deemed to constitute a cancellation or suspension of any registration of the person as an official liquidator; and
 - (b) the imposition of any condition or restriction on the future conduct of an insolvency practitioner is deemed, as the context may permit, to constitute the imposition of such a condition or restriction on the future conduct of the insolvency practitioner acting in his capacity as an official liquidator.

- (3) Nothing in this Section affects the powers that any person or the Court may have apart from this Section.

PART 11: DISSOLUTION

301. **Dissolution and early dissolution**

- (1) Sub-sections (2) and (3) of this Section apply, where the liquidator has sent to creditors his final account and return.
- (2) On the expiration of three (3) months from the date of dispatch of the final account and return the Company is deemed to be dissolved.
- (3) However, the Court may, on the application of the liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the Company is to take effect for such time as the Court thinks fit.
- (4) It is the duty of the person on whose application an order of the Court under sub-section (3) is made to deliver a copy of the order to the Registrar for registration. If the person fails to do so, he commits a contravention and is liable to a level [●] fine.
- (5) Where the realisable assets of the Company are insufficient to cover the expenses of the winding up, and the affairs of the Company do not require any further investigation, the liquidator may at any time apply to the Registrar for the early dissolution of the Company.
- (6) Before making an application under sub-section (5), the liquidator shall give not less than twenty-eight (28) days' notice of his intention to do so to the Company's creditors and contributories and to any administrative receiver.
- (7) On the expiration of three (3) months from the date of receipt of the application by the Registrar under sub-section (5), the Company is dissolved.

302. **Power of Court to declare dissolution of Company void**

- (1) Where a Company has been dissolved under these Regulations or the Companies Regulations, the Court may at any time within ten (10) years of the date of the dissolution, on an application made by a liquidator of the Company or by any other person appearing to the Court to be interested, make an order, on such terms as the Court sees fit, declaring the dissolution to have been void and the Court may by the order give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as nearly as may be as if the Company had not been dissolved.
- (2) Upon the making of an order under sub-section (1), such proceedings may be taken which might have been taken if the Company had not been dissolved.

303. **Property of dissolved Company**

- (1) When a Company is dissolved under these Regulations or the Companies Regulations, all property and rights whatsoever vested in the Company immediately before its dissolution are deemed to be vested in the Global Market in accordance with Chapter [2] (*Property of dissolved company*) of Part 29 (*Dissolution and restoration to the register*) of the Companies Regulations.

- (2) Sub-section (1) is subject to any order of the Court under Section 302 (*Power of Court to declare dissolution of Company void*) or otherwise.

SCHEDULE 1

INTERPRETATION

PART 1

INTERPRETATION AND TIME

1. Rules of interpretation

- (1) In these Regulations, unless a contrary intention appears, a reference to—
 - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a Company, unregistered company, partnership, unincorporated association, government or state;
 - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Regulations, include publishing or causing to be published in printed or electronic form;
 - (d) a calendar year shall mean a year of the Gregorian calendar;
 - (e) a day shall refer to a business day, being a normal working day in the Global Market;
 - (f) a reference to the masculine gender includes the feminine and *vice versa*;
 - (g) words in the singular shall include the plural and *vice versa*; and
 - (h) any reference to "**dollars**" or "\$" is a reference to United States Dollars.
- (2) The headings in these Regulations shall not affect the interpretation of these Regulations.
- (3) References in these Regulations to a body corporate include a non-Global Market Company.
- (4) A reference in these Regulations to a Part, Chapter, Section or Schedule by number only, and without further identification, is a reference to the Part, Chapter, Section or Schedule of that number in these Regulations.
- (5) A reference in a Section or other division of these Regulations to a sub-section, paragraph or sub-paragraph by number or letter only, and without further identification, is a reference to the sub-section, paragraph or sub-paragraph of that number or letter contained in the Section or other division of these Regulations in which that reference occurs.
- (6) A reference to "**prescribed form**", "**prescribed manner**", "**prescribed circumstances**" or to be as "**prescribed**" without further reference is a reference to such form, manner, circumstances or otherwise as to be determined by the Board of the Global Market.
- (7) Unless the context otherwise requires, where these Regulations refer to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that

enactment as extended or applied by or under another enactment, including any other provision of that enactment.

- (8) References in these Regulations to a writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means.
- (9) The [*Board of Directors of the Global Market*] may by order amend a provision of these Regulations which-
 - (a) requires anything to be done within a specified period of time,
 - (b) prevents anything from being done after a specified time; or
 - (c) requires a specified minimum period of notice to be given.
- (10) In these Regulations a reference to action includes a reference to inaction.
- (11) A fee or remuneration is charged when the work to which it relates is due.
- (12) A reference to a particular time of day is, unless stated otherwise, a reference to that time in (Gulf Standard Time) Abu Dhabi, United Arab Emirates.

2. Global Market

References to legislation in these Regulations shall be construed in accordance with the following provisions—

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Abu Dhabi Law is law made by the Ruler, as applicable in the Emirate of Abu Dhabi;
- (c) these Regulations are the Abu Dhabi Global Market Regulations No. [●] of 2015 (Insolvency Regulations) made by the Board of Directors of the Global Market;
- (d) references to "**Global Market legislation**" are references to all Global Market legislation, regulations and rules; and
- (e) references to "**legislation administered by the Registrar**" are references to Global Market regulations and rules conferring functions and powers on the Registrar.

3. Defined terms

In these Regulations, unless otherwise defined in these Regulations or the context indicates otherwise, the defined terms listed below shall have the following meanings—

"**Abu Dhabi Global Market Law**" means Abu Dhabi Law No. 4 of 2013 concerning the Abu Dhabi Global Market, passed by the Ruler.

"**administration application**" has the meaning given in Section 17(1) (*Administration application*).

"**administrative receiver**" has the meaning given by Section 161 (*Appointment and powers of receivers and administrative receivers*).

"**administrator**" of a Company and "**administrator**" of a Deed of Company Arrangement has the respective meanings given by Section 10(1) (*Administration*) and, where the context requires, includes a reference to a former administrator and, unless the context otherwise requires, references to an "administrator" without further designation are to both kinds of administrator.

"**Affiliate**" means in relation to any person, any entity controlled (directly or indirectly) by the person, any entity that controls (directly or indirectly) the person or any entity (directly or indirectly) under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"**Appointed Person**" means in relation to a Company:

- (a) a person qualified to act as an insolvency practitioner in relation to that person;
- (b) a person who is experienced in insolvency matters who is—
 - (i) a partner in the Office-holder's firm;
 - (ii) an employee of the Office-holder;
 - (iii) an employee of Office-holder's firm[; *and*
- (c) *[in relation to a creditors' voluntary winding up, an authorised person in relation to the Company or debtor,]*

who is appointed in writing by an Office-holder.]

"**Articles**" has the meaning given in the Companies Regulations.

"**Associate**" has the meaning given to it by paragraph 5 (*Meaning of Associate*) of this Schedule.

"**attendance at a meeting**" is to be interpreted in accordance with paragraph PART 2 (*Attendance at meetings and proxies*) of Part 1 (*Interpretation and time*) of this Schedule.

"**authenticate**" or "**authenticated**" means to authenticate in accordance with paragraph 15 (*Authentication*) of Part 3 (*Form and content of documents*) of this Schedule.

"**blank proxy**" has the meaning given in paragraph 37 (*Blank proxies*) of Part 11 (*Proxies and corporate representation*) of Schedule 6 (*Creditors' meetings*).

"**Board of Directors of the Global Market**" means the governing body of the Global Market, established under Section 4 of the Abu Dhabi Global Market Law.

"**books and papers**" and "**books or papers**" includes accounts, deeds, writing and documents.

"**Branch**" means a branch of a non-Global Market Company registered pursuant to the Companies Regulations.

"**business day**" means every day except Friday, Saturday and public holidays in the United Arab Emirates.

"**capital market arrangement**" has the meaning given to it by paragraph 6 (*Meaning of "capital market arrangement"*) of this Schedule.

"**capital market investment**" has the meaning given to it by paragraph 7 (*Meaning of "capital market investment"*) of this Schedule.

"**cash**" means money in any currency, credited to an account, or a similar claim for repayment of money such as a money market deposit.

"**Companies Regulations**" means the Abu Dhabi Global Market Regulations No. [●] of 2015 (Companies Regulations), issued by the Board of Directors of the Global Market.

"**Company**" has the meaning given in Section 1 (*Companies*) of the Companies Regulations.

"**Connected Person**" means a person is connected with a Company if:

- (a) he is a Director, officer or shadow director of the Company or he is an Associate of such a Director, officer or shadow director;
- (b) he is an Associate of the Company;
- (c) he is an employee of the Company; or
- (d) he is a trustee of a trust and the Company has an interest as beneficiary in the trust property or vice versa.

"**correspondence**" includes correspondence by telephonic or other electronic means,

"**contributory**" means every person liable to contribute to the assets of a Company in the event of its being wound up.

"**convener**" means in respect of any meeting, the person who summons the meeting.

"**Court**" means the Global Market's courts as established under the Abu Dhabi Global Market Law.

"**Court Procedural Rules**" means the Abu Dhabi Global Market Regulations No. [●] of 2015 (Court Procedural Rules), issued by the Board of Directors of the Global Market.

"**Court Regulations**" means the Abu Dhabi Global Market Regulations No. [●] of 2015 (Court Regulations), issued by the Board of Directors of the Global Market.

"**creditors' voluntary winding up**" means a voluntary winding up other than a members' voluntary winding up.

"**debt**" means:

- (a) in relation to the winding up of a Company, any of the following:
 - (i) any debt or liability to which the Company is subject:
 - (1) in the case of winding up which was not immediately preceded by an administration on the date on which the Company went into liquidation;

- (2) in the case of a winding-up which was immediately preceded by an administration, at the date on which the Company entered administration;
 - (ii) any debt or liability to which the Company may become subject after that date by reason of any obligation incurred before that date; and
 - (iii) any interest provable as mentioned in paragraph 28 (*Interest*) of Schedule 5 (*Proofs and Distributions*); and
- (b) in relation to the administration of a Company, any of the following:
- (i) any debt or liability to which the Company is subject on the date on which the Company went into administration;
 - (ii) any debt or liability to which the Company may become subject after that date by reason of any obligation incurred before that date; and
 - (iii) any interest provable as mentioned in paragraph 28 (*Interest*) of Schedule 5 (*Proofs and Distributions*); and
- (c) for the purposes of a reference in any provision of these Regulations about winding up or administration to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

"Deed of Company Arrangement" means a deed of company arrangement between a Company, all or some of its creditors and the administrator of the deed which complies with the requirements of Chapter 8 (*Deed of Company Arrangement*) of Part 2 (*Administration*) of these Regulations.

"deliver" and **"delivery"** are to be interpreted in accordance with Part 9 (*Delivery of documents and Opting out*) of this Schedule except in respect of the Registrar where "deliver" and "delivery" are to be interpreted in accordance with the Regulations.

"Director" has the meaning given in the Companies Regulations and includes any person occupying the position of Director, by whatever name called.

"document" includes a written notice or statement or anything else in writing capable of being delivered to a recipient.

"electronic means" in relation to delivery or other correspondence includes fax and "electronic address" includes a fax number.

"equivalent collateral" means:

- (a) in relation to securities, securities of the same issuer or debtor, forming part of the same issue or class and of the same nominal amount or in the case of shares of a company, the issue price, currency and description, or such other assets as may be permitted by the relevant collateral arrangement; and
- (b) in relation to cash, a payment of the same amount and in the same currency,

and includes the original collateral provided under the arrangement.

"file with the Court" means deliver to the Court for filing.

"financed project" has the meaning given to it by paragraph 10 (*Meaning of "financed project"*) of this Schedule.

"collateral" means any of the following:

- (a) cash in any currency;
- (b) securities of any kind, including (without limitation) debt and equity securities and sukuk, and any rights or claims associated with any such securities;
- (c) guarantees, letters of credit and obligations to reimburse; and
- (d) any asset commonly used as collateral in the Global Market.

"collateral arrangement" means any margin, collateral or security arrangement or other credit enhancement related to or forming part of a netting agreement or one or more qualified financial contracts entered into thereunder or to which a netting agreement applies, including (without limitation):

- (a) a pledge, mortgage, charge or any other form of security in collateral, whether possessory or non possessory;
- (b) (ii) a title transfer collateral arrangement; and
- (c) (iii) any guarantee, letter of credit or reimbursement obligation by or to a party to one or more qualified financial contracts, in respect of one or more of those qualified financial contracts.

"Financial Market Regulations" means the Abu Dhabi Global Market Regulations governing the financial markets issued from time to time by the Board of Directors of the Global Market.

"floating charge" means a charge which is a floating charge on its creation.

"foreign main proceeding" means a foreign proceeding taking place in a jurisdiction other than the Global Market where the debtor has the centre of its main interests.

"foreign proceeding" has the meaning given in Schedule 11 (*Supplemental provisions applicable to protected cell companies*).

"foreign representative" has the meaning give in Schedule 11 (*Supplemental provisions applicable to protected cell companies*).

"general meeting" means a meeting of members of a Company.

"Global Market" means the Abu Dhabi Global Market, the Financial Free Zone established pursuant to Federal Decree No. 15 of 2013 concerning the establishment of a Financial Free Zone in the Emirate of Abu Dhabi.

"hire purchase agreement" includes a conditional sale agreement, a chattel leasing agreement and a retention of title agreement,

"holder of a qualifying charge" in respect of a Company's property has the meaning given in Section 30 (*Power to appoint*).

"in administration" has the meaning given by Section 10(2)(a) (*Administration*).

"insolvency law of the Global Market" means these Regulations as extended or applied by or under any other enactment, regulations or rules (excluding these Regulations).

"insolvency practitioner" has the meaning given under Section 296 (*Qualification and registration of insolvency practitioners*).

"Insolvency Proceedings" means, as the context requires, any of the following procedures or proceedings:

- (a) under these Regulations:
 - (i) winding up;
 - (ii) provisional liquidation;
 - (iii) administrative receivership;
 - (iv) receivership;
 - (iv) administration or, in the case of Part 8 (*Financial Markets and Netting*), the making of an interim order on an administration application or [*out of court administration interim period*]; and
 - (v) a Deed of Company Arrangement being in force; and
- (b) for the purposes of Part 8 (*Financial Markets and Netting*) of the Regulations only, any of the procedures or proceedings described in paragraph (a) and any other procedure or proceeding under any provision of law relating to liquidation, reorganisation, composition with creditors, receivership or any other similar procedures or proceedings.

"insolvent estate" means the Company's assets.

"insolvent party" is the party in relation to which an Insolvency Proceeding under the laws of the Global Market has been instituted.

"last date for proving" has the meaning given in paragraph 32 (*Content of notice*) of Schedule 5 (*Proofs and Distributions*).

"legislation" includes regulations or rules made under legislation.

"level" when used to describe the quantum of any fine imposed under these Regulations is a reference to the fine levels set out in Schedule 9 (*Contraventions*) or such other fine schedule as adopted by the Board from time to time.

"**liability**" has the meaning given in paragraph 2 (*Definitions and Interpretation*) of Schedule 5 (*Proofs and Distributions*).

"**Liquidation Committee**" means a creditors' committee appointed in accordance with Section 237 (*Liquidation committee*).

"**liquidator**" includes, where the context allows, a liquidator appointed provisionally.

"**market value**" means the amount which would be realised on a sale of property in the open market by a willing vendor.

"**member**", in respect of a Company, has the meaning given in the Companies Regulations.

"**members' voluntary winding up**" means a winding up in the case of which a Director's statutory declaration has been made in accordance with Section 182 (*Statutory declaration of solvency*).

"**netting**" means the occurrence of any or all of the following:

- (a) the termination, liquidation or acceleration of any payment or delivery obligations or entitlements or obligations or entitlements to make, receive or require payments or deliveries, under one or more qualified financial contracts entered into under a netting agreement or to which a netting agreement applies;
- (b) the calculation or estimation of a close-out value, market value, liquidation value, replacement value or other relevant value (whether at the time of or following the relevant termination, liquidation and/or acceleration) in respect of each obligation or entitlement or group of obligations or entitlements terminated, liquidated or accelerated under paragraph (a) of this definition;
- (c) the conversion of any values calculated or estimated under paragraph (b) of this definition into a single currency;
- (d) the determination of the net balance of the values calculated under paragraph (b) of this definition, as converted under paragraph (c) of this definition, whether by operation of set off or otherwise; and
- (e) entry by the parties into a transaction pursuant to or by virtue of which such a net balance becomes payable directly or as part of the consideration for an asset or the provision for the payment of damages related to any non-performance of any such transaction.

"**netting agreement**" means (i) any agreement between two parties that provides for netting of present or future payment or delivery obligations or entitlements arising under or in connection with one or more qualified financial contracts entered into under the agreement by the parties to the agreement (a "master netting agreement"), (ii) any master agreement between two parties that provides for netting of the amounts due under two or more master netting agreements (a "master-master netting agreement") and (iii) any collateral arrangement related to or forming part of one or more of the foregoing.

"**non-cellular assets**" has the meaning given in the Companies Regulations.

"non-Global Market Company" means a company incorporated or formed outside the Global Market, whether under the federal or local laws of the United Arab Emirates, or the law of the country or territory in question.

"non-insolvent party" is the party other than the insolvent party.

"Office-holder" has the meaning given in Section 259 (*Getting in the Company's property*).

"officer" means, in relation to a Company:

- (a) a Director, manager or secretary; or
- (b) an Office-holder appointed to the Company or its property.

"official exchange rate" is the foreign exchange rate prescribed in paragraph 26 (*Debt in foreign currency*) of Schedule 5 (*Proofs and Distributions*).

"official interest rate" means the rate of interest specified in Section [37] (*General Rules about Costs*) of the Court Procedural Rules.

"official liquidator" has the meaning given in Section 296 (*Qualification and registration of insolvency practitioners*).

"party" means for the purposes of Part 8 (*Financial Markets and Netting*) of these Regulations a person constituting one of the parties to a netting agreement.

"permission" of the Court is to be read as referring to "leave of the Court" in these Regulations.

"petitioner", when referred to in the context of a winding up, includes any person who has been substituted as such, or has been given carriage of the petition.

"Preferential Debts" means the debts referred to in Section 234 (*Preferential debts*).

"Privileged Communication" means a communication attracting a privilege arising from the provision of professional legal advice or from the relationship of lawyer and client or other equivalent relationship, but does not include a general duty of confidentiality.

"project company" has the meaning given to it by paragraph 8 (*Meaning of project company*) of this Schedule.

"property" has the meaning given in Section 222(2) (*Property of the Company*).

"Proof" and **"proving"** has the meaning given in paragraph 4 (*Proving a debt*) of Schedule 5 (*Proofs and Distribution*).

"Protected Cell Company" has the meaning given in the Companies Regulations.

"proxy" has the meaning given in paragraph 11(3) (*Attendance at meetings and proxies*) of this Schedule.

"published in the Global Market" means publication in an English language newspaper distributed in the United Arab Emirates and available in the Global Market.

"qualified financial contract" means any financial agreement, contract or transaction, including any terms and conditions incorporated by reference in any such financial agreement, contract or transaction, pursuant to which payment or delivery obligations are due to be performed or title to commodities or assets is to be transferred for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency or pursuant to which obligations to make payments or deliveries, or to transfer title to commodities or assets, in either case, for consideration at a certain time or within a certain period of time and whether or not subject to any condition or contingency are to be entered into or incurred. Qualified financial contracts include (without limitation):

- (a) a currency, cross-currency, interest rate swap or profit rate swap;
- (b) a basis swap;
- (c) a spot, future, forward or other foreign exchange transaction;
- (d) a cap, collar or floor transaction;
- (e) a commodity swap;
- (f) a forward rate agreement;
- (g) a currency or interest rate future;
- (h) a currency or interest rate option;
- (i) an equity derivative, such as an equity or equity index swap, equity forward, equity option or equity index option;
- (j) a derivative relating to bonds or other debt securities or to a bond or debt security index, such as a total return swap, index swap, forward, option or index option;
- (k) a credit derivative, such as a credit default swap, credit default basket swap, total return swap or credit default option;
- (l) an energy derivative, such as an electricity derivative, oil derivative, coal derivative or gas derivative;
- (m) a weather derivative, such as a weather swap or weather option;
- (n) a bandwidth derivative;
- (o) a freight derivative;
- (p) an emissions derivative, such as an emissions allowance or emissions reduction transaction;
- (q) an economic statistics derivative, such as an inflation derivative;
- (r) a property index derivative;
- (s) a spot, future, forward or other securities or commodities transaction;

- (t) a securities contract, including a margin loan and an agreement to buy, sell, borrow or lend securities, such as a securities repurchase or reverse repurchase agreement, a securities lending agreement or a securities buy/sell-back agreement, including any such contract or agreement relating to mortgage loans, interests in mortgage loans or mortgage-related securities;
- (u) a commodities contract, including an agreement to buy, sell, borrow or lend commodities, such as a commodities repurchase or reverse repurchase agreement, a commodities lending agreement or a commodities buy/sell-back agreement;
- (v) a collateral arrangement;
- (w) an agreement to clear or settle securities transactions or to act as a depository for securities;
- (x) any other agreement, contract or transaction similar to any agreement, contract or transaction referred to in paragraphs (a) to (w) with respect to one or more reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments, precious metals, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial or economic consequence, or economic or financial indices or measures of economic or financial risk or value ;
- (y) any swap, forward, option, contract for differences or other derivative in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (x) or (z) or (aa) below;
- (z) any Sharia'a compliant contract or undertaking (including a murabaha, musawama or wa'ad) which individually or together with any other such contract or undertaking has or is entered into with a view to having an economic effect similar to any instrument of a kind described in any of paragraphs (a) to (y) above or paragraph (aa) below;
- (aa) any agreement, contract or transaction designated as such by the Board of Directors of the Global Market by published notice, such designation being revocable by further published notice.

"**receiver**" has the meaning given in Section 161(1) (*Appointment and powers of receivers and administrative receivers*) and includes, where the context allows, an administrative receiver [*but does not include a Court-appointed receiver appointed under the Court Procedural Rules.*]

"**Registrar**" means the Global Market's Registration Bureau established pursuant to the Abu Dhabi Global Market Law.

"**these Regulations**" means the Abu Dhabi Global Market Regulations No. [●] of 2015 (Insolvency Regulations), issued by the Board of Directors of the Global Market.

"**Regulator**" means the Financial Services Regulations Bureau established pursuant to the Abu Dhabi Global Market Law.

"**relevant obligations**" means the obligations which are incurred under, secured or otherwise covered by a netting agreement and such obligations may consist of or include:

- (a) present or future, actual or contingent or prospective obligations (including such obligations arising under a master agreement or similar arrangement);
- (b) obligations owed to the collateral-taker, by a person other than the collateral-provider; or
- (c) obligations of a specified class or kind arising from time to time.

"**residential address**" means the current residential address of a person or, if that is not known, the last known residential address.

"**retention of title agreement**" means an agreement:

- (a) which does not constitute a charge on the goods, but
- (b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company in respect of the goods or any property representing the goods.

"**Ruler**" means the ruler of the Emirate of Abu Dhabi.

"**secured creditor**" of a Company means a creditor of a Company who holds security in respect of his debt over property of the Company.

"**security**" means any mortgage, charge (including floating charge), pledge, lien or other security.

"**service**" means for both Court documents and other documents, service in accordance with Part [6] (*Service of Documents*) of the Court Procedural Rules with such modifications as the Court may direct; however, Part [6] (*Service of Documents*) of the Court Procedural Rules does not apply to the service of a written demand on a Company in accordance with Section 207(1)(a) of these Regulations.

"**shadow director**", in relation to a Company, means a person in accordance with whose directions or instructions the Directors of the Company are accustomed to act (but so that a person is not deemed a shadow director by reason only that the Directors act on advice given by him in a professional capacity).

"**Special Resolution**" has the meaning given in the Companies Regulations.

"**Schedule**" means a schedule to these Regulations.

"**standard contents**" means-

- (a) for a notice to be published in the Global Market, the standard contents set out in Part 4 (*Standard contents of notices to be published in the Global Market*) of this Schedule;
- (b) for notices to be advertised other than by way of being published in the Global Market, the standard contents set out in Part 5 (*Standard contents of notices to be advertised other than by way of being published in the Global Market*) of this Schedule ;

- (c) for a notice to be delivered to the Registrar, the standard contents set out in Part 6 (*Standard contents of notices to be delivered to the Registrar*) of this Schedule;
- (d) for a notice to be delivered to other persons, the standard contents set out in Part 7 (*Standard contents of notices to be delivered to other persons*) of this Schedule;
- (e) for applications to the Court the standard contents set out in Part 8 (*Applications to the Court*) of this Schedule.

"Statement of Affairs" means a statement of a Company's affairs prepared in accordance with these Regulations in relation to an administration, administrative receivership or a winding up as the context requires, and containing the particulars as prescribed by these Regulations or otherwise by the Registrar.

"statement of concurrence" means a statement made by a relevant person in the prescribed form [2.15B] stating that he concurs in the statement of affairs as detailed in Section 61 (*Verification and filing*).

"statement of proposals" means a statement made by an administrator under Section 65 (*Administrator's proposals*) setting out proposals for achieving the purpose of administration.

"statement of truth" means a statement of truth made in accordance with the Court Procedural Rules.

"statutory demand" means a demand served by a creditor on the Company, as further described in Section 208 (*The statutory demand*).

"step-in rights" has the meaning given to it by paragraph 9 (*Meaning of "step-in rights"*) of this Schedule.

"subsidiary" has the meaning given in the Companies Regulations.

"the purpose of administration" means an objective specified in Section 11(1) (*Purpose of administration*).

"title transfer collateral arrangement" means a margin, collateral or security arrangement related to a netting agreement based on the transfer of title to collateral, whether by outright sale or by way of security, including (without limitation) a sale and repurchase agreement, securities lending agreement, securities buy/sell-back agreement or an irregular pledge.

"unable to pay its debts" has the meaning given by Section 207 (*Definition of inability to pay debts*).

"UNCITRAL Model Law" means the Model Law on cross-border insolvency as adopted by the United Nations Commission on International Trade Law on 30th May 1997.

"unregistered company" has the meaning given in Section 270 (*Application of this Part to "unregistered company"*).

"venue" means a reference to the venue for any proceeding or attendance before the Court or for a meeting are to:

- (a) the time, date and place for the proceeding, attendance or meeting; or

- (b) the time and date for a meeting which is held in accordance with paragraph 20 (*Remote attendance at meetings*) of Schedule 6 (*Creditors meetings*) or paragraph 19 (*Remote attendance at meetings of creditors' committees*) of Schedule 7 (*Creditors' Committees*) of these Regulations without any place being specified for it.

"**voluntary winding up**" means a members' voluntary winding up and a creditor's voluntary winding up.

"**winding up by the Court**" means a winding up under Sections 206(a) (*Circumstances in which a Company may be wound up by the Court*), 210 (*Petition for winding up on grounds of interests of the Global Market*) and 271 (*Winding up of unregistered Companies*) of these Regulations.

"**winding up proceedings**" means:

- (a) a winding up by the Court; or
- (b) a voluntary winding up.

"**witness statement**" means a witness statement verified by a statement of truth in accordance with the Court Procedural Rules.

4. Meaning of "liability", "into liquidation" and "into insolvent liquidation" and "in administration" and "enters administration"

- (1) In any provision of these Regulations about winding up or administration, except in so far as the context otherwise requires, "**liability**" means a liability to pay money or money's worth, including, without limitation, any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.
- (2) A Company goes "**into liquidation**" if it passes a resolution for voluntary winding up or an order for its winding up is made by the Court at a time when it has not already gone into liquidation by passing such a resolution.
- (3) A Company goes "**into insolvent liquidation**" if at the time the Company goes into liquidation its assets were insufficient for the payment of its debts and other liabilities and the expenses of the winding up.
- (4) References to a Company being "**in administration**" or that a Company "**enters administration**" shall be construed in accordance with Section 10(2) (*Administration*).

5. Meaning of "Associate"

- (1) For the purposes of these Regulations an "**Associate**" of another person is to be determined in accordance with this paragraph and any provision that a person is an Associate of another person is to be taken to mean that they are Associates of each other.
- (2) A person is an Associate of an individual if that person is—
 - (a) the individual's spouse (including former spouse);
 - (b) a relative of the individual or the individual's spouse (including former spouse); or

- (c) the spouse (including former spouse) of a relative of the individual or the individual's spouse (including former spouse).
- (3) A person is an Associate of any person whom he employs or by whom he is employed.
- (4) A person in his capacity as trustee of a trust other than a pension scheme or an employees' share scheme is an Associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an Associate of that other person.
- (5) A Company is an Associate of another Company if—
 - (a) the same person has control of both;
 - (b) a person has control of one and persons who are his Associates have control of the other (or collectively they have control); or
 - (c) a group of two or more persons has control of each Company, and the groups either—
 - (i) consist of the same persons; or
 - (ii) could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an Associate.
- (6) A Company is an Associate of another person if that person has control of it or if that person and persons who are his Associates together have control of it.
- (7) In this paragraph a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child.
- (8) In this paragraph any director or other officer of a Company is to be treated as employed by that Company.
- (9) In this paragraph a person is to be taken as having control of a company if—
 - (a) the directors of the Company or of another Company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
 - (b) he is entitled to exercise, or control the exercise of 50% or more of the voting power at any general meeting of the Company or of another Company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the Company.

6. Meaning of "capital market arrangement"

- (1) For the purposes of Section 161 (*Appointment and powers of receivers and administrative receivers*) an arrangement is a "capital market arrangement" if—
 - (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement; or
 - (b) it involves a grant of security to—
 - (i) a party to the arrangement who issues a capital market investment; or
 - (ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment; or
 - (c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party; or
 - (d) at least one party guarantees the performance of obligations of another party; or
 - (e) at least one party provides security in respect of the performance of obligations of another party; or
 - (f) the arrangement involves an investment which is an option, future or contract for difference under sections [•] of the Financial Market Regulations.
- (2) For the purposes of sub-paragraph (1)—
 - (a) a reference to holding as trustee includes a reference to holding as nominee or agent;
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment;
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it; and
 - (d) the reference to the provision of finance includes the provision of an indemnity.
- (3) In Section 138 and this paragraph "party" to an arrangement includes a party to an agreement which—
 - (a) forms part of the arrangement;
 - (b) provides for the raising of finance as part of the arrangement; or
 - (c) is necessary for the purposes of implementing the arrangement.

7. Meaning of "capital market investment"

- (1) For the purposes of Section 161 (*Appointment and powers of receivers and administrative receivers*) an investment is a "**capital market investment**" if it is within section [•] of the Financial Market Regulations [(*debt instruments*)].

8. Meaning of "project company"

- (1) a company is a "project company" of a project if—
 - (a) it holds property for the purpose of the project;
 - (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project;
 - (c) it is one of a number of companies which together carry out the project;
 - (d) it has the purpose of supplying finance to enable the project to be carried out; or
 - (e) it is the holding company of a company within any of paragraphs (a) to (d).
- (2) But a company is not a "project company" of a project if—
 - (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e); but
 - (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d);
 - (ii) related to a function within sub-paragraph (1)(a) to (d); or
 - (iii) related to the project.
- (3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

9. Meaning of "step-in rights"

- (1) A person has "step-in rights" if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—
 - (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project; or
 - (b) make arrangements for carrying out all or part of the project.
- (2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

10. Meaning of "financed project"

A project is a "financed project" if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least \$[•] million for the purposes of carrying out the project.

PART 2

MEETINGS AND TIME LIMITS

11. Attendance at meetings and proxies

- (1) The following provisions also apply for the interpretation of these Regulations.
- (2) A person attends a meeting if he or she—
 - (a) is physically present, or attends remotely in accordance with paragraph 18 (*Remote attendance at meetings*) of Schedule 6 (*Creditors' meetings*) or paragraph 19 (*Remote attendance at meetings of creditors' committees*) of Schedule 7 (*Creditors' Committees*);
 - (b) attends by proxy or by corporate representative.
- (3) A "**proxy**" is a document which complies with the following requirements –
 - (a) it is a document which is given by a creditor, member or contributory to another person ("**the proxy-holder**") authorising the proxy-holder to attend, and to speak and vote at, a meeting as the representative of the creditor, member or contributory; and
 - (b) either that document –
 - (i) directs the proxy-holder to vote or abstain, or to propose resolutions, as directed; or
 - (ii) authorises the proxy-holder to do so in accordance with the proxy-holder's discretion.
- (4) A "**blank proxy**" is a document which complies with paragraph 37 (*Blank proxies*) of Part 11 (*Proxies and corporate representation*) of Schedule 6 (*Creditors' meetings*).

12. Time limits

- (1) Rule [2.8 (*Time*)] of the Court Procedural Rules (which provides for the calculation of periods of time expressed in days) applies for the calculation of periods expressed in days in these Regulations.
- (2) The beginning and the end of a period expressed in months in these Regulations are to be determined as follows—
 - (a) if the beginning of the period is specified—
 - (i) the month in which the period ends is the specified number of months after the month in which it begins; and
 - (ii) the date in the month on which the period ends is: (aa) the date corresponding to the date in the month on which it begins, or (bb) if there is no such date in the month in which it ends, the last day of that month;
 - (b) if the end of the period is specified—
 - (i) the month in which the period begins is the specified number of months before the month in which it ends; and
 - (ii) the date in the month on which the period begins is: (aa) the date corresponding to the date in the month on which it ends, or (bb) if there is no such date in the month in which it begins, the last day of that month.

- (3) The provisions of Rule [3.1 (*The Court's general powers of management*)] of the Court Procedural Rules apply so as to enable the Court to extend or shorten the time for compliance with anything required or authorised to be done by these Regulations.

PART 3

FORM AND CONTENT OF DOCUMENTS

13. Requirement for writing

A notice or statement must be in writing unless a provision in these Regulations provides otherwise.

14. Form

- (1) A document must be in electronic or hard-copy form.
- (2) A document in electronic form must be capable of being—
- (a) read by the recipient in electronic form; and
 - (b) reproduced by the recipient in hard-copy form.

15. Authentication

- (1) A document in electronic form is sufficiently authenticated—
- (a) if the identity of the sender is confirmed in a manner specified by the recipient; or
 - (b) where the recipient has not so specified, if the communication contains or is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement.
- (2) A document in hard-copy form is sufficiently authenticated if it is signed.
- (3) If a document is authenticated by the signature of an individual on behalf of—
- (a) a body of persons, the document must also state the position of that individual in relation to the body;
 - (b) a body corporate of which the individual is the sole member, the document must also state that fact.

16. Information required to identify persons and proceedings etc.

Where these Regulations require a document to identify various persons, provide contact details for an Office-holder or identify proceedings that must be done by providing the information set out below.

Company or unregistered company	In the case of a Company— (1) its registered name;
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	<p>(2) its registered number or equivalent;</p> <p>In the case of a non-Global Market Company–</p>
	<p>(1) its name;</p> <p>(2) the country or territory in which it is incorporated;</p> <p>(3) the postal address of its principal place of business; and</p> <p>(4) the number, if any, under which it is so registered.</p>
Debtor	<p>(1) full name; and</p> <p>(2) residential address [<i>subject to any order for limited disclosure under the Court Procedural Rules</i>].</p>
Office-holder or proposed Office-holder	<p>(1) the name of the Office-holder or proposed Office-holder; and</p> <p>(2) the nature of the appointment held by the Office-holder or to be held by the proposed Office-holder.</p>
contact details for an Office-holder	<p>(1) a postal address for the Office-holder; and</p> <p>(2) either an email address, or a telephone number, through which the Office-holder may be contacted.</p>
proceedings	<p>(1) for proceedings relating to a Company or unregistered company, the information identifying the Company or unregistered company; and</p> <p>(2) if applicable, any number assigned by the Court to those proceedings.</p>

PART 4

STANDARD CONTENTS OF NOTICES TO BE PUBLISHED IN THE GLOBAL MARKET

[Note: The requirements in Parts 4 to 8 of this Schedule must be read with paragraph 16 (Information required to identify persons and proceedings etc.) of this Schedule.]

17. Contents of notices to be published in the Global Market

- (1) A notice which these Regulations require to be published in the Global Market must contain the standard contents set out in this Part in addition to any content specifically required by any other provision of these Regulations.
- (2) Notices must, if it is relevant to the particular notice, identify the Office-holder and specify—
 - (a) the Office-holder's contact details;
 - (b) the name of any person other than the Office-holder (if any) who may be contacted about the proceedings;
 - (c) the date of the Office-holder's appointment, and—
 - (i) the court name and any number assigned to the proceedings by the Court; or
 - (ii) the reference assigned to the proceedings by the adjudicator.
- (3) Information which this Part requires to be included in a notice to be published in the Global Market may be omitted if it is not reasonably practicable to obtain it.

18. Notices relating to a Company or unregistered company to be published in the Global Market

A notice relating to a Company or a non-Global Market Company must also identify the Company or a non-Global Market Company and specify—

- (a) its registered office, or if a non-Global Market Company, the postal address of its principal place of business;
- (b) any principal trading address if this is different from its registered office;
- (c) any name under which it was registered in the 12 months before the date of the commencement of the proceedings which are the subject of the Global Market notice; and
- (d) any name or style (other than its registered name) under which—
 - (i) the Company or a non-Global Market Company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

19. The document published in the Global Market containing the notice – as evidence, variations and errors

- (1) A copy of the document published in the Global Market containing any notice required by these Regulations to be published in the Global Market is evidence of any facts stated in the notice.
- (2) *[Where these Regulations require notice of an order of the Court to be published in the Global Market, a copy of the document published in the Global Market containing the notice may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the notice.]*
- (3) *Where an order of the Court, which has been published in the Global Market, has been varied, or any matter has been erroneously or inaccurately published in the Global Market, the person whose responsibility it was to publish the order or other matter in the Global Market must as soon as is reasonably practicable cause the variation to be published in the Global Market or a further entry to be published in the Global Market for the purpose of correcting the error or inaccuracy.]*

PART 5

STANDARD CONTENTS OF NOTICES ADVERTISED IN SUCH MANNER AS THE OFFICE-HOLDER THINKS FIT

20. Contents of notices advertised in such manner as the Office-holder thinks fit

- (1) This Part sets out the requirements for notices under these Regulations which may be advertised otherwise than by way of being published in the Global Market.
- (2) Such notices must, in addition to any content specifically required by these Regulations or any other provision of these Regulations, contain the standard contents set out in this Part.
- (3) Where such notices are placed by the Office-holder they must also—
 - (a) identify the Office-holder; and
 - (b) specify the Office-holder's contact details.
- (4) Information which this Part requires to be included in a notice may be omitted if it is not reasonably practicable to obtain it.

21. Other advertised notices relating to a Company or an unregistered company

A notice relating to a Company or a non-Global Market Company must also identify the Company or a non-Global Market Company and state—

- (a) its principal trading address;
- (b) any name under which it was registered in the 12 months before the date of the commencement of the proceedings which are the subject of the notice; and
- (c) any name or style (other than its registered name) under which—
 - (i) the Company or a non-Global Market Company carried on business; and
 - (ii) any debt owed to a creditor was incurred.

22. Other advertised notices – other provisions

Information which this Part requires to be contained in a notice must be included in an advertisement of that notice in a way that is clear and comprehensible.

PART 6

STANDARD CONTENTS OF DOCUMENTS TO BE DELIVERED TO THE REGISTRAR ETC.

23. Requirements of documents delivered to the Registrar

- (1) A document which these Regulations require to be delivered to the Registrar must contain the standard contents set out in this Part in addition to any content specifically required by any other provision of these Regulations.

- (2) *[A document of more than one nature must satisfy the requirements which apply to each.*
- (3) *However the requirements in respect of a document which is to be delivered to another person at the same time as the Registrar, may be satisfied by delivering to that other person a copy of the document delivered to the Registrar.]*

24. Standard contents of documents delivered to the Registrar

A document to be delivered to the Registrar must—

- (a) identify the Company or, if applicable, the non-Global Market Company;
- (b) specify—
 - (i) the nature of the document;
 - (ii) the Section of these Regulations, paragraph of a Schedule to these Regulations or any provision of these Regulations under which the document is delivered;
 - (iii) the date of the document;
 - (iv) the name and postal address of the person delivering the document;
 - (v) the capacity in which that person is acting in relation to the Company or, if applicable, the non-Global Market Company; and
- (c) be authenticated by the person delivering the document.

25. Standard contents of documents relating to the office of Office-holders

A document relating to the office of the Office-holder must also identify the Office-holder and specify—

- (a) the date of the event of which notice is delivered;
- (b) where the document relates to an appointment, the person making the appointment, or if the Court is making the appointment then specify that it is doing so;
- (c) where the document relates to the termination of an appointment, the reason for that termination; and
- (d) the contact details for the Office-holder.

26. Standard contents of documents relating to other documents

A document relating to another document must also specify—

- (a) the nature of the other document;
- (b) the date of the other document; and
- (c) where the other document relates to a period of time, the period of time to which it relates.

27. Standard contents of documents relating to Court orders

A document relating to a Court order must also specify—

- (a) the nature of the order; and
- (b) the date of the order.

28. Standard contents of returns or reports of meetings

A return or report of a meeting must also specify—

- (a) the purpose of and venue for the meeting;
- (b) whether a required quorum was in attendance for the meeting to take place; and
- (c) if the meeting took place, the outcome of the meeting (including any resolutions passed).

29. Standard contents of returns or reports of matters considered by correspondence

A return or report of a matter, consideration of which has been sought by correspondence, must also specify—

- (a) the purpose of the consideration; and
- (b) the outcome of the consideration (including any resolutions passed or deemed to be passed).

30. Standard contents of documents relating to other events

A document relating to any other event must also specify—

- (a) the nature of the event, including the section of these Regulations, paragraph of a Schedule to these Regulations or other provision of these Regulations under which it took place; and
- (b) the date on which the event occurred.

PART 7

STANDARD CONTENTS OF NOTICES FOR DELIVERY TO OTHER PERSONS ETC.

31. Standard contents of notices to be delivered to persons other than the Registrar

- (1) This Part applies to notices which these Regulations require to be delivered to any person other than the Registrar.
- (2) Such notices must contain the standard contents set out in this Part in addition to any content specifically required by these Regulations.
- (3) A notice of more than one nature must satisfy the requirements which apply to each.

- (4) However the requirements in respect of a document which is to be delivered to another person at the same time as the Registrar, may be satisfied by delivering to that other person a copy of the document delivered to the Registrar.

32. Standard contents of all notices

A notice must—

- (a) specify the nature of the notice;
- (b) in the case of proceedings relating to a Company or, if applicable a non-Global Market Company, identify the Company or a non-Global Market Company;
- (c) specify the Section of these Regulations, paragraph of a Schedule to these Regulations or other provision of these Regulations under which the notice is given;
- (d) in the case of a notice delivered by the Office-holder, specify the contact details for the Office-holder.

33. Standard contents of notices relating to the office of Office-holders

A notice relating to the office of the Office-holder must also identify the Office-holder and specify—

- (a) the date of the event of which notice is delivered;
- (b) where the notice relates to an appointment, the person making the appointment, or if the Court is making the appointment then specify that it is doing so; and
- (c) where the notice relates to the termination of an appointment, the reason for that termination.

34. Standard contents of notices relating to documents

A notice relating to a document must also specify –

- (a) the nature of the document;
- (b) the date of the document; and
- (c) where the document relates to a period of time, the period of time to which the document relates.

35. Standard contents of notices relating to Court proceedings or orders

A notice relating to Court proceedings must also identify those proceedings and if the notice relates to a Court order specify—

- (a) the nature of the Court order; and
- (b) the date of the order.

36. Standard contents of notices of the results of meetings

A notice of the result of a meeting must also specify—

- (a) the purpose of and venue for the meeting;
- (b) whether a required quorum was in attendance for the meeting to take place; and
- (c) if the meeting took place, the outcome of the meeting (including any resolutions passed).

37. Standard contents of returns or reports of matters considered by correspondence

A return or report of matters, consideration of which has been sought by correspondence, must also specify—

- (a) the purpose of the consideration; and
- (b) the outcome of the consideration (including any resolutions passed or deemed to be passed).

PART 8

APPLICATIONS TO THE COURT

38. Standard contents and authentication of applications to the Court

(1) An application to Court must state—

- (a) that the application is made under these Regulations;
- (b) the Section of these Regulations or paragraph of a Schedule to these Regulations under which it is made;
- (c) the names of the parties;
- (d) the name of the [debtor who or] Company or non-Global Market Company which is the subject of the insolvency proceedings to which the application relates;
- (e) where the Court has previously allocated a number to the Insolvency Proceedings within which the application is made, that number;
- (f) the nature of the remedy or order applied for or the directions sought from the Court;
- (g) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;
- (h) where these Regulations require that notice of the application to be delivered to specified persons, the names and addresses of all those persons (so far as known to the applicant); and
- (i) the applicant's address for service.

(2) The application must be authenticated by or on behalf of the applicant or the applicant's solicitor or legal representative.

PART 9

DELIVERY OF DOCUMENTS AND OPTING OUT

39. Application of Part

- (1) This Part applies where a document is required under these Regulations to be delivered, filed, forwarded, given, sent, or submitted unless—
 - (a) these Regulations or an order of the Court makes different provision including one requiring service on a person; or
 - (b) the recipient of a document is the Registrar.
- (2) A document is delivered, filed, forwarded, given, sent, or submitted if it is delivered in accordance with this Part.
- (3) Where these Regulations require an Office-holder to deliver a document to all the creditors that requirement is satisfied by the delivery of that document to all those creditors of whose address the Office-holder is aware who have not opted out of receiving the particular document.

40. Opting out

- (1) The Office-holder must, in the first communication to creditors, ask them by a notice in writing if they wish to opt out of receiving further documents relating to the Insolvency Proceedings.
- (2) Such a notice must be sent to all the creditors.
- (3) The notice must identify the Insolvency Proceedings and the Office-holder and provide contact details for the Office-holder and state that—
 - (a) the creditor is entitled to receive documents about the Insolvency Proceedings;
 - (b) the creditor may opt out of receiving further documents about the Insolvency Proceedings except any which relate to the payment of a dividend to creditors;
 - (c) opting out will not affect the creditor's entitlement to receive dividends should any be paid to creditors;
 - (d) in order to opt out the creditor must deliver to the Office-holder a notice in writing identifying the Insolvency Proceedings and the creditor which must be authenticated by the creditor; and
 - (e) the creditor has the right to revoke the opt out at any time by delivering to the Office-holder a further notice which identifies the Insolvency Proceedings and the Office-holder and—
 - (i) states that the creditor wishes to revoke the opt out previously given from receiving further documents about the Insolvency Proceedings; and
 - (ii) is authenticated by the creditor.

- (4) A notice opting out and a revocation of a notice opting out each have effect from the date of delivery of the notice to the Office-holder.
- (5) Where a creditor has opted out, then any requirement of these Regulations for an Office-holder to deliver documents to all creditors will not extend to that creditor unless the notice relates to the payment of a dividend.
- (6) Any percentage of creditors which these Regulations require for any purpose is to be calculated solely by reference to those creditors who have not opted out at the time in question.

41. Delivery of documents to authorised recipients

Where under these Regulations a document is to be delivered to a person (other than by being served on that person), it may be delivered instead to any other person authorised to accept delivery on behalf of the first-mentioned person.

42. Deliver of documents to joint Office-holders

Where there are joint Office-holders in Insolvency Proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

43. Postal delivery of documents

- (1) A document is delivered if it is sent by post.
- (2) Unless the contrary is shown—
 - (a) a document sent by post is treated as delivered on the third business day after the day on which it is posted; and
 - (b) where a post-mark appears on the envelope in which a document was posted, the date of that post-mark is to be treated as the date on which the document was posted.
- (3) In this rule "post-mark" means a mark applied by a postal operator which records the date on which a letter entered the postal system of the postal operator.

44. Personal delivery of documents

A document is delivered if it is personally delivered in accordance with the rules for personal service in Rule [6.5] (*Personal Service*) of the Court Procedural Rules.

45. Electronic delivery of documents

- (1) A document is delivered if it is sent by electronic means and the following conditions are met.
- (2) The conditions are that the intended recipient of the document has—
 - (a) given consent for the electronic delivery of the document;
 - (b) not revoked that consent before the document is sent; and
 - (c) provided an electronic address for the delivery of the document.

- (3) Consent may relate to a specific document or to documents generally.
- (4) Unless the contrary is shown, a document is to be treated as delivered by electronic means to an electronic address where the sender can produce a copy of the electronic communication which—
 - (a) contains the document; and
 - (b) shows the time and date the communication was sent and the electronic address to which it was sent.
- (5) Unless the contrary is shown, a document sent electronically is treated as delivered to the electronic address to which it is sent at 9.00 am on the next business day after it was sent.

46. Electronic delivery of documents to the Court

- (1) A document may not be delivered to the Court by electronic means unless this is expressly permitted by the Court Procedural Rules, a practice direction, or these Regulations.
- (2) A document delivered by electronic means is to be treated as delivered to the Court at the time it is recorded by the Court as having been received or otherwise as the Court Procedural Rules, a practice direction or these Regulations provide.

47. Electronic delivery of notice to enforcement officers

Where anything in these Regulations provides for the delivery of a notice to an enforcement officer, it may be delivered by electronic means to a person who has been authorised to receive such notice on behalf of a specified enforcement officer or on behalf of enforcement officers generally.

48. Electronic delivery by Office-holders

- (1) Where an Office-holder delivers a document by electronic means, the document must—
 - (a) contain, or be accompanied by, a statement that the recipient may request a hard copy of the document; and
 - (b) specify a telephone number, email address and postal address which may be used to make that request.
- (2) An Office-holder must deliver a hard copy of the document to the recipient within five business days of receipt of a request.
- (3) An Office-holder must not require the person requesting a hard copy to pay a fee for supplying it.

49. Proof of delivery of documents

- (1) A certificate complying with this paragraph is proof that a document has been duly delivered to the recipient in accordance with this Part unless the contrary is shown.
- (2) A certificate must state the method of delivery and the date of the sending, posting or delivery (as the case may be).

- (3) In the case of a receiver or administrative receiver the certificate must be given by—
 - (a) the receiver or administrative receiver; or
 - (b) a member of the receiver or administrative receiver's staff.
- (4) In the case of an Office-holder (other than receivers and administrative receivers), the certificate must be given by—
 - (a) the Office-holder;
 - (b) the Office-holder's solicitor or legal representative;
 - (c) a partner or an employee of either of them.
- (5) In the case of a person other than an Office-holder the certificate must be given by that person and state—
 - (a) that the document was delivered by that person; or
 - (b) that another person (named in the certificate) was instructed to deliver it.
- (6) A certificate under this paragraph 49 may be endorsed on a copy of the document to which it relates.
- (7) Once a Proof has, or details of a claim have, been delivered to an Office-holder in accordance with these Regulations, it need not be delivered again; and accordingly, where a provision of these Regulations requires delivery of a Proof or details of a claim by a certain time, that requirement is satisfied if the Proof has or the details have already been delivered.

PART 10

INSPECTION OF DOCUMENTS, COPIES AND PROVISION OF INFORMATION

50. Right to copy documents

Where these Regulations give a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of a reasonable fee.

51. Charges for copies of documents provided by the Office-holder

Except where prohibited by these Regulations, a person is entitled to require the payment of a reasonable fee for copies of documents requested by a creditor, member, contributory or member of a liquidation or creditors' committee.

52. Contravention in relation to inspection of documents

- (1) A contravention will be committed if a person who does not have a right under these Regulations to inspect a relevant document falsely claims to be a creditor, a member of a Company or a contributory of a Company with the intention of gaining sight of the document.
- (2) A relevant document is one which is on the Court file or held by the Office-holder or any other person and which a creditor, or member or contributory of a Company has the right to inspect under these Regulations.

(3) A person guilty of a contravention under this paragraph 52 is liable to a level [●] fine.

53. Right to list of creditors

(1) This paragraph 53 applies in the following proceedings-

- (a) administration; or
- (b) creditors' voluntary winding up or a compulsory winding up.

(2) A creditor or a foreign representative has the right to require the Office-holder to provide a list of the creditors and the amounts of their respective debts unless, in a winding up or an administration, a Statement of Affairs has been delivered to the Registrar.

(3) The Office-holder on being required to provide such a list—

- (a) must deliver it to the person requiring the list as soon as reasonably practicable; and
- (b) may charge a reasonable fee for a hard copy.

(4) The Office-holder may omit the name and address of a creditor if the Office-holder thinks its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person.

(5) In such a case the list must include—

- (a) the amount of that creditor's debt; and
- (b) a statement that the name and address of the creditor has been omitted for that debt.

54. Confidentiality of documents – grounds for refusing inspection

(1) Where an Office-holder considers that a document forming part of the records of the Insolvency Proceedings—

- (a) should be treated as confidential; or
- (b) is of such a nature that its disclosure would be prejudicial to the conduct of the proceedings or might reasonably be expected to lead to violence against any person,

the Office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the Office-holder may refuse inspection include members of a creditors' committee.

(3) Where the Office-holder refuses inspection of a document, the person wishing to inspect it may appeal to the Court.

(4) The Court's decision may be subject to such conditions (if any) as it thinks just.

SCHEDULE 2

POWERS OF THE ADMINISTRATOR

- (1) Power to take possession of, collect and get in the property of the Company and, for that purpose, to take such proceedings as may seem to him expedient.
- (2) Power to sell or otherwise dispose of the property of the Company by public auction or private contract or, to sell, hire out or otherwise dispose of the property of the Company by public group or private bargain.
- (3) Power to raise or borrow money and grant security therefor over the property of the Company.
- (4) Power to appoint a solicitor or legal representative or accountant or other professionally qualified person to assist him in the performance of his functions.
- (5) Power to bring 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 property of the Company.
- (8) Power to use the Company's seal.
- (9) Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
- (10) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
- (11) Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
- (12) Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the Company.
- (13) Power to make any payment which is necessary or incidental to the performance of his functions.
- (14) Power to carry on the business of the Company.
- (15) Power to establish subsidiaries of the Company.
- (16) Power to transfer to subsidiaries of the Company the whole or any part of the business and property of the Company.
- (17) Power to grant or accept a surrender of a lease or tenancy of any of the property of the Company, and to take a lease or tenancy of any property required or convenient for the business of the Company.

- (18) Power to make any arrangement or compromise on behalf of the Company.
- (19) Power to call up any uncalled capital of the Company.
- (20) Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
- (21) Power to present or defend a petition for the winding up of the Company.
- (22) Power to change the situation of the Company's registered office.
- (23) Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 3

POWERS OF ADMINISTRATIVE RECEIVER

- (1) Power to take possession of, collect and get in the property of the Company and, for that purpose, to take such proceedings as may seem to him expedient.
- (2) Power to sell or otherwise dispose of the property of the Company by public auction or private contract.
- (3) Power to raise or borrow money and grant security for that purpose over the property of the Company.
- (4) Power to appoint a legal consultant or accountant or other professionally qualified person to assist him in the performance of his functions.
- (5) Power to bring 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 property of the Company.
- (8) Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
- (9) Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
- (10) Power to appoint any agent to do any business which the administrative receiver is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
- (11) Power to do all such other things as may be necessary for winding up the Company's affairs and distributing its assets.
- (12) Power to make any payment which is necessary or incidental to the performance of his functions.
- (13) Power to carry on the business of the Company.
- (14) Power to establish subsidiaries of the Company.
- (15) Power to transfer to subsidiaries of the Company the whole or part of the business and property of the Company.
- (16) Power to grant or accept a surrender of a lease or tenancy of any of the property of the Company and to take a lease or tenancy of any property required or convenient for the business of the Company.
- (17) Power to make any arrangement or compromise on behalf of the Company.

- (18) Power to call up any uncalled capital of the Company.
- (19) Power to present or defend a petition for the winding up of the Company.
- (20) Power to change the situation of the Company's registered office.
- (21) Power to do all other things incidental to the foregoing powers.

SCHEDULE 4

POWERS OF LIQUIDATOR IN A WINDING UP

PART 1

POWERS EXERCISABLE WITH SANCTION

- (1) Power to pay any class of creditors in full.
- (2) Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company, or whereby the Company may be rendered liable.
- (3) Power to bring or defend any action or other legal proceeding in the name and on behalf of the Company.
- (4) Power to bring legal proceedings under Sections 256 (*Fraudulent trading*), 257 (*Wrongful trading*), 262 (*Transactions at an undervalue*) and 263 (*Preferences*) of these Regulations.
- (5) Power to carry on the business of the Company so far as may be necessary for its beneficial winding up.

PART 2

POWERS EXERCISABLE WITHOUT SANCTION IN ANY WINDING UP

- (6) Power to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
- (7) Power to compromise, on such terms as may be agreed—
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Company and a member or other person liable to contribute to the assets of the Company or person alleged to be such or other debtor or person apprehending liability to the Company; and
 - (b) all questions in any way relating to or affecting the assets or the winding up of the Company, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
- (8) Power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company's seal.
- (9) Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any member or other person liable to contribute to the assets of the Company for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration 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 endorsed by or on behalf of the Company in the course of its business.
- (11) Power to raise on the security of the assets of the Company any money requisite.
- (12) Power to take out in his official name letters of administration to any deceased member or other person liable to contribute to the assets of the Company, and to do in his official name any other action necessary for obtaining payment of any money due from such person's estate which cannot conveniently be done in the name of the Company.
- (13) In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator himself.
- (14) Power to appoint an agent to do any business which the liquidator is unable to do himself.
- (15) Power to do all such other things as may be necessary for winding up the Company's affairs and distributing its assets.

SCHEDULE 5

PROOFS AND DISTRIBUTION

PART 1

INTRODUCTION

1. Application of Schedule

This Schedule applies to Part 2 (*Administration*) and Part 4 (*Winding Up*).

PART 2

INTERPRETATION

2. Definitions and Interpretation

(1) In this Schedule—

- (a) "**debt**", in relation to winding up, means (subject to sub-paragraph (2)) one or more of the following –
 - (i) a debt or liability to which the Company is subject at the relevant date;
 - (ii) a debt or liability to which the Company may become subject after the relevant date by reason of any obligation incurred before that date; and
 - (iii) interest provable as mentioned in paragraph 28 (*Interest*) of this Schedule;
- (b) "**dividend**" in its application to a members' voluntary winding-up includes distribution;
- (c) "**Office-holder**" means a person who, pursuant to these Regulations, holds an office as a liquidator, provisional liquidator or administrator;
- (d) "**Insolvency Proceedings**" means any winding up proceedings or proceedings concerning provisional liquidation or administration under these Regulations as the context requires;
- (e) "**provable debt**" has the meaning given in paragraph 3 (*Provable debts*) of this Schedule;
- (f) "**relevant date**" means:
 - (i) in the case of an administration which was not immediately preceded by a winding up, the date on which the Company entered administration,
 - (ii) in the case of an administration which was immediately preceded by a winding up, the date on which the Company went into liquidation,

- (iii) in the case of a winding up which was not immediately preceded by an administration, the date on which the Company went into liquidation; and
 - (iv) in the case of a winding up which was immediately preceded by an administration, the date on which the Company entered administration.
- (2) For the purposes of any provision of these Regulations about winding up, a liability in tort is a debt provable in a winding up, if either—
 - (a) the cause of action has accrued at the relevant date; or
 - (b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.
- (3) For the purposes of references in any provisions of these Regulations about winding up, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.
- (4) In any provision of these Regulations about winding up, "**liability**" means (subject to subparagraph (3)) a liability to pay money or money's worth, including any liability—
 - (a) under any law, rules or regulations whether issued by the Global Market or any other jurisdiction;
 - (b) for breach of trust;
 - (c) in contract, tort or bailment;
 - (d) arising out of an obligation to make restitution.
- (5) This paragraph applies where a Company is in administration and must be read as if—
 - (a) references to winding up were references to administration;
 - (b) references to administration were references to winding up;
 - (c) references to going into liquidation were references to entering administration;
 - (d) references to entering administration were references to going into liquidation.
- (6) Unless defined in this Schedule, or the context otherwise requires, a term defined in these Regulations has the same meaning in this Schedule. Any reference to these Regulations includes the Schedules thereto.

PART 3

CREDITORS' CLAIMS

3. Provable debts

- (1) All claims by creditors in Insolvency Proceedings, except as provided in this paragraph, are provable as debts against the Company, whether they are present or future, certain or contingent, ascertained or sounding only in damages.
- (2) [In relation to administration and winding up, claim(s) which by virtue of these Regulations or any other enactment of the Global Market are claim(s) the payment of which in an administration or a winding up would be postponed shall not be provable except at a time when all other claims of creditors in the Insolvency Proceedings (other than the kind mentioned in this paragraph) have been paid in full with interest under paragraph 28 (*Interest*) of this Schedule.]
- (3) Nothing in this paragraph 3 prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

4. Proving a debt

- (1) In Insolvency Proceedings (other than a members' voluntary winding up), a person claiming to be a creditor of the Company and wishing to recover his debt in whole or in part must submit his claim in writing to the Office-holder unless –
 - (a) the Court orders otherwise, or
 - (b) in a winding up immediately preceded by an administration, the creditor has already proved in the administration; or
 - (c) in an administration immediately preceded by a winding up, the creditor has already proved in the winding up.
- (2) A creditor who claims is referred to as "**proving**" for his debt and a document by which he seeks to establish his claim is his "**proof**".
- (3) In a members' voluntary winding up the Office-holder may require proof to be delivered to the liquidator.

5. Requirements for proof

- (1) A proof must –
 - (a) be made out by, or under the direction of, the creditor and authenticated by him or a person authorised in that behalf; and
 - (b) state the following matters–
 - (i) the creditor's name and address;
 - (ii) if the creditor is a Company, its registered number or equivalent;

- (iii) the total amount of the creditor's claim (including any applicable tax) as at the relevant date, less any payments made after that date in respect of the claim, any deduction under paragraph 23 (*Discounts*) of this Schedule and any adjustment by way of set-off in accordance with paragraphs 24 (*Administration: mutual dealings and set-off*) and 25 (*Winding up: mutual dealings and set off*) of this Schedule;
 - (iv) whether or not the claim includes outstanding uncapitalised interest;
 - (v) particulars of how and when the debt was incurred by the Company;
 - (vi) particulars of any security held, the date on which it was given and the value which the creditor puts on it;
 - (vii) details of any reservation of title in respect of goods to which the debt refers; and
 - (viii) the name, address and authority of the person authorising the proof (if other than the creditor himself).
- (2) There shall be specified in the proof details of any documents by reference to which the debt can be substantiated; but (subject as follows) it is not essential that such document be attached to the proof or submitted with it.
- (3) The Office-holder may call for any document or other evidence to be produced to the Office-holder if the Office-holder considers it necessary for the purpose of substantiating the whole or any part of the claim made in the proof.

6. Costs of proving

- (1) Unless the Court otherwise orders, each creditor bears the cost of proving for that creditor's own debt, including costs incurred in providing documents or evidence under paragraph 5(3) (*Requirements for proof*) of this Schedule.
- (2) In an administration or winding up, costs incurred by the Office-holder in estimating the value of a debt under paragraph 15 (*Administration and winding up: estimate of value of debt*) of this Schedule are payable out of the assets as an expense of the administration or winding up.

7. Allowing inspection of proofs

- (1) The Office-holder must, so long as proofs delivered to the Office-holder are in the possession of the Office-holder, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—
- (a) any creditor who has delivered a proof (unless the proof has been wholly rejected for purposes of dividend or otherwise);
 - (b) any member or contributory of the Company; and
 - (c) any person acting on behalf of any of the above.

8. Transmission of proofs: replacement of office-holder

- (1) If a new Office-holder (the "**New Office-holder**") is appointed in place of another (the "**Former Office-holder**"), the Former Office-holder must as soon as reasonably practicable after the appointment of the New Office-holder deliver to the New Office-holder all proofs which the Former Office-holder has received, together with an itemised list of them.
- (2) The New Office-holder must authenticate the list and return it to the Former Office-holder. From then on, all proofs must be sent to and retained by the New Office-holder.

9. Admission and rejection of proofs for dividend

- (1) A proof may be admitted for dividend either for the whole amount claimed by the creditor or for part of that amount.
- (2) If the Office-holder rejects a proof in whole or in part, the Office-holder must prepare a statement of the Office-holder's reasons for doing so, and deliver or send it as soon as reasonably practicable to the creditor.

10. Appeal against decision on proof

- (1) If a creditor is dissatisfied with the Office-holder's decision in relation to the creditor's proof (including any decision on the question of preference), the creditor may apply to the Court for the decision to be reversed or varied. The application must be made within 21 days of the creditor receiving the statement sent under paragraph 9(2) (*Admission and rejection of proofs for dividend*) of this Schedule.
- (2) A member, a contributory or any other creditor may, if dissatisfied with the Office-holder's decision admitting or rejecting the whole or any part of a proof, make such an application within 21 days of becoming aware of the Office-holder's decision.
- (3) The Court will fix a venue for the application to be heard, notice of which must be sent by the applicant to the creditor who delivered the proof in question (if the applicant is not the creditor who delivered the proof in question) and the Office-holder.
- (4) The Office-holder must, on receipt of the notice, file with the Court the relevant proof, together (if appropriate) with a copy of the statement sent under paragraph 9(2) (*Admission and rejection of proofs for dividend*) of this Schedule.
- (5) Where the application is made by a member or a contributory, the Court will not disallow the proof (in whole or in part) unless the member or the contributory shows that there is (or would be but for the amount claimed in the proof), or that it is likely that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the Company would be entitled.
- (6) After the application has been heard and determined, the proof must, unless it has been wholly disallowed, be returned by the Court to the Office-holder.
- (7) Office-holders are not personally liable for costs incurred by any person in respect of an application under this paragraph unless the Court otherwise orders.

11. Withdrawal or variation of proof

A creditor's proof may at any time, by agreement between the creditor and the Office-holder concerned, be withdrawn or varied as to the amount claimed.

12. Exclusion of proof by the Court

- (1) The Court may exclude a proof or reduce the amount claimed—
 - (a) on the Office-holder's application, where the Office-holder thinks that the proof has been improperly admitted, or ought to be reduced; or
 - (b) on the application of a creditor, a member or a contributory, if the Office-holder declines to interfere in the matter.
- (2) Where the application is made by a member or a contributory, the Court will not exclude a proof or reduce the amount claimed (in whole or in part) unless the member or the contributory shows that there is (or would be but for the amount claimed in the proof), or that there will be (or would be but for the amount claimed in the proof), a surplus of assets to which the Company would be entitled.
- (3) Where application is made to the Court under sub-paragraph (1), the Court will fix a venue for the application to be heard, notice of which must be sent by the applicant—
 - (a) in the case of an application by the Office-holder, to the creditor who made the proof; and
 - (b) in the case of an application by a creditor, a member or a contributory, to the Office-holder and to the creditor who made the proof (if the applicant is not the creditor who made the proof).

13. Administration and winding up by the Court: debts of insolvent Company to rank equally

- (1) This paragraph applies in an administration and to a winding up by the Court.
- (2) Debts other than Preferential Debts rank equally between themselves and, after the Preferential Debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

14. Administration and winding up: division of unsold assets

- (1) The Office-holder may—
 - (a) in an administration, with permission of the creditors' committee, or, if there is no creditors' committee, by application to the Court; or
 - (b) in a winding up, without prejudice to provisions of these Regulations about disclaimer, with permission of the Liquidation Committee, or, if there is no Liquidation Committee, by application to the court,

divide in its existing form amongst the Company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

- (2) The Office-holder must—
- (a) in the receipts and payments account included in the final progress report under Chapter 9 (*Ending Administration*) of this Part, state the estimated value of the property divided amongst the creditors of the Company during the period to which the report relates; and
 - (b) as a note to the account, provide details of the basis of the valuation.

15. Administration and winding up: estimate of value of debt

- (1) The Office-holder must estimate the value of a debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value; and the Office-holder may revise an estimate previously made, if the Office-holder thinks fit by reference to a change of circumstances or to information becoming available to the Office-holder.
- (2) The Office-holder must inform the creditor as to the Office-holder's estimate and any revision of it.
- (3) Where the value of a debt is estimated under this paragraph 15 or by the Court, the amount provable in the case of that debt is that of the estimate for the time being.

16. Negotiable instruments, etc.

Unless otherwise allowed by an Office-holder, a proof in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security cannot be admitted unless there is produced the instrument or security itself or a copy of it certified by the creditor or the creditor's authorised representative to be a true copy.

17. Secured creditors

- (1) If a secured creditor realises his security, he may prove for the balance of his debt, after deducting the amount realised.
- (2) If a secured creditor voluntarily surrenders his security for the general benefit of creditors, he may prove for his whole debt, as if it was unsecured.

18. Secured creditor: value of security

- (1) A secured creditor may, with the permission of the Court or (except where sub-paragraph (2) applies) the agreement of the Office-holder, at any time alter the value which that creditor has put upon a security in a proof.
- (2) If a secured creditor—
 - (a) is the applicant for an administration order or is the person who has appointed the administrator and has in the application or the notice of appointment put a value on a security; or
 - (b) has voted in an administration or winding up by the Court in relation to the unsecured balance of the secured creditor's debt,

the secured creditor may alter the value of a security only with the permission of the Court.

19. Secured creditor: surrender for non-disclosure

- (1) If a secured creditor omits to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the Court, on application by the secured creditor, relieves the secured creditor from the effect of this paragraph 19 on the ground that the omission was inadvertent or the result of honest mistake.
- (2) If the Court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

20. Secured creditor: redemption by Office-holder

- (1) The Office-holder may at any time deliver notice to a creditor whose debt is secured that the Office-holder proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.
- (2) The creditor then has 21 days (or such longer period as the Office-holder may allow) in which, if he so wishes, to exercise the right to alter the value of his security (with the permission of the Court, where paragraph 18(2) (*Secured creditor: value of security*) of this Schedule applies but otherwise without the need for either the agreement of the Office-holder or the permission of the Court).
- (3) If the creditor alters the value of his security, the Office-holder may only redeem at the new value.
- (4) If the Office-holder redeems the security, the cost of transferring it is payable out of the assets.
- (5) A secured creditor may at any time, by notice, call on the Office-holder to elect whether the Office-holder will or will not exercise the Office-holder's power to redeem the security at the value then placed on it; and the Office-holder then has three months in which to exercise the power or determine not to exercise it.

21. Secured creditor: test of security's value

- (1) If the Office-holder is dissatisfied with the value which a secured creditor puts on his security (whether in the proof or by way of alteration of value in accordance paragraph 18 (*Secured creditor: value of security*) of this Schedule, the Office-holder may require any property comprised in the security to be offered for sale.
- (2) The terms of sale will be as agreed, or as the Court may direct; and if the sale is by auction, the Office-holder on behalf of the Company or the estate and the creditor (on his own behalf) may appear and bid.
- (3) This paragraph 21 does not apply if the value of the security has been altered with the Court's permission.

22. Realisation of security by creditor

- (1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the Office-holder)—
 - (a) the net amount realised must be substituted for the value previously put by the creditor on the security; and

- (b) that amount must be treated in all respects as an amended valuation made by the creditor.

23. Discounts

There shall in every case be deducted from the claim all trade and other discounts (except any discount for immediate or early settlement) which would have been available but for the Insolvency Proceedings.

24. Administration: mutual dealings and set-off

- (1) This paragraph 24 applies in an administration where the administrator proposes to make a distribution and has delivered a notice under paragraph 31 (*Notice of intention to declare a dividend*) of this Schedule.
- (2) An account must be taken as at the date of the notice referred to in sub-paragraph (1) of what is due from the Company and a creditor to each other in respect of their mutual dealings and the sums due from one party must be set off against the sums due from the other.
- (3) If there is a balance owed to the creditor then only that balance is provable in the administration.
- (4) If there is a balance owed to the Company that must be paid to the administrator as part of the assets. However if all or part of the balance owed to the Company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without reduction under paragraph 46 (*Debt payable at future time*) of this Schedule) if and when that debt becomes due and payable.
- (5) In this paragraph 24—
 - (a) "**obligation**" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and
 - (b) "**mutual dealings**" means mutual credits, mutual debts or other mutual dealings between the Company and a creditor proving or claiming to prove for a debt in the administration but does not include any of the following—
 - (i) a debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (aa) an application for an administration order was pending; or
 - (bb) a person had delivered notice of intention to appoint an administrator;
 - (ii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—
 - (aa) an application for an administration order was pending; or
 - (bb) a person had delivered notice of intention to appoint an administrator;

- (iii) a debt arising out of an obligation incurred after the Company entered administration;
 - (iv) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the Company entered administration;
 - (v) a debt arising out of an obligation where—
 - (aa) at the time the obligation was incurred the creditor had notice that a meeting of creditors had been summoned under Section 193 (*Meetings of members and creditors*) of these Regulations or a winding up petition was pending; and
 - (bb) a winding up immediately preceded the administration;
 - (vi) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
 - (aa) at a time when the creditor had notice that a meeting of creditors had been summoned under Section 193 (*Meetings of members and creditors*) of these Regulations or that a winding up petition was pending; and
 - (bb) where a winding up immediately preceded the administration;
 - (vii) a debt arising out of an obligation incurred during a winding up which immediately preceded the administration;
 - (viii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into during a winding up which immediately preceded the administration.
- (6) A sum must be treated as being due to or from the Company for the purposes of subparagraph (2) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (7) For the purposes of this paragraph 24—
- (a) paragraph 15 (*Administration and winding up: estimate of value of debt*) of this Schedule applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
 - (b) paragraphs 26 (*Debt in foreign currency*), 27 (*Payments of periodical nature*) and 28 (*Interest*) of this Schedule shall apply to sums due to the Company which—

- (i) are payable in a currency other than dollars;
 - (ii) are of a periodical nature; or
 - (iii) bear interest; and
- (c) paragraph 46 (*Debt payable at future time*) of this Schedule applies to a sum due to or from the Company which is payable in the future.

25. Winding up: mutual dealings and set-off

- (1) This paragraph 25 applies in a winding up where, before the Company goes into liquidation, there have been mutual dealings between the Company and a creditor of the Company proving for a debt in the liquidation.
- (2) An account must be taken of what is due from the Company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.
- (3) If there is a balance owed to the creditor then only that balance is provable in the winding up.
- (4) If there is a balance owed to the Company then that must be paid to the liquidator as part of the assets. However if all or part of the balance owed to the Company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without reduction under paragraph 46 (*Debt payable at future time*) of this Schedule) if and when that debt becomes due and payable.
- (5) In this paragraph 25—
 - (a) "**obligation**" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and
 - (b) "**mutual dealings**" means mutual credits, mutual debts or other mutual dealings between the Company and a creditor proving for a debt in the winding up but does not include any of the following—
 - (i) a debt arising out of an obligation incurred at a time when the creditor had notice that—
 - (aa) a meeting of creditors had been summoned under Section 193 (*Meetings of members and creditors*) of these Regulations; or
 - (bb) a petition for the winding up of the Company was pending;
 - (ii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—
 - (aa) a meeting of creditors had been summoned under Section 193 (*Meetings of members and creditors*) of these Regulations; or
 - (bb) a winding up petition was pending;

- (iii) a debt arising out of an obligation where—
 - (aa) at the time the obligation was incurred the creditor had notice that an administration application was pending or a person had delivered notice of intention to appoint an administrator; and
 - (bb) an administration immediately preceded the winding up;
 - (iv) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—
 - (aa) at a time when the creditor had notice that an administration application was pending or a person had delivered notice of intention to appoint an administrator; and
 - (bb) an administration immediately preceded the winding up;
 - (v) a debt arising out of an obligation incurred during an administration which immediately preceded the winding up;
 - (vi) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into during an administration which immediately preceded the winding up;
 - (vii) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the Company went into liquidation.
- (6) A sum must be treated as being due to or from the Company for the purposes of sub-paragraph (2) whether—
- (a) it is payable at present or in the future;
 - (b) the obligation by virtue of which it is payable is certain or contingent; or
 - (c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
- (7) For the purposes of this paragraph 25—
- (a) paragraph 15 (*Administration and winding up: estimate of value of debt*) of this Schedule applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;
 - (b) paragraphs 26 (*Debt in foreign currency*), 27 (*Payments of periodical nature*) and 28 (*Interest*) of this Schedule shall apply to sums due to the Company which —
 - (i) are payable in a currency other than dollars;
 - (ii) are of a periodical nature; or
 - (iii) bear interest; and

- (c) paragraph 46 (*Debt payable at future time*) of this Schedule applies to a sum due to or from the company which is payable in the future.

26. Debt in foreign currency

- (1) For the purpose of proving for any debts incurred or payable in a currency other than dollars, the amount of those debts must be converted into dollars at the official exchange rate prevailing on the relevant date.
- (2) "**The official exchange rate**" for the purposes of sub-paragraph (1) is the middle market exchange rate of the Central Bank of the United Arab Emirates at the close of business, as published for the relevant date in question. In the absence of any such published rate, it is such rate as the Court determines.

27. Payments of periodical nature

- (1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.
- (2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

28. Interest

- (1) Where a debt proved in Insolvency Proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.
- (2) In the following circumstances the creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.
- (3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from that time to the relevant date.
- (4) If the debt is due otherwise, interest may only be claimed if, before the date on which the Company—
- (a) entered administration or, if the administration was immediately preceded by a winding up, the date on which the Company went into liquidation; or
- (b) went into liquidation or, if the winding up was immediately preceded by an administration, the date on which the Company entered administration,
- a demand for payment of the debt was made in writing by or on behalf of the creditor, and notice given that interest would be payable from the date of the demand to the date of the payment.
- (5) Interest under sub-paragraph (4) may only be claimed for the period from the date of the demand to the relevant date and for all the purposes of these Regulations must be charged at a rate not exceeding that mentioned in sub-paragraph (6).
- (6) The rate of interest to be claimed under sub-paragraphs (3) and (4) is the rate specified in Part [37] (*General Rules about Costs*) of the Court Procedural Rules on the relevant date.³

³ This should refer to an equivalent of s.17 of the Judgments Act 1838. To be confirmed.

- (7) In an administration or winding up—
- (a) any surplus remaining after payment of the debts proved must, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;
 - (b) all interest payable under sub-paragraph (7)(a) ranks equally whether or not the debts on which it is payable rank equally; and
 - (c) the rate of interest payable under sub-paragraph (7)(a) is whichever is the greater of the rate specified under sub-paragraph (6) and the rate applicable to the debt apart from the administration or, if applicable, the winding up.

PART 4

DISTRIBUTIONS TO CREDITORS

29. Application of Part to particular class of creditors

- (1) Subject as follows, this Part applies where the Office-holder makes, or proposes to make, a distribution to any class of creditors other than secured creditors.
- (2) Where in an administration, a distribution is to a particular class of creditors, a reference in this Part to creditors is a reference to that class of creditors only.
- (3) The paragraphs in this Part apply in relation to any distribution made in the insolvency to preferential creditors, with such adaptations as are appropriate considering that such creditors are of a limited class.

30. Intention to declare and distribute dividend

- (1) In an administration and in a winding up, the Office-holder must deliver notice to the creditors of the Office-holder's intention to declare and distribute a dividend in accordance with paragraph 31 (*Notice of intention to declare a dividend*) of this Schedule.
- (2) In a winding up, whenever the liquidator has sufficient funds in hand for the purpose the liquidator must, subject to the retention of such sums as may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in respect of the debts which they have respectively proved.

31. Notice of intention to declare a dividend

- (1) Where an Office-holder intends to declare a dividend, the Office-holder must deliver a notice of that fact to all creditors who have not proved for their debts (subject to sub-paragraph (4)(a)).
- (2) Before declaring a dividend the Office-holder must by a notice invite the creditors to prove for their debts (unless the Office-holder has previously done so by a notice which has been published in the Global Market).
- (3) The notice—
 - (a) must be published in the Global Market; and

- (b) may be advertised in such other manner (if any) as the Office-holder thinks fit.
- (4) Where a dividend is to be declared for preferential creditors—
 - (a) a notice under sub-paragraph (1) need only be delivered to creditors whose debts the Office-holder has reason to believe are preferential; and
 - (b) a notice under sub-paragraph (1) need only be delivered if the Office-holder thinks fit.

32. Content of notice

A notice under sub-paragraph 31(1) or 31(3) (*Notice of intention to declare a dividend*) of this Schedule must, in addition to the standard contents—

- (a) specify a date ("**the last date for proving**") by which proofs may be delivered which must be—
 - (i) the same date for all creditors; and
 - (ii) not less than 21 days from the date of notice;
- (b) state that it is the intention of the Office-holder to make a distribution to creditors within the period of two months from the last date for proving;
- (c) specify whether the proposed dividend is interim or final;
- (d) specify the place to which proofs must be delivered;
- (e) in the case of an administration, state that it is the intention of the administrator to make a distribution to creditors within the period of two months from the last date for proving;
- (f) in the case of a winding up, state that it is the intention of the Office-holder to declare a dividend within a period of two months from the last date for proving; and
- (g) in the case of a members' voluntary winding up, where the distribution is to be a sole or final distribution, state that the dividend may be distributed without regard to the claim of any person in respect of a debt not proved.

33. Postponement or cancellation of dividend

If in the period of two months referred to in paragraph 32(b) (*Content of notice*) above—

- (a) the Office-holder has rejected a proof in whole or in part and application is made to the Court for that decision to be reversed or varied; or
- (b) application is made to the Court for the Office-holder's decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed,

the Office-holder may postpone or cancel the dividend.

34. Admission or rejection of proofs

- (1) Unless the Office-holder has already dealt with them, the Office-holder must, within five (5) business days of the last date for proving—
 - (a) admit or reject (in whole or in part) proofs delivered to the Office-holder; or
 - (b) make such provision in relation to them as the Office-holder thinks fit.
- (2) The Office-holder is not obliged to deal with proofs delivered after the last date for proving, but the Office-holder may do so, if the Office-holder thinks fit.
- (3) In the declaration of a dividend no payment must be made more than once by virtue of the same debt.

35. Declaration of dividend

- (1) If the Office-holder has not had cause to postpone or cancel the dividend in the two month period referred to in paragraphs 32(e) or (f) (*Content of notice*) of this Schedule, the Office-holder must within that period proceed to declare the dividend to one or more classes of creditors of which the Office-holder gave notice.
- (2) Except with the permission of the Court, the Office-holder must not declare a dividend so long as there is pending any application to the Court to reverse or vary a decision of the Office-holder on a proof, or to exclude a proof or to reduce the amount claimed.
- (3) If the Court gives permission under sub-paragraph (2), the Office-holder must make such provision in relation to the proof as the Court directs.

36. Notice of declaration of a dividend

- (1) Where the Office-holder declares a dividend the Office-holder must deliver notice of that fact to, subject to sub-paragraph (3), all creditors who have proved for their debts.
- (2) The notice must include the following particulars relating to the Insolvency Proceedings—
 - (a) amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;
 - (b) payments made by the Office-holder in carrying out the Office-holder's functions in relation to the Insolvency Proceedings;
 - (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;
 - (d) the total amount to be distributed and the rate of dividend; and
 - (e) whether, and if so when, any further dividend is expected to be declared.
- (3) Where the Office-holder declares a dividend for preferential creditors only, the notice pursuant to sub-paragraph (1) need only be delivered to those preferential creditors who have proved for their debts.

37. Payments of dividends and related matters

- (1) The dividend may be distributed simultaneously with the notice declaring it.
- (2) Payment of dividend may be made by post, or the Office-holder may, with the agreement of the creditor, arrange for it to be paid to the creditor by any other means or in any form, or held for the creditor's collection.
- (3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend must be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose.

38. Notice of no dividend, or no further dividend

If the Office-holder delivers notice to creditors that the Office-holder is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

- (a) that no funds have been realised; or
- (b) that the funds realised have already been distributed or used or allocated for defraying the expenses of the Insolvency Proceedings.

39. Where sole or final dividend

- (1) When the liquidator in a winding up has realised all the Company's assets or so much of them as can, in the liquidator's opinion, be realised without needlessly prolonging the winding up, the liquidator must deliver notice as provided for in this Part, either—
 - (a) of the intention to declare a final dividend; or
 - (b) that no dividend, or further dividend, will be declared.
- (2) The notice must contain all such particulars as are required by this Part and must require claims against the assets to be established by a date set out in the notice.
- (3) Where, in an administration or winding up, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under paragraph 31 (*Notice of intention to declare a dividend*) of this Schedule, the Office-holder—
 - (a) in a winding up, must defray any outstanding expenses of the winding up out of the assets;
 - (b) in an administration, must—
 - (i) pay any outstanding expenses of a winding up (including any of the items mentioned in Sections 116 (*Expenses of the administration*) and 117 (*Pre-administration costs*) of these Regulations) or provisional winding up that immediately preceded the administration;
 - (ii) pay any items payable in accordance with the provisions of Section 152 (*Vacation of office: charges and liabilities*) of these Regulations;

- (iii) pay any amounts (including any debts or liabilities and the administrator's own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the Company, be payable out of the property of which the administrator had custody or control in accordance with the provisions of Section 152 (*Vacation of office: charges and liabilities*) of these Regulations;
 - (c) in a members' voluntary winding up may, and in every other case must, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.
- (4) The Court may, on the application of any person, postpone the date specified in the notice.

40. Administration and winding up: provisions as to dividends

In an administration or winding up, in the calculation and distribution of a dividend the Office-holder must make provision for—

- (a) any debts which appear to the Office-holder to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to deliver their proofs;
- (b) any debts which are the subject of claims which have not yet been determined; and
- (c) disputed proofs and claims.

41. Administration and winding up: non-payment of dividend

In an administration or winding up, no action lies against the Office-holder for a dividend; but if the Office-holder refuses to pay a dividend the Court may, if it thinks just, order the Office-holder to pay it and also to pay, out of the Office-holder's own money—

- (a) interest on the dividend, at the official interest rate, from the time when it was withheld; and
- (b) the costs of the proceedings in which the order to pay is made.

42. Supplementary provisions as to dividends

- (1) A creditor is not entitled to disturb the payment of any dividend or making of any distribution because –
- (a) the amount claimed in the creditor's proof is increased after payment of the dividend or making of the distribution;
 - (b) in an administration or insolvent or compulsory winding up the creditor did not prove for a debt before the declaration of the dividend; or
 - (c) in a members' voluntary winding up, the creditor did not prove for a debt before the last date for proving or increases the claim in proof after that date.
- (2) However the creditor is entitled to be paid or receive, out of any money for the time being available for the payment of any further dividend or making of any further distribution, any dividend or distribution which he has failed to receive.

- (3) Any dividend or dividends payable under this paragraph 42 must be paid or distribution made before that money is applied to the payment of any further dividend or making of any further distribution.
- (4) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the Office-holder, [for the credit of the Insolvency Proceedings], any amount overpaid by way of dividend.

43. Secured creditors

- (1) The following applies where a creditor alters the value of a security after a dividend has been declared.
- (2) If the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the Office-holder, for the credit of [the administration or the insolvent estate], any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.
- (3) If the alteration increases the creditor's unsecured claim, the creditor is entitled to receive from the Office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.
- (4) However, the creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

44. Disqualification from dividend

If a creditor contravenes any provision of these Regulations relating to the valuation of securities, the Court may, on the application of the Office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

45. Assignment of right to dividend

- (1) If a person entitled to a dividend ("**the entitled person**") delivers notice to the Office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned the entitlement to another person, the Office-holder must pay the dividend to that other person accordingly.
- (2) A notice delivered under this paragraph must specify the name and address of the person to whom payment is to be made.

46. Debt payable at future time

- (1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of dividend, the creditor is entitled to dividend equally with other creditors, but subject as follows.
- (2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof (or, if a distribution has previously been made to the creditor, the amount remaining outstanding in respect of the creditor's admitted proof) must be reduced by applying the following formula—

$$\frac{x}{1.05^n}$$

where—

"**X**" is the value of the admitted proof; and

"**n**" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

47. [Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors are to prove their debts or claims or else to be excluded from the benefit of any distribution made before those debts are proved provided that the Court is satisfied that all necessary steps have been taken to bring the Insolvency Proceedings to the attention of creditors.]

SCHEDULE 6

CREDITORS' MEETINGS CORRESPONDENCE AND MEETINGS

PART 1

APPLICATION OF SCHEDULE

1. Types of proceeding to which Schedule applies

- (1) This Schedule applies to making decisions, except where these Regulations provide otherwise—
 - (a) in administration;
 - (b) where a Deed of Company Arrangement is applicable;
 - (c) in administrative receivership;
 - (d) in a creditors' voluntary winding up; and
 - (e) in a winding up by the Court.
- (2) This Schedule also applies to decision making and meetings under Section 190 (*Effect of Company's insolvency*).
- (3) These Regulations determine which procedures may be used in a particular circumstance.

PART 2

RESOLUTION BY CORRESPONDENCE

2. Application of Part

- (1) This Part applies where these Regulations allow an Office-holder to invite the creditors or contributories to pass a resolution by correspondence.
- (2) This Part does not apply to a resolution which these Regulations require to be passed at a meeting.

3. Resolution by correspondence

- (1) For a resolution to be passed by correspondence the convener must deliver a notice to every creditor or (as the case may be) contributory who would be entitled to notice of a meeting at which the resolution could be passed.
- (2) The notice must in addition to the standard contents—
 - (a) set out the resolutions to be voted on;
 - (b) state the deadline for voting;

- (c) state that in order to be counted a vote by a creditor must be accompanied by written details of the creditor's claim (unless previously supplied) failing which the vote will be disregarded;
 - (d) provide a space for the creditor or contributory to authenticate the vote;
 - (e) provide a space for a person authenticating on behalf of a creditor to state the capacity in which the vote is authenticated; and
 - (f) be authenticated and dated by the Office-holder.
- (3) The notice must contain a deadline for voting, set at the discretion of the Office-holder, but which must be not less than 14 days from the date of delivery of the notice.
- (4) In order to be counted, votes must—
 - (a) be received by the convener by 12.00 noon on the deadline; and
 - (b) in the case of a vote cast by a creditor, be accompanied by a statement of entitlement to vote on the resolution unless one has previously been delivered to the Office-holder.
- (5) In order to be counted, a vote must be accompanied by a statement of entitlement.
- (6) A statement of entitlement is—
 - (a) a statement of the details of the claim in an administrative receivership; or
 - (b) a proof in an insolvent or compulsory winding up.
- (7) A vote must be disregarded if—
 - (a) a statement of entitlement neither accompanies the vote nor has previously been delivered to the convener; or
 - (b) the Office-holder decides, in the application of Part 8 (*Creditors' Voting Rights and Majorities*) of this Schedule, that the creditor is not entitled to cast the vote.
- (8) For the resolution to be passed, the Office-holder must receive at least one valid vote in favour by the closing date.
- (9) Creditors whose debts amount to at least ten (10)% of the total debts of the company, debtor may, within five business days from the date of delivery of the notice, require the Office-holder to call a meeting of creditors to consider the resolution.
- (10) Contributories representing at least ten (10)% of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within five business days from the date of delivery of the notice, require the Office-holder to call a meeting of contributories to consider the resolution.
- (11) A reference in these Regulations to anything done or required to be done at, or in connection with, or in consequence of, a meeting of creditors or contributories extends to anything done in the course of correspondence in accordance with this paragraph.

PART 3

SUMMONING OF MEETINGS (GENERAL)

4. Venue

- (1) The convener must have regard to the convenience of those invited to attend when fixing the venue for a meeting (including the resumption of an adjourned meeting).
- (2) The convenor shall summon a meeting between [10:00 and 16:00]⁴ on a business day, unless the Court otherwise directs.

5. Notice of meetings: content and accompanying documents

- (1) Notices summoning a meeting must specify the purpose of and venue for the meeting and—
 - (a) in case of a meeting of creditors, state that claims, proofs (if not already delivered) and proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting; and
 - (b) in the case of a meeting of contributories, state that proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting in order for contributories to be entitled to vote at the meeting.
- (2) Blank proxies complying with paragraph 43(1) (*Blank proxies*) of this Schedule must be delivered with every notice summoning a meeting.
- (3) This paragraph does not apply if the Court orders under paragraph 7 (*Notice of meeting by advertisement only*) that notice of a meeting be given by advertisement only.

6. Notice of meetings: when and to whom delivered

- (1) Notices summoning a meeting must be delivered at least 14 days before the day fixed for the meeting unless this paragraph provides to the contrary.
- (2) Notices must be delivered in accordance with the following table.

⁴ Court hours to be confirmed in Court Procedural Rules.

Proceedings	Meeting	Persons to whom notice must be given	Minimum notice required
administration	creditors' meeting	all the creditors who had claims against the Company at the date when the company entered administration (except for those who have subsequently been paid in full)	14 days
Deed of Company Arrangement	meeting of creditors	all the creditors	14 days
administrative receivership	meeting of creditors under section 178(2)	all the creditors who had claims against the Company at the date when the receiver was appointed	14 days
creditors' voluntary winding up or a compulsory winding up by the court	creditors' meeting	all the creditors	14 days
creditors' voluntary winding up or a compulsory winding up by the court	creditors' meeting to consider whether a replacement should be appointed after the liquidator's resignation	all the creditors	28 days
compulsory winding up by the court;	creditors' meeting to consider whether to remove the liquidator	all the creditors	14 days
creditors' voluntary winding up or a winding up by the court	meeting of contributories	every person appearing (by the company's records or otherwise) to be a contributory	14 days

- (3) This paragraph does not apply to meetings under Sections 190 (*Effects of Company's insolvency*) or 193 (*Meetings of members and creditors*) or where the Court orders under paragraph 7 (*Notice of meeting by advertisement only*) that notice of a meeting be given by advertisement only.

7. Notice of meeting by advertisement only

- (1) The Court may order that notice of a meeting be given by advertisement only and not by individual notice to the persons concerned.

- (2) In considering whether to make such an order, the Court will have regard to the cost of advertisement, the amount of assets available and the extent of the interest of creditors, members and contributories or any particular class of them.
- (3) In addition to the standard contents, the advertisement must state—
 - (a) the venue for the meeting;
 - (b) that claims, proofs (if not already delivered) and proxies must be delivered to a specified place not later than 12.00 noon on the business day before the date fixed for the meeting;
 - (c) the date of the Court's order that notice of the meeting be given by advertisement only.

8. Publication of notice of meetings (except under Sections 190 and 193)

- (1) The convener of a meeting (other than a meeting under Sections 190 (*Effects of Company's insolvency*) or 193 (*Meetings of members and creditors*)) must publish a notice of the meeting on the Registrar's website or in an English language newspaper distributed in the United Arab Emirates and available in the Global Market stating—
 - (a) the standard contents;
 - (b) that a meeting of creditors or contributories or a Company meeting is to take place,
 - (c) the venue fixed for the meeting,
 - (d) the purpose of the meeting; and
 - (e) the time and date by which, and place at which, those attending must deliver proxies and (in the case of a meeting of creditors) claims or proofs (if not already delivered) in order to be entitled to vote.
- (2) In insolvent or compulsory winding up the notice must also state—
 - (a) who summoned the meeting; and
 - (b) if the meeting was summoned at the request of a creditor, the fact that it was so summoned and the section of these Regulations under which it was summoned.
- (3) The notice must be published before or as soon as reasonably practicable after notice is delivered to those attending.
- (4) Information published under this paragraph may also be published in such other manner as the convener thinks fit.

9. Publication of notice of meetings under Sections 190 and 193

- (1) A notice under Section 190 (*Effects of Company's insolvency*) or Section 193 (*Meetings of members and creditors*) must contain, in addition to the standard contents, a statement that the convenor shall furnish free of charge such information concerning the affairs of the Company as they may reasonably require and, in the case of Section 193 (*Meetings of members and*

creditors), the place where a list of the names and addresses of the Company's creditors will be available for inspection free of charge.

- (2) The notice must also state the purpose of, and venue fixed for, the meeting, and the time and date by which, and place at which, those attending must deliver proxies and claims or proofs (if not already delivered) in order to be entitled to vote.

10. Notice to Company officers and other people

- (1) In an administration, notice to attend an initial creditors' meeting must be delivered to every present or former officer of the Company whose presence the administrator thinks is required.
- (2) These notices must be delivered at the same time that notice is delivered to creditors in compliance with Section 70(1) (*Requirement for initial creditors' meeting*).
- (3) In a creditors' voluntary winding up or a winding up by the Court the convener must deliver a notice at least 14 days before the date fixed for the meeting to such of the persons referred to in Section 260(2)(a) to (d) (*Duty to co-operate with Office-holder*) as the convener thinks should be told of, or attend, the meeting.
- (4) Every person who receives a notice under sub-paragraphs (1), and every person who receives a notice under sub-paragraph (3) which states that that person is required to attend the meeting, must attend.

11. Non-receipt of notice of meeting

Where a meeting is summoned by notice in accordance with these Regulations, the meeting is presumed to have been duly summoned and held, even if not everyone to whom the notice is to be delivered has received it.

PART 4

MEETINGS IN PARTICULAR PROCEEDINGS

12. Creditors' meetings in administration: notice of extension of time

Where the Court orders an extension to the period set out in Section 70(2)(b) (*Requirement for initial creditors' meeting*), the administrator must deliver a notice of the extension to each person to whom the administrator is required to deliver a notice by Section 65(4) (*Administrator's proposals*).

PART 5

REQUISITIONED MEETINGS

13. Requisition of meetings

- (1) In this Part, "**requisitioned meeting**" means a meeting requested under Section 70(7) (*Requirement for initial creditors' meeting*) or Section 80(1) (*Further creditors' meeting*).
- (2) A request for a meeting under Section 70(7) (*Requirement for initial creditors' meeting*) must be delivered within eight (8) business days of the date on which the administrator's statement of proposals is delivered.

- (3) The request for a requisitioned meeting must include a statement of the purpose of the proposed meeting and—
 - (a) either—
 - (i) a statement of the requesting creditor's claim or contributory's value;
 - (ii) a list of the creditors or contributories concurring with the request and of the amounts of their respective claims or values; and
 - (iii) confirmation of concurrence from each creditor or contributory concurring;
or
 - (b) a statement of the requesting creditor's debt or contributory's value and that that alone is sufficient without the concurrence of other creditors or contributories.
- (4) In the preceding paragraph, a contributory's value is the amount which the contributory may vote at any meeting.
- (5) A meeting must be summoned for the removal of the liquidator, other than a liquidator appointed by the Court under Section 204(2) (*Court's power to control proceedings*), if 25% in value of the Company's creditors, excluding those who are connected with the company, request it.
- (6) Where a meeting under sub-paragraph (5) or any meeting for the replacement of a liquidator appointed under Section 204(2) (*Court's power to control proceedings*) is to be held, or is proposed to be summoned, the Court may, on the application of any creditor, give directions as to the mode of summoning it, the delivery of blank proxies and of proxies, the conduct of the meeting, and any other matter which appears to the Court to require regulation or control.
- (7) A requisitioned meeting must be held within 28 days, of the date on which one of the events specified in paragraph 14(3) (*Expenses of requisitioned meetings*) of this Schedule first occurs.

14. Expenses of requisitioned meetings

- (1) The convener must, not later than 21 days of receipt of a request for a requisitioned meeting, inform the requesting creditor or contributory of the sum to be deposited as security for payment of the expenses of summoning and holding the meeting.
- (2) The convener is not obliged to summon a requisitioned meeting until either—
 - (a) the convener has received the required sum; or
 - (b) the period of 21 days has expired without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.
- (3) The expenses of a requisitioned meeting must be paid out of the deposit (if any) unless—
 - (a) the meeting resolves that they are to be payable out of the assets of the Company as an expense of the administration or winding up, as the case may be; and
 - (b) in the case of a meeting of contributories, the creditors are first paid in full, with interest.

- (4) Where the meeting does not so resolve, the expenses must be paid by the requesting creditor or contributory to the extent that the deposit (if any) is not sufficient.
- (5) To the extent that the deposit (if any) is not required for payment of the expenses, it must be repaid to the requesting creditor or contributory.

PART 6

CONSTITUTION OF MEETINGS

15. Quorum at meeting of creditors or contributories

- (1) A meeting of creditors or contributories is not competent to act unless a quorum is in attendance.
- (2) A quorum is—
 - (a) in the case of a meeting of creditors, at least one creditor entitled to vote;
 - (b) in the case of a meeting of contributories, at least two contributories entitled to vote, or all the contributories, if their number does not exceed two.
- (3) A meeting of creditors or contributories must not commence until at least the expiry of 15 minutes after the time appointed for its commencement where—
 - (a) the provisions of this paragraph as to a quorum attending are satisfied by the attendance of the chair alone, or one other person in addition to the chair; and
 - (b) the chair is aware, by virtue of claims or proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote.
- (4) If within 30 minutes from the time fixed for the commencement of the meeting those persons attending the meeting do not constitute a quorum, the chairman may adjourn the meeting to such time and place as the chairman may appoint.

16. Chair at meetings

The chair of a meeting of creditors or contributories or a meeting to remove the liquidator in an insolvent or compulsory winding up must be the convener or an Appointed Person.

17. Attendance by other persons

The chair of a meeting may—

- (a) admit any person who has given reasonable notice of wishing to attend;
- (b) decide what intervention, if any, may be made at—
 - (i) a meeting of creditors by any person attending who is not a creditor; or
 - (ii) a meeting of contributories by any person attending who is not a contributory; and

- (c) decide what questions may be put to any person attending who is referred to in Section 260(2)(a) to (d) (*Duty to co-operate with Office-holder*).

18. Remote attendance at meetings

- (1) This paragraph applies to—
 - (a) any meeting of the creditors of a Company summoned under these Regulations; or
 - (b) any meeting of the members or contributories of a Company summoned by the Office-holder under these Regulations, other than a meeting of the members of a Company in a members' voluntary winding up.
- (2) Where the person summoning a meeting ("**the convener**") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- (3) Where a meeting is conducted and held in the manner referred to in sub-paragraph (2), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.
- (4) For the purposes of this paragraph—
 - (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
 - (b) a person is able to exercise the right to vote at a meeting when—
 - (i) that person is able to vote during the meeting on resolutions put to the vote at that meeting; and
 - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (5) The convener of a meeting which is to be conducted and held in the manner referred to in sub-paragraph (2) shall make whatever arrangements the convener considers appropriate to—
 - (a) enable those attending the meeting to exercise their rights to speak or vote; and
 - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (6) Where in the reasonable opinion of the convener—
 - (a) a meeting will be attended by persons who will not be present together at the same place; and
 - (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under these Regulations to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

(7) In making the arrangements referred to in sub-paragraph (5) and in forming the opinion referred to in sub-paragraph (6)(b), the convener must have regard to the legitimate interests of the creditors, members or contributories and others attending the meeting in the efficient despatch of the business of the meeting.

(8) If—

(a) the notice of a meeting does not specify a place for the meeting;

(b) the convener is requested in accordance with the rules to specify a place for the meeting; and

(c) that request is made—

(i) in the case of a meeting of creditors or contributories, by not less than ten (10) % in value of the creditors or contributories; or

(ii) in the case of a meeting of members, by members representing not less than ten (10)% of the total voting rights of all the members having at the date of the request a right to vote at the meeting;

it shall be the duty of the convener to specify a place for the meeting.

(9) In this paragraph, "**the Office-holder**", in relation to a Company, means its liquidator, provisional liquidator, administrator (including for this purpose an administrator of a Deed of Company Arrangement relating to the Company) or administrative receiver.

19. Creditor request for remote attendance at meetings

(1) This paragraph applies where—

(a) the notice of the meeting does not specify a place for the meeting;

(b) the convener is requested in accordance with the rules to specify a place for the meeting; and

(c) that request is made—

(i) in the case of a meeting of creditors or contributories by not less than ten (10) % in value of the creditors or contributories; or

(ii) in the case of a meeting of members, by members representing not less than ten (10) % of the total voting rights of all the members having at the date of the request a right to vote at the meeting.

(2) The request must be accompanied by—

(a) in the case of a request by creditors, a list of the creditors making or concurring with the request and the amounts of their respective debts;

(b) in the case of a request by contributories, a list of the contributories making or concurring with the request and their respective values (being the amounts for which they may vote at the meeting);

- (c) in the case of a request by members, a list of the members making or concurring with the request and their voting rights; and
 - (d) from each person concurring, confirmation of that person's concurrence.
- (3) The request must be delivered to the convener within seven (7) business days of the date on which the convener delivered the notice of the meeting in question.
- (4) Where the convener considers that the request has been properly made in accordance with these Regulations, the convener must—
- (a) deliver notice to all those previously given notice of the meeting—
 - (i) that it is to be held at a specified place; and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than 28 days after the original date for the meeting; and
 - (c) deliver at least 14 days' notice of that venue to all those previously given notice of the meeting;
- and the notices required by sub-paragraphs (a) and (c) may be delivered at the same or different times.
- (5) Where the convener has specified a place for the meeting in response to a request to which this paragraph applies, the chair of the meeting must attend the meeting by being present in person at that place.
- (6) Paragraph 14 (*Expenses of requisitioned meetings*) of this Schedule does not apply to the summoning and holding of a meeting at a place specified in accordance with paragraph 18 (*Remote attendance at meetings*) of this Schedule.

PART 7

ADJOURNMENT AND SUSPENSION

20. Adjournment by chair

- (1) The chair may (and must if it is so resolved) adjourn for not more than 14 days—
- (a) any meeting of creditors in administration or where there is a Deed of Company Arrangement, but subject to the direction of the Court;
 - (b) any meeting in an insolvent or compulsory winding up where the adjournment is with a view to obtaining the attendance of any person referred to in Section 260(2)(a) to (d) (*Duty to co-operate with Office-holder*) who is not in attendance; and
 - (c) any other meeting in an insolvent or compulsory winding up, but subject to the direction of the Court and to paragraph 22 (*Adjournment of meetings to remove a liquidator*) of this Schedule.

- (2) Further adjournment under this Schedule must not be to a day later than 14 days after the date on which the meeting was originally held (subject to any direction by the Court).
- (3) If a meeting is adjourned, the chair must, as soon as reasonably practicable, unless for any reason the chair thinks it unnecessary or impracticable, deliver notice of the adjournment in an insolvent or compulsory winding up, to any such person referred to in Section 260(2)(a) to (d) (*Duty to co-operate with Office-holder*) who did not attend the meeting as the chair thinks fit.

21. Administrator's proposals: lack of majority at initial creditors meeting

If at an initial creditors' meeting there is not the requisite majority for approval of the administrator's proposals (with modifications, if any), the chairman may, and must if a resolution is passed to that effect, adjourn the meeting for not more than 14 days after the date on which the initial creditors' meeting was held (subject to any direction by the Court).

22. Adjournment of meetings to remove a liquidator

If the chair of a meeting to remove the liquidator in an insolvent or compulsory winding up is the liquidator or the liquidator's nominee and a resolution has been proposed for the liquidator's removal, the chair must not adjourn the meeting without the consent of at least one-half (in value) of the creditors attending and entitled to vote.

23. Adjournment in absence of chair

- (1) This paragraph applies to meetings in an administration, an insolvent winding up or a compulsory winding up.
- (2) If no one attends to act as chair within 30 minutes of the time fixed for the meeting to start, then the meeting is adjourned to the same time and place the following week or, if that is not a business day, to the business day immediately following.
- (3) If on the second adjournment no one attends to act as chair within 30 minutes then the meeting comes to an end.

24. Proofs and proxies in adjournment

Where a meeting in an administration, insolvent or compulsory winding up is adjourned, claims, proofs and proxies may be used if delivered at any time up to 12.00 noon on the business day immediately before resumption of the adjourned meeting.

25. Suspension

In the course of a meeting, the chair may, without an adjournment, declare it suspended for one or more periods not exceeding one (1) hour in total.

PART 8

CREDITORS' VOTING RIGHTS AND MAJORITIES

26. Creditors' voting rights by correspondence

- (1) The Office-holder may seek to obtain the passing of a resolution by creditors or contributories without holding a meeting by giving notice of the resolution to every creditor or contributory who is entitled to be notified of a meeting at which the resolution could be passed.
- (2) In order to be counted, votes must be received by the Office-holder in writing by 12.00 hours on the closing date specified in the notice, and in the case of votes cast by creditors must be accompanied by details or a proof as required by paragraph 27(1)(a) (*Creditors' voting rights at meetings*), unless already lodged under that paragraph.
- (3) If any vote cast by a creditor is received without details or a proof, or the Office-holder decides that the creditor or contributory is not entitled to vote according to paragraphs 27 (*Creditors' voting rights at meetings*) to 34 (*Voting rights and requisite majorities at contributories' meetings*), then that creditor's or contributory's vote must be disregarded.
- (4) The closing date shall be set at the discretion of the Office-holder; but in any event it must not be set less than 14 days from the giving of notice provided for in sub-paragraph (1).
- (5) For the resolution to be passed, the Office-holder must receive at least one valid vote by the closing date specified in the notice.
- (6) If no valid vote is received by the closing date specified, the Office-holder must call a meeting of creditors or contributories at which the resolution could be passed.
- (7) Creditors whose debts amount to at least ten (10) % of the total debts of the Company may, within five (5) business days from the giving of notice provided for in sub-paragraph (1), require the Office-holder to summon a meeting of creditors to consider the resolution.
- (8) Contributories representing at least ten (10) % of the total voting rights of all contributories having the right to vote at a meeting of contributories may, within five (5) business days from the giving of notice provided for in sub-paragraph (1), require the Office-holder to summon a meeting of contributories to consider the resolution.
- (9) A reference in these Regulations to a resolution passed at a creditors' or contributories' meeting includes a reference to a resolution passed under this paragraph.
- (10) This paragraph does not apply in respect of any resolution which these Regulations require to be passed at a meeting.

27. Creditors' voting rights at meetings

- (1) A creditor is entitled to vote at a meeting of creditors only if—
 - (a) there has been delivered to the convener—
 - (i) in an administration or administrative receivership or under a Deed of Company Arrangement, details; or

- (ii) in an insolvent or compulsory winding up (and subject to paragraph **Error! Reference source not found.** (*Scheme manager's voting rights*)), a proof, of the debt claimed in accordance with sub-paragraph (2), including any calculation for the purposes of paragraphs 28 (*Calculation of voting rights*) or 29 (*Calculation of voting rights: special cases*); and
 - (b) the details were or proof was delivered to the convener—
 - (i) not later than 12.00 noon on the business day before the day fixed for the meeting; or
 - (ii) later than that time but the chair of the meeting is satisfied that that was due to circumstances beyond that person's control; and
 - (c) the claim has been admitted for the purposes of entitlement to vote; and
 - (d) there has been delivered to the convener any proxy intended to be used on behalf of that person.
- (2) A debt is claimed in accordance with this paragraph if it is claimed as due from the Company to the person seeking to be entitled to vote.
- (3) The details delivered to the convener in an administrative receivership must state—
- (a) the creditor's name and address, and, if a company, its company registration number;
 - (b) the total amount of the claim (including any applicable tax) as at the date of the appointment of the receiver, less all trade and other discounts available to the Company, or which would have been available to the Company but for the appointment, except for any discount for immediate or early settlement;
 - (c) whether or not that amount includes outstanding uncapitalised interest;
 - (d) particulars of how and when the debt was incurred by the Company;
 - (e) particulars of any security held, the date when it was given and the value which the creditor puts upon it;
 - (f) details of any reservation of title in relation to goods to which the debt refers; and
 - (g) the name, and address and authority of the person making out the claim (if other than the creditor).
- (4) The chair of a meeting of creditors may call for any document or other evidence to be produced if the chair thinks it necessary for the purpose of substantiating the whole or any part of a claim.

28. Calculation of voting rights

- (1) Votes are calculated according to the amount of each creditor's claim—
- (a) in an administration, as at the date on which the company entered administration, less—

- (i) any payments that have been made to the creditor after that date in respect of the claim; and
 - (ii) any adjustment by way of set-off in accordance with paragraph 24 (*Administration: mutual dealings and set-off*) of Schedule 5 (*Proofs and distribution*)—
 - (aa) as if that paragraph were applied on the date on which the votes are counted if notice of declaration of a dividend has not been delivered under paragraph 35 (*Administration: mutual dealings and set-off*) of Schedule 5 (*Proofs and distribution*); or
 - (bb) which has actually been made in calculating the dividend to be paid to the creditor if notice of declaration of a dividend has been delivered under paragraph 35 (*Administration: mutual dealings and set-off*) of Schedule 5 (*Proofs and distribution*);
 - (b) in an administrative receivership, as at the date of the appointment of the receiver, less any payments that have been made to the creditor after that date in respect of the claim;
 - (c) in an insolvent or compulsory winding up, as set out in the creditor's proof to the extent that it has been admitted; or
 - (d) under a Deed of Company Arrangement as at the date of the relevant meeting.
- (2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chair decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.
- (3) A creditor may not vote in respect of any claim or part of a claim where the claim or part is secured, except where the vote is cast—
- (a) in an administration, in respect of—
 - (i) the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor; or
 - (ii) the full value of the debt without deduction of the value of the security in a case where the administrator has made a statement under Section 70(6) (*Requirement for initial creditors' meeting*) and an initial creditors' meeting has been requisitioned under Section 70(2) (*Requirement for initial creditors' meeting*); or
 - (b) in an administrative receivership, insolvent or compulsory winding up, in respect of the balance (if any) of the debt after deduction of the value of the security as estimated by the creditor; or
 - (c) under a Deed of Company Arrangement where it is so permitted.
- (4) No vote may be cast by virtue of a claim more than once on any resolution put to the meeting.

- (5) Sub-paragraph (4) does not prevent a creditor from—
- (a) voting in respect of less than the full value of an entitlement to vote; or
 - (b) casting a vote one way in respect of part of the value of an entitlement and another way in respect of some or all of the balance of that value.

29. Calculation of voting rights: special cases

- (1) In an administration, a creditor under a hire-purchase agreement is entitled to vote in respect of the amount of the debt due and payable by the Company on the date on which the company entered administration.
- (2) In calculating the amount of any debt for the purpose of sub-paragraph 29(1), no account is to be 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—
- (a) the making of an administration application;
 - (b) a notice of intention to appoint an administrator or any matter arising as a consequence of the notice; or
 - (c) the Company entering administration.
- (3) A creditor shall 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 Company, as a security in his hands; and
 - (b) to estimate the value of the security and, for the purpose of his entitlement to vote (but not for dividend), to deduct it from his claim.

30. Procedure for admitting creditors' claims for voting at meetings

- (1) At a meeting of creditors, the chair must ascertain entitlement to vote and admit or reject claims accordingly.
- (2) The chair may admit or reject a claim in whole or in part.
- (3) If the chair is in any doubt whether a claim should be admitted or rejected, the chair must 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.

31. Procedure for admitting creditors' claims for voting by correspondence

- (1) Where a matter is being voted on by correspondence the Office-holder, or Appointed Person, must ascertain entitlement to vote and admit or reject claims accordingly.
- (2) The Office-holder or Appointed Person may admit or reject a claim in whole or in part.
- (3) If the Office-holder or Appointed Person is in any doubt whether a claim should be admitted or rejected, the Office-holder or Appointed Person must 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.

32. Requisite majorities

A resolution is passed by creditors when a majority (in value) of those voting by correspondence or attending and voting at a meeting have voted in favour of it.

33. Appeals against decisions under this Part

- (1) The decision of the Office-holder or Appointed Person (in respect of matters considered by correspondence) or the chair's decisions (in respect of matters considered at meetings) under this Part are subject to appeal to the Court by any creditor or by a contributory.
- (2) If the chair'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) An appeal under this paragraph may not be made later than 21 days after the date of the meeting.
- (4) The chair is not personally liable for costs incurred by any person in relation to an appeal under this paragraph unless the Court makes an order to that effect.
- (5) The Court may not make an order under sub-paragraph (4) if the chair in a winding up by the Court is the official receiver or a person nominated by the official receiver to be chair.
- (6) The Court's power to make an order under this paragraph is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

PART 9

Contributories' Voting Rights and Majorities

34. Voting rights and requisite majorities at contributories' meetings

At a meeting of contributories—

- (a) voting rights are as at a general meeting of the Company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the Company is in liquidation;
- (b) a resolution is passed if more than one half of the votes cast by contributories attending are in favour.

PART 10

RECORDS, RETURNS AND REPORTS

35. Minutes

- (1) The chair of any meeting under these Regulations in an administration, under a Deed of Company Arrangement, administrative receivership, insolvent or compulsory winding up,

other than a Company meeting (for which see paragraph 47 (*Company meetings (general)*)), must cause minutes of its proceedings to be kept.

- (2) The minutes must be authenticated by the chair, and be retained by the chair as part of the records of the proceedings in question.
- (3) The minutes must include—
 - (a) a list of the names of creditors who attended a meeting of creditors or a meeting of both members and creditors and their claims;
 - (b) a list of the names of contributories who attended a meeting of contributories;
 - (c) if a creditors' committee has been established, the names and addresses of those elected to be members of the committee; and
 - (d) a record of every resolution passed.

PART 11

PROXIES AND CORPORATE REPRESENTATION

36. Appointment of proxy-holders

- (1) A proxy-holder must be an individual aged 18 or over.
- (2) A proxy may be given for use only at a particular meeting.
- (3) A principal may appoint more than one person to be proxy-holder at a particular meeting; but if so—
 - (a) their appointment is as alternates;
 - (b) the order in which they are authorised to be proxy-holder must be specified in the appointment; and
 - (c) only one of them may act as proxy-holder for that principal at the meeting.
 - (d) A proxy shall be given to the chair of the meeting in question and a person given a proxy under this paragraph may not refuse it.

37. Blank proxies

- (1) A blank proxy is a document which—
 - (a) when completed by the insertion or addition of the details specified in sub-paragraph (b)(iii) will be a proxy capable of use in accordance with these Regulations;
 - (b) contains a statement to the effect that a creditor, member or contributory to be named in the document when completed—
 - (i) appoints a proxy-holder, to be named in the document when completed, as the proxy of the creditor, member or contributory at a meeting to be specified

in the document when completed (which may or may not include the resumption of an adjourned meeting); and

- (ii) directs or authorises the proxy-holder to propose or vote as, when the document is completed, will be provided in the proxy; and
- (iii) makes provision for the insertion or addition of—
 - (aa) the name and address of the creditor, member or contributory;
 - (bb) either the name of the proxy-holder or a statement that the proxy is given to the chair of the meeting;
 - (cc) if more than one proxy-holder is appointed, the order in which they are authorised;
 - (dd) a statement of the extent to which the proxy-holder is directed to vote in a particular way or to abstain; and
 - (ee) the relationship of the person authenticating the proxy to the creditor, member or contributory, and the authority of that person, where the authentication is by someone authorised by the creditor, member or contributory.

- (2) Blank proxies delivered under these Regulations must not have inserted in them the name or description of any person as proxy.
- (3) The convener of a meeting may require a proxy used at a meeting to be the same as or substantially similar to the blank proxy delivered for that meeting; but if so, the information required to be inserted on the blank proxy must be limited to the things listed in subparagraph (1)(b)(iii).
- (4) A proxy must be authenticated and dated by the creditor, member or contributory, or by some person authorised by the creditor, member or contributory.
- (5) If a proxy is authenticated by a person other than the principal, the nature of that person's authority must be stated.

38. Use of proxies

- (1) An authenticated proxy given for a meeting must be delivered to the chair before the meeting begins.
- (2) A proxy given for a meeting may be used at the resumption of that meeting after an adjournment, and the authenticated proxy need not be delivered to the chair at the resumption (whether the chair is the same person or not).
- (3) But if a different proxy is given for use at resumption of a meeting after an adjournment, the authenticated proxy must be delivered to the chair before the commencement of the resumed meeting.
- (4) Where the Office-holder holds proxies for use as chair of a meeting but another person acts as chair, that other person may use the proxies as if proxy-holder.

- (5) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as the Office-holder, the proxy-holder may, unless the proxy states otherwise, vote for or against (as the proxy-holder thinks fit) any resolution for the nomination or appointment of that person jointly with another or others.
- (6) 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 the proxy-holder would be entitled to vote.
- (7) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, prohibit the proxy-holder from voting at the discretion of the proxy-holder on resolutions put to the meeting which are not dealt with in the proxy.

39. Retention of proxies

The chair of a meeting must—

- (a) retain the proxies used for voting at the meeting where the chair is also the Office-holder; or
- (b) deliver them as soon as reasonably practicable after the meeting to the Office-holder.

40. Right of inspection

- (1) The Office-holder must allow proxies, so long as they remain in the Office-holder's hands, to be inspected at all reasonable times on any business day by—
 - (a) the creditors, in the case of proxies used at a meeting of creditors;
 - (b) the members or contributories, in the case of proxies used at a meeting of the company or of its contributories; and
 - (c) the Directors,as the case may be.
- (2) The reference in sub-paragraph 40(1) to the creditors is—
 - (a) in the case of an insolvent or compulsory winding up, to those creditors who have proved for their debts; and
 - (b) in any other case, to persons who have delivered in writing claims to be creditors of the Company;

but in neither case does it include a person whose proof or claim has been wholly rejected for purposes of voting, dividend or otherwise.

- (3) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents (including proofs) delivered, in accordance with directions contained in any notice convening the meeting, to the chair or to any other person by a creditor, member or contributory for the purpose of the meeting.
- (4) This paragraph is subject to Sections 62(6) (*Limited disclosure*) and 67(7) (*Limited disclosure of statement of proposals*).

41. Proxy-holder with financial interest

(1) A proxy-holder (including the chair of the meeting using a proxy under paragraph 38(4) (*Use of proxies*)) must not vote in favour of any resolution which would—

- (a) directly or indirectly place the proxy-holder or any associate in a position to receive any remuneration out of the insolvent estate; or
- (b) fix or change the basis of remuneration receivable by the proxy-holder or any associate out of the insolvent estate,

unless the proxy specifically directs the proxy-holder to vote in that way.

(2) For the purpose of sub-paragraph (1), the proxy-holder is an associate of the chair where the chair uses a proxy under paragraph 38(4) (*Use of proxies*).

(3) Where—

- (a) a proxy-holder has authenticated the proxy as being authorised to do so by the principal; and
- (b) the proxy specifically directs the proxy-holder to vote in the way mentioned in sub-paragraph 41(1),

the proxy-holder must nevertheless not vote in that way without having produced to the chair authorisation from the principal sufficient to show that the proxy-holder was entitled so to authenticate the proxy.

42. Vote by chair as proxy-holder

Where, in a meeting of creditors in an administration, insolvent or compulsory winding up, the chair holds a proxy which includes a requirement to vote for a particular resolution and no other person proposes that resolution—

- (a) the chair must propose it unless the chair considers that there is good reason for not doing so; and
- (b) if the chair does not propose it, the chair must as soon as reasonably practicable after the meeting deliver notice to the principal of the reason why not.

43. Corporate representation

(1) A person authorised to represent a corporation (other than as a proxy) at a meeting of creditors or contributories must produce to the chair —

- (a) the instrument conferring the authority; or
- (b) a copy of it certified as a true copy by—
 - (i) two Directors; or
 - (ii) a Director and the secretary; or
 - (iii) a Director in the presence of a witness who attests the Director's signature.

- (2) The instrument conferring the authority must have been executed in accordance with section 39(1) to (3) (*Execution of documents*) of the Companies Regulations unless the instrument is the constitution of the corporation.

44. Action where person excluded

- (1) In this paragraph and in paragraphs 45 (*Indication to excluded person*) and 46 (*Complaint*), an "**excluded person**" means a person who has taken all steps necessary to attend a meeting under the arrangements which—
- (a) have been put in place by the convener of the meeting under paragraph 18 (*Remote attendance at meetings*); but
 - (b) do not permit that person to attend the whole or part of that meeting.
- (2) Where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may—
- (a) continue the meeting;
 - (b) declare the meeting void and convene the meeting again;
 - (c) declare the meeting valid up to the point where the person was excluded and adjourn the meeting.
- (3) Where the chair continues the meeting, the meeting is valid unless—
- (a) the chair decides in consequence of a complaint under paragraph 46 (*Complaint*) to declare the meeting void and hold the meeting again; or
 - (b) the Court directs otherwise.
- (4) Without prejudice to sub-paragraph (2), where the chair becomes aware during the course of the meeting that there is an excluded person, the chair may, in the chair's discretion and without an adjournment, declare the meeting suspended for any period up to 1 hour.

45. Indication to excluded person

- (1) A person who claims to be an excluded person may request an indication of what occurred during the period of that person's claimed exclusion.
- (2) A request under sub-paragraph (1) must be made as soon as reasonably practicable in accordance with sub-paragraph (3).
- (3) A request under sub-paragraph (1) must be made to—
- (a) the chair where it is made during the course of the business of the meeting; or
 - (b) the Office-holder where it is made after the conclusion of the business of the meeting.
- (4) Where satisfied that the person making the request is an excluded person, the person to whom the request is made under sub-paragraph (3) must deliver the requested indication to the excluded person no later than three (3) business days after the day on which the exclusion is

claimed to have occurred, or on which the request was made under sub-paragraph (1), as the case may be.

46. Complaint

- (1) A person may make a complaint if that person—
 - (a) is, or claims to be, an excluded person; or
 - (b) attends the meeting and claims to have been adversely affected by the actual, apparent or claimed exclusion of another person.
- (2) The complaint must be made to the appropriate person, who is —
 - (a) the chair, where the complaint is made during the course of the meeting; or
 - (b) the Office-holder, where it is made after the meeting.
- (3) The complaint must be made as soon as reasonably practicable and, in any event, no later than 4.00 pm on the business day following—
 - (a) the day on which the person was, appeared or claimed to be excluded; or
 - (b) where an indication is sought under paragraph 45 (*Indication to excluded person*), the day on which the complainant received the indication.
- (4) The appropriate person must—
 - (a) consider whether there is an excluded person; and
 - (b) where satisfied that there is an excluded person, consider the complaint; and
 - (c) where satisfied that there has been prejudice, take such action as the appropriate person considers fit to remedy the prejudice.
- (5) Sub-paragraph (6) applies where the appropriate person is satisfied that the complainant is an excluded person and—
 - (a) a resolution was voted on at the meeting during the period of the person's exclusion; and
 - (b) the excluded person asserts how the excluded person intended to vote on the resolution.
- (6) Where the appropriate person is satisfied if the excluded person had voted as that person intended it would have changed the result of the resolution, then the appropriate person must—
 - (a) count the intended vote as having been cast in that way;
 - (b) amend the record of the result of the resolution; and
 - (c) where notice of the result of the resolution has been delivered to those entitled to attend the meeting, deliver notice to them of the change.

- (7) Where satisfied that more than one complainant is an excluded person, the appropriate person must have regard to the combined effect of the intended votes.
- (8) The appropriate person must deliver notice to the complainant of any decision.
- (9) A complainant who is not satisfied by the action of the appropriate person may apply to the Court for directions and any application must be made no more than two business days from the date of receiving the decision of the appropriate person.

PART 12

COMPANY MEETINGS

47. Company meetings (general)

Unless these Regulations provide otherwise, a Company meeting must be called and conducted, and records of the meeting must be kept in accordance with the law of the Global Market, including any applicable provision in or made under the Companies Regulations.

SCHEDULE 7

CREDITORS' COMMITTEES

PART 1

INTRODUCTORY

1. Formation of creditors' committees

- (1) This Part applies to creditors' committees in-
 - (a) an administration;
 - (b) an administrative receivership;
 - (c) a creditors' voluntary winding up; and
 - (d) a winding up by the court.
- (2) A creditors' meeting may establish a creditors' committee, as stated in Section 81 (*Creditors' committee*) of Part 2 (*Administration*), Section 170 (*Committee of creditors*) of Part 3 (*Receivership*) and Section 237 (*Liquidation committee*) of Part 4 (*Winding-up*), Section 170 (*Committee of creditors*) of Part 3 (*Receivership*) and such creditors' committee shall carry out functions conferred on it by or under these Regulations and this Schedule.

PART 2

INTERPRETATION

2. Functions of a committee

In addition to any functions conferred on a committee by any provision of these Regulations, a committee must assist the Office-holder in discharging the Office-holder's functions and act in relation to the Office-holder in such manner as may from time to time be agreed.

PART 3

MEMBERSHIP AND FORMALITIES OF FORMATION OF A COMMITTEE

3. Number of members of a committee

- (1) A committee must have at least three members but not more than five members.
- (2) Sub-paragraph (1) is subject to paragraphs 8 (*Cessation of creditors' committee in a winding up when creditors are paid in full*) and 9 (*Vacancies – creditor members of creditors' committee*) of this Schedule.

4. Eligibility to be a member of a committee

A person claiming to be a creditor is eligible to be a member of the creditors' committee-

- (a) in an administration or an administrative receivership if that person's claim-

- (i) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or dividend; and
- (ii) is not fully secured;
- (b) in a creditors' voluntary winding up or a winding up by the court, if-
 - (i) that person has delivered a proof;
 - (ii) the proof has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distributions or dividends; and
 - (iii) the debt is not fully secured.

5. Eligibility of body corporate to be a member of committee

A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative appointed under paragraph 16 (*Committee members' representatives*) of this Schedule.

6. Formalities of establishment (certificate of due constitution)

- (1) A creditors' committee does not come into being (and accordingly cannot act), until the Office-holder has issued a certificate of its due constitution.
- (2) The certificate of due constitution must-
 - (a) identify the proceedings;
 - (b) identify and provide contact details for the Office-holder;
 - (c) state that the committee has been duly constituted;
 - (d) identify each Company that is a member of the committee;
 - (e) give the full name and postal address of a member which is not a Company; and
 - (f) be authenticated and dated by the Office-holder.
- (3) If the Office-holder is not the chair of the creditors' meeting which resolves to establish the committee, then the chair must as soon as reasonably practicable deliver notice of the resolution to the Office-holder (or, as the case may be, to the person the meeting appoints as Office-holder), and inform the Office-holder of the names and addresses of the persons elected to be members of the committee.
- (4) Before a person may act as a member of the committee that person must agree to do so.
- (5) Agreement to act may be given by a person's proxy holder attending the meeting establishing the committee or, in the case of a Company, by its duly appointed representative, unless the relevant proxy or authorisation does not allow this.
- (6) The certificate of due constitution must be issued as soon as reasonably practicable after the minimum number of persons (in accordance with paragraph 3 (*Number of members of a committee*) of this Schedule) have agreed to act as members.

- (7) The Office-holder must, as soon as reasonably practicable deliver the certificate to the Registrar.

7. Issue of an amended certificate of due constitution

- (1) The Office-holder must issue an amended certificate of constitution if there is a change in membership of the committee.
- (2) The amended certificate must-
 - (a) identify the proceedings;
 - (b) identify and provide contact details for the Office-holder;
 - (c) state the date of the original certificate of due constitution and the date of the last amended certificate (if any);
 - (d) state that this amended certificate replaces the previous certificate;
 - (e) identify each Company that is a member of the committee;
 - (f) give the full name and postal address of a member which is not a Company;
 - (g) state whether any member has become a member since the issue of the previous certificate;
 - (h) give the full name and address of any member named on the previous certificate who is no longer a member and the date when such membership ended; and
 - (i) be authenticated and dated by the Office-holder.
- (3) The Office-holder must, as soon as reasonably practicable deliver the amended certificate to the Registrar.

8. Cessation of creditors' committee in a winding up when creditors are paid in full

- (1) Where the creditors have been paid in full together with interest in accordance with paragraph 28 (*Interest*) of Schedule 5 (*Proofs and Distributions*), the liquidator must-
 - (a) issue a certificate to that effect; and
 - (b) deliver to the Registrar a notice to that effect together with a copy of the certificate referred to in sub-paragraph 8(1)(a).
- (2) On the issue of such a certificate the creditors' committee ceases to exist.
- (3) The certificate must-
 - (a) identify the liquidator;
 - (b) contain a statement by the liquidator certifying that the creditors of the Company have been paid in full with interest in accordance with paragraph 28 (*Interest*) of Schedule 5 (*Proofs and Distributions*); and
 - (c) be authenticated and dated by the liquidator.

9. Vacancies - creditor members of creditors' committee

- (1) This paragraph applies if there is a vacancy in the membership of a creditors' committee.
- (2) The vacancy need not be filled if-
 - (a) the Office-holder and a majority of the remaining committee members agree; and
 - (b) the number of members does not fall below three.
- (3) The Office-holder may appoint a creditor, who is qualified under paragraph 4 (*Eligibility to be a member of a Committee*) of this Schedule to be a member of the committee, to fill the vacancy, if-
 - (a) a majority of the members of the committee agree to the appointment; and
 - (b) the creditor consents to act.
- (4) Alternatively, a meeting of creditors may resolve that a creditor be appointed (with that creditor's consent) to fill the vacancy.
- (5) Where the vacancy is filled by an appointment made by a meeting of creditors which the Office-holder does not attend, the chairman of the meeting must report the appointment to the Office-holder.

10. Resignation

A member of a committee may resign by notice in writing delivered to the Office-holder.

11. Termination of membership

Membership of a committee is automatically terminated if-

- (a) that member neither attends nor is represented at three consecutive meetings (unless it is resolved at the third of those meetings that this paragraph is not to apply in that member's case);
- (b) that member has ceased to be eligible to be a member of the committee under paragraph 4 (*Eligibility to be a member of a Committee*) of this Schedule; or
- (c) that member ceases to be a creditor and a period of three months has elapsed from the date that that member ceased to be a creditor or is found never to have been a creditor.

12. Removal

A member of the committee may be removed by a resolution at a meeting of creditors.

PART 4

MEETINGS OF COMMITTEE

13. Meetings of committee

- (1) Subject as follows, meetings of the committee must be held when and where determined by the Office-holder.
- (2) The Office-holder must call a first meeting of the committee to take place within six weeks of the committee's establishment.
- (3) After the calling of the first meeting, the Office-holder must call a meeting-
 - (a) if so requested by a member of the committee or a member's representative (the meeting then to be held within 21 days of the request being received by the Office-holder); and
 - (b) for a specified date, if the committee has previously resolved that a meeting be held on that date.
- (4) The Office-holder must give five business days' notice of the venue of a meeting to every member of the committee (or a member's representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of any member.
- (5) Waiver may be signified either at or before the meeting.
- (6) Where the Office-holder has determined that a meeting should be conducted and held in the manner referred to in paragraph 19 (*Remote attendance at meetings of creditors' committees*) of this Schedule, the notice period mentioned in sub-paragraph (4) is seven business days.

14. The chair at meetings

- (1) The chair at a meeting of the committee must be the Office-holder or an Appointed Person.
- (2) If within 30 minutes from the time fixed for commencement of the meeting there is no person present to act as chairman, the meeting stands adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.
- (3) Subject to anything to the contrary in these Regulations the meeting must be summoned and conducted in the case of a Company incorporated-
 - (a) in the Global Market; or
 - (b) outside the Global Market,in accordance with these Regulations, including any applicable provision in or made under the Companies Regulations.
- (4) The chairman of the meeting shall cause minutes of its proceedings to be entered in the Company's minute book.

15. Quorum

A meeting of the committee is duly constituted if due notice of it has been delivered to all the members, and at least two of the members are in attendance or represented.

16. Committee members' representatives

- (1) A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by the member for that purpose.
- (2) A person acting as a committee member's representative must hold a letter of authority entitling that person to act (either generally or specially) and authenticated by or on behalf of the committee member.
- (3) A proxy in relation to a creditors' meeting shall (unless it contains a statement to the contrary) be treated as a letter of authority to act generally authenticated by or on behalf of the committee-member.
- (4) The chair at a meeting of the committee may call on a person claiming to act as a committee member's representative to produce a letter of authority, and may exclude that person if it appears to the chair that the authority is deficient.
- (5) No person may be represented by-
 - (a) another member of the committee;
 - (b) a person who is at the same time representing another committee member;
 - (c) a body corporate; or
 - (d) a disqualified Director.
- (6) Where a representative authenticates any document on behalf of a committee member the fact that the representative authenticates as a representative must be stated below the authentication.

17. Voting rights and resolutions

- (1) At a meeting of the committee, each member (whether the member is in attendance or is represented by a representative) has one vote; and a resolution is passed when a majority of the members attending or represented have voted in favour of it.
- (2) Every resolution passed must be recorded in writing and authenticated by the chair, either separately or as part of the minutes of the meeting, and the record must be kept with the records of the Insolvency Proceedings and the Company's minute book.

18. Resolutions by correspondence

- (1) The Office-holder may seek to obtain the agreement of the members of the committee to a resolution by delivering to every member (or the member's representative designated for the purpose) a copy of the proposed resolution in accordance with this paragraph 18.
- (2) The Office-holder must deliver to each member of the committee or the member's representative (as the case may be) a copy of the proposed resolution.

- (3) The resolution must be set out in such a way that the recipient may indicate agreement or dissent on the copy and where there is more than one resolution may indicate agreement or dissent from each one separately.
- (4) A member of the committee may, within seven business days from the delivery of a resolution, require the Office-holder to summon a meeting of the committee to consider the matters raised by the resolution.
- (5) In the absence of such a request, the resolution is passed by the committee if a majority of the members deliver notice to the Office-holder that they agree with the resolution.
- (6) A copy of every resolution passed under this paragraph 18, and a note that the agreement of the committee was obtained, must be kept with the records of the Insolvency Proceedings.

19. Remote attendance at meetings of creditors' committees

- (1) This paragraph applies to a meeting of a creditors' committee held under these Regulations.
- (2) Where the Office-holder considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- (3) A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.
- (4) A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting, any information or opinions which that person has on the business of the meeting.
- (5) A person is able to exercise the right to vote at a meeting when-
 - (a) that person is able to vote during the meeting on resolutions or determinations put to the vote at that meeting; and
 - (b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the votes of all the other persons attending the meeting.
- (6) Where such a meeting is to be held the Office-holder must make whatever arrangements the Office-holder considers appropriate to-
 - (a) enable those attending the meeting to exercise their rights to speak or vote; and
 - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (7) A requirement in this Schedule to specify a place for the meeting may be satisfied by specifying the arrangements the Office-holder proposes to enable persons to exercise their rights to speak or vote where in the reasonable opinion of the Office-holder-
 - (a) a meeting will be attended by persons who will not be present together at the same place; and
 - (b) it is unnecessary or inexpedient to specify a place for the meeting.

- (8) In making the arrangements referred to in sub-paragraph (6) and in forming the opinion referred to in sub-paragraph (7)(b), the Office-holder must have regard to the legitimate interests of the committee members or their representatives attending the meeting in the efficient despatch of the business of the meeting.
- (9) Where the notice of a meeting does not specify a place for the meeting the Office-holder must specify a place for the meeting if at least one member of the committee requests the Office-holder to do so in accordance with paragraph 20 (*Procedure for requests that a place for a meeting should be specified*) of this Schedule.

20. Procedure for requests that a place for a meeting should be specified

- (1) This paragraph applies to a request to the Office-holder under paragraph 19(9) (*Remote attendance at meetings of creditors' committee*) to specify a place for the meeting.
- (2) The request must be made within five business days of the date on which the Office-holder sent the notice of the meeting in question.
- (3) Where the Office-holder considers that the request has been properly made in accordance with this paragraph, the Office-holder must-
 - (a) deliver notice to all those previously given notice of the meeting-
 - (i) that it is to be held at a specified place; and
 - (ii) as to whether the date and time are to remain the same or not;
 - (b) set a venue (including specification of a place) for the meeting, the date of which must be not later than seven business days after the original date for the meeting; and
 - (c) give five business days' notice of the venue to all those previously given notice of the meeting.
- (4) The notices required by sub-paragraphs (3)(a) and (3)(c) may be delivered at the same or different times.
- (5) Where the Office-holder has specified a place for the meeting in response to a request under paragraph 19(9) (*Remote attendance at meetings of creditors' committee*) of this Schedule, the chairman of the meeting must attend the meeting by being present in person at that place.

PART 5

SUPPLY OF INFORMATION TO THE COMMITTEE

21. Obligations to supply information to the committee: insolvent or compulsory winding up

- (1) This paragraph only applies in relation to an insolvent or compulsory winding up.
- (2) In the absence of any directions by the committee under sub-paragraph (3), not less than once in every period of six months the Office-holder must deliver a report to every member of the committee setting out the position generally in relation to the progress of the proceedings and matters arising in connection with them to which the Office-holder considers the committee's attention should be drawn.

- (3) The Office-holder must, as soon as reasonably practicable after being directed by the committee-
 - (a) deliver a report to every member of the committee setting out the matters mentioned in sub-paragraph (2) (but not more often than once in any period of two months); or
 - (b) comply with a request for information.
- (4) However the Office-holder need not comply with such a direction where it appears to the Office-holder that-
 - (a) the direction is frivolous or unreasonable; or
 - (b) the cost of complying would be excessive, having regard to the relative importance of the information; or
 - (c) the insolvent estate is without sufficient funds for the Office-holder to comply.
- (5) Where the committee has come into being more than 28 days after the appointment of the Office-holder, the Office-holder must make a summary report to the members of the committee of what actions the Office-holder has taken since the Office-holder's appointment, and must answer such questions as they may put to the Office-holder relating to the Office-holder's conduct of the proceedings so far.
- (6) A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report under this paragraph by the Office-holder of any matters previously arising, other than a summary report.
- (7) Nothing in this paragraph disentitles the committee, or any member of it, from having access to the Office-holder's record of the proceedings, or from seeking an explanation of any matter within the committee's responsibility.

22. Obligations to supply information to the committee: administration and administrative receivership

- (1) This paragraph only applies where-
 - (a) a committee in an administration resolves under Section 81(2) (*Creditors' committee*) to require the attendance of an administrator; or
 - (b) a committee in an administrative receivership resolves under Section 170 (*Committee of creditors*) to require the attendance of the administrative receiver.
- (2) The notice to the Office-holder requiring the Office-holder's attendance must be-
 - (a) authenticated by a member of the committee; and
 - (b) accompanied by a copy of the resolution.
- (3) A member's representative may authenticate the notice for the member.
- (4) The meeting at which the Office-holder's attendance is required must be fixed by the committee for a business day, and must be held at such time and place as the Office-holder determines.

- (5) Where the Office-holder so attends, the members of the committee may elect any one of their number to be chair of the meeting in place of the Office-holder or a nominee of the Office-holder.

PART 6

MISCELLANEOUS

23. Expenses of members etc.

- (1) The Office-holder must pay out of the insolvent estate the reasonable travelling expenses directly incurred by members of the committee or their representatives in attending the committee's meetings or otherwise on the committee's business.
- (2) In the case of an administrative receivership-
- (a) such expenses are an expense of the receivership; and
 - (b) the requirement for the Office-holder to pay the expenses does not apply to a meeting of the committee held within three months of a previous meeting, unless the meeting is summoned by the administrative receiver.
- (3) In any other case-
- (a) the expenses are an expense of the Insolvency Proceedings; and
 - (b) the requirement for the Office-holder to pay the expenses does not apply to a meeting of the committee held within six weeks of a previous meeting, unless the meeting is summoned by the Office-holder.

24. Dealings by committee members and others

- (1) This paragraph applies in a creditors' voluntary winding up and a winding up by the court to the following persons-
- (a) a member of the committee;
 - (b) a member's representative;
 - (c) a person who is an associate of-
 - (i) a member; or
 - (ii) a member's representative; and
 - (d) a person who has been a member at any time in the last 12 months.
- (2) Such a person must not enter into a transaction as a result of which that person would-
- (a) receive as an expense of the Insolvency Proceedings a payment for services given or goods supplied in connection with the administration of the insolvent estate;
 - (b) obtain a profit from the administration of the Company's assets; or
 - (c) acquire an asset forming part of the insolvent estate.

- (3) However such a transaction may be entered into-
 - (a) with the prior sanction of the committee, where it is satisfied (after disclosure of the circumstances) that the person will be giving full value in the transaction;
 - (b) with the prior permission of the Court; or
 - (c) if that person does so as a matter of urgency, or by way of performance of a contract in force before the start of the Insolvency Proceedings, and that person obtains the Court's permission for the transaction, having applied for it without undue delay.
- (4) Neither a member nor a representative of a member who is to participate directly or indirectly in a transaction may vote on a resolution to sanction that transaction.
- (5) The Court may, on the application of a person interested-
 - (a) set aside a transaction on the ground that it has been entered into in contravention of this paragraph; and
 - (b) make such other order about the transaction as it thinks just, including an order requiring a person to whom this paragraph applies to account for any profit obtained from the transaction and compensate the insolvent estate for any resultant loss.
- (6) The Court will not make an order under the previous sub-paragraph in respect of an associate of a member of the committee or of a committee member's representative, if satisfied that the associate or representative entered into the relevant transaction without having any reason to suppose that in doing so the associate or representative would contravene this paragraph 24.
- (7) The costs of an application to the Court for permission under this paragraph do not fall on the insolvent estate, unless the Court so orders.

25. Dealings by committee members and others: administration and administrative receivership

- (1) This paragraph applies in an administration and administrative receivership.
- (2) Membership of the committee does not prevent a person from dealing with the Company provided that a transaction in the course of such dealings is in good faith and for value.
- (3) The Court may, on the application of an interested person-
 - (a) set aside a transaction which appears to it to be contrary to this paragraph; and
 - (b) make such other order about the transaction as it thinks just including an order requiring a person to whom this paragraph applies to account for any profit obtained from the transaction and compensate the Company for any resultant loss.

26. Formal defects

The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of a member of the committee or a committee member's representative or in the formalities of its establishment.

27. Winding up by the Court - functions of committee

If for the time being there is no creditors' committee in a winding up of a Company by the court the functions of the creditors' committee are vested in the [*Court/Registrar*].

PART 7

WINDING UP BY THE COURT - ADMINISTRATION FOLLOWED BY WINDING UP

28. Application of Part

This Part applies where a winding-up order has been made by the Court upon the application of the administrator under Section 122 (*Court ending administration on application of administrator*) of these Regulations and-

- (a) the court makes a winding-up order under Section 217(3) (*Appointment of provisional liquidator or of liquidator following administration*) appointing the administrator as the liquidator;
- (b) a creditors' committee was established in the administration under Section 81 (*Creditors' committee*) of the Regulations; and
- (c) at the date of the winding-up order the committee has at least three, but no more than five, members.

29. Continuation of creditors' committee

The committee is deemed to have been established under Section 81 (*Creditors' Committee*) of these Regulations and -

- (a) no action may be taken under Section 237 (*Liquidation committee*) to establish any other committee;
- (b) pending the issue of a certificate of continuance (as referred to in paragraph 30 (*Certificate of continuance*) to this Schedule below), the committee is suspended and cannot act.

30. Certificate of continuance

- (1) The liquidator must ascertain whether the members of the committee agree to continue to act.
- (2) If the minimum number of three members required by paragraph 3 (*Number of members of a committee*) of this Schedule to form a committee have signified their agreement to act, the liquidator must issue a certificate of the committee's continuance.
- (3) The certificate of continuance must-
 - (a) identify and provide contact details for the Office-holder;
 - (b) identify each Company that is a member of the committee;
 - (c) where a member of the committee is not a Company, state the full name and postal address of that member;

- (d) where a member represents a creditor, state the name and postal address of the creditor that member is representing;
 - (e) contain a statement of the continuance of the committee established under Section 81 (*Creditors' Committee*) of these Regulations; and
 - (f) be authenticated and dated by the Office-holder.
- (4) No person may act or continue to act as a member of the committee unless that person has agreed to do so.
- (5) The liquidator must deliver the certificate of continuance to the Registrar.

31. Amended certificate of continuance

- (1) If members of the former creditors' committee other than those identified in the certificate of continuance signify their agreement to act as members of the creditors' committee, or if there is any other change in the membership of the committee, the liquidator must as soon as reasonably practicable issue an amended certificate of continuance.
- (2) The amended certificate must-
- (a) identify and provide contact details for the Office-holder;
 - (b) state the date of the certificate of continuance and the date of the most recent amended certificate (if any) issued under this paragraph;
 - (c) state that this amended certificate replaces the latest certificate referred to in sub-paragraph (2)(b);
 - (d) identify each Company that is a member of the committee;
 - (e) where a member of the committee is not a Company, state the full name and postal address of that member;
 - (f) where a member represents a creditor, state the name and postal address of the creditor that member is representing;
 - (g) indicate any member of the committee who has become a member since the latest certificate referred to in sub-paragraph (2)(b);
 - (h) for any former member of the committee named on the latest certificate referred to in sub-paragraph (2)(b) state the relevant information under sub-paragraph (2)(d), (2)(e) or (2)(f) as applicable and the date when that member's membership of the committee terminated; and
 - (i) be authenticated and dated by the Office-holder.
- (3) The liquidator must deliver the amended certificate of continuance to the Registrar.

32. Obligations of the liquidator to the committee

- (1) As soon as reasonably practicable after the issue of the certificate of continuance under paragraph 30 (*Certificate of continuance*) of this Schedule, the liquidator must report to the

creditors' committee what actions the liquidator has taken since the date on which the Company went into liquidation.

- (2) A person who becomes a member of the committee after the date of issue of the certificate of continuance is not entitled to require a report from the liquidator of a matter previously arising, other than a summary report.
- (3) Nothing in this paragraph 32 disentitles the committee, or a member of it, from having access to the records of the winding up (whether relating to the period when the company was in administration or to any subsequent period), or from seeking an explanation of a matter within the committee's responsibility.

SCHEDULE 8

PREFERENTIAL DEBTS

- (1) So much of any amount which is—
 - (a) owed by the Company to a person who is or has been an employee of the Company; and
 - (b) payable by way of non-discretionary Salary (including agreed holiday remuneration) or contributions to an occupational pension scheme in respect of the whole or any part of the period of three (3) months before the relevant date.

- (2) "**Relevant date**" for these purposes means:
 - (a) in relation to a Company which is being wound up by the Court, the date of the appointment of a provisional liquidator or, if no such appointment is made, the date of the winding up order; or
 - (b) in relation to a Company which is being wound up voluntarily, the date of the resolution for the winding up of the Company; or
 - (c) in relation to a Company which is in administration, the date on which it entered administration.

SCHEDULE 9
CONTRAVENTIONS

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
Part 2: Administration		
s.32(6)	Notice of appointment - making a false declaration	Level [●]
s.35(2)	Commencement of appointment – failure to notify the administrator after appointment	Level [●]
s.40(7)	Notice of intention to appoint – making a false declaration	Level [●]
s.42(7)	Notice of appointment– making a false declaration	Level [●]
s.44(2)	Commencement of appointment – failure to notify the administrator after appointment	Level [●]
s.56(2)	Publicity - failure to publicise Administration	Level [●]
s.56(4)	Publicity – failure to publicise Deed of Company Arrangement	Level [●]
s.57(8)	Announcement of administrator's appointment – formalities to adhere to	Level [●]
s.60(7)	Statement of Company's affairs – failure to provide statement	Level [●]
s.65(8)	Administrator's proposals – failure to submit proposal	Level [●]
s.70(5)	Requirement for initial creditors' meeting – failure to convene meeting	Level [●]
s.73(4)	Business and result of initial creditors' meeting – failure to report	Level [●]
s.74(8)	Revision of administrator's proposals – failure to report	Level [●]
s.78(10)	Reports to Creditors – failure to report	Level [●]
s.80(2)	Further creditors' meeting – failure to convene meeting	Level [●]
s.109(6)	Charged property: – failure to send copy of the order	Level [●]
s.110(5)	Hire-purchase property – failure to send copy of the order	Level [●]
s.119(5)	Automatic end of administration – failure to notify Registrar of termination	Level [●]
s.119(11)	Automatic end of administration – failure to notify Registrar of	Level [●]

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
	extension	
s.121(3)	Notice of automatic end of administration – failure to notify	Level [●]
s.124(6)	Termination of administration where objective achieved – failure to notify	Level [●]
s.133(9)	Moving from administration to dissolution – failure to notify	Level [●]
s.136(3)	Notice to Companies Registrar where administration ends – failure to notify	Level [●]
s.143(3)	Administrator ceasing to be qualified – failure to give notice	Level [●]
s.153(2)	Failure of Administrator in their duties vacating office	Level [●]
s.154(6)	Joint administrators – may be punished individually	Level [●]
Part 3: Receivership		
s.162(2)	Notification that receiver has been appointed – failure to notify	Level [●]
s.166(3)	Duties of receiver - failure to deliver accounts to Registrar	Level [●]
s.168(7)	Vacation of office – failure to vacate and file notice	Level [●]
s.171(3)	Notice and advertisement of appointment - formalities to adhere to	Level [●]
s.174(5)	Notice requiring Statement of Affairs – failure to submit	Level [●]
s.177(7)	Power to dispose of charged property – failure to submit a copy of the order	Level [●]
s.178(3)	Meeting of Creditors – failure to convene meeting	Level [●]
Part 4: Winding Up		
s.182(3)	Statutory declaration of solvency - without reasonable grounds	Level [●]
s.188(3)	Progress report to members at year's end – failure to report	Level [●]
s.189(4)	Final meeting prior to dissolution - failure to send to Registrar a copy of account of winding up and return of final meeting	Level [●]
s.190(4)	Effect of Company's insolvency – failure to convene meeting where Company insolvent	Level [●]
s.193(3)	Meeting of members and creditors – failure to convene meetings	Level [●]

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
s.197(3)	Progress report to members and creditors at year's end – failure to produce and distribute reports	Level [●]
s.198(4)	Final meeting prior to dissolution – failure to submit a copy of the winding up	Level [●]
s.199(2)	Notice of resolution to wind up – failure to publish	Level [●]
s.201(2)	Notice by Liquidator of his appointment - failure to publish	Level [●]
s.214(3)	Notice of winding up order - failure to publish	Level [●]
s.218(3)	Power to stay winding up – failure to forward copies of the order	Level [●]
s.219(2)	Progress report to members and creditors – failure to produce and submit	Level [●]
s.220(4)	Duty to summon final meeting - Liquidator failing to send to Registrar a copy of account of winding up and return of final meetings	Level [●]
s.223(2)	Notification that Company is in liquidation - failure to notify	Level [●]
s.224(5)	Powers of liquidator - Liquidator exercising powers before creditors' meeting	Level [●]
s.225(9)	Power to disclaim onerous property – failure to submit notice to Registrar	Level [●]
s.240(4)	Notice requiring Statement of Affairs – failure to submit	Level [●]
s.249(1)	Fraud in anticipation of winding up	Level [●]
s.250	Transaction in fraud of creditors	Level [●]
s.251	Misconduct in course of winding up	Level [●]
s.252	Falsification of company's books	Level [●]
s.253	Material omission from statement relating to Company's affairs	Level [●]
s.254	False representations to Creditors	Level [●]
s.260(3)	Failing to co-operate with Office-holder	Level [●]
s.301(4)	Dissolution and early dissolution – failure to deliver copy of order to Registrar	Level [●]

<i>Provision of Regulations creating contravention</i>	<i>General nature of contravention</i>	<i>Level of fine</i>
Schedule 1 (<i>Interpretation</i>) Part 10 (<i>Inspection of Documents, Copies and Provision and Information</i>)		
Paragraph 52(3) of Schedule 1	Falsely claiming to be a Creditor, member of a Company or a contributory of a Company to gain sight of certain documents	Level [●]

SCHEDULE 10

APPLICATION OF UNCITRAL MODEL LAW

CHAPTER I General Provisions

Article 1. Scope of application

- (1) This Law applies where:
 - (a) assistance is sought in the Global Market by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (b) assistance is sought in a foreign State in connection with a proceeding under these Regulations; or
 - (c) a foreign proceeding and a proceeding under these Regulations in respect of the same debtor are taking place concurrently; or
 - (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under these Regulations.
- (2) This Law does not apply to a proceeding concerning an entity which the Board of Directors of the Global Market designates as an entity which falls within this paragraph (2).

Article 2. Definitions

For the purposes of this Law:

- (a) "**foreign proceeding**" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (b) "**foreign main proceeding**" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) "**foreign non-main proceeding**" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of sub-paragraph (f) of this article;
- (d) "**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 assets or affairs or to act as a representative of the foreign proceeding;
- (e) "**foreign court**" means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) "**establishment**" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services; and
- (g) "**Global Market Insolvency Officeholder**" means a liquidator or provisional liquidator within the meaning of these Regulations.

Article 3. International obligations of the Global Market

To the extent that this Law conflicts with an obligation of the Global Market arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

Article 4. Competent court

The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Court.

Article 5. Authorisation of Global Market Insolvency Officeholder to act in a foreign State

A Global Market Insolvency Officeholder is authorised to act in a foreign State on behalf of a proceeding under these Regulations, as permitted by the applicable foreign law.

Article 6. Public policy exception

Nothing in this Law prevents the Court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of the Global Market.

Article 7. Additional assistance under other laws

Nothing in this Law limits the power of the Court or a Global Market Insolvency Officeholder to provide additional assistance to a foreign representative under other laws of the Global Market.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

CHAPTER II Access of Foreign Representatives and Creditors to Courts in the Global Market

Article 9. Right of direct access

A foreign representative is entitled to apply directly to the Court.

Article 10. Limited jurisdiction

The sole fact that an application pursuant to this Law is made to the Court by a foreign representative does not subject the foreign representative or the foreign assets of the debtor to the jurisdiction of the court of the Global Market for any purpose other than the application.

Article 11. Application by a foreign representative to commence a proceeding under these Regulations

A foreign representative appointed in foreign main proceedings or foreign non-main proceedings is entitled to apply to commence a proceeding under these Regulations if the conditions for commencing such a proceeding are otherwise met.

Article 12. Participation of a foreign representative in a proceeding under these Regulations

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under these Regulations.

Article 13. Access of foreign creditors to a proceeding under these Regulations

- (1) Subject to paragraph (2) of this Article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under these Regulations as creditors in the Global Market.
- (2) Paragraph (1) of this Article does not affect the ranking of claims in a proceeding under these Regulations, except that the claims of foreign creditors shall not be given lower priority than that of general unsecured creditors solely because the holder of such a claim is a foreign creditor.

Article 14. Notification to foreign creditors of a proceeding under these Regulations

- (1) Whenever under these Regulations notification is to be given to creditors in the Global Market, such notification shall also be given to the known creditors that do not have addresses in the Global Market. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.
- (3) When a notification of a right to file a claim is to be given to foreign creditors, the notification shall:
 - (a) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) indicate whether secured creditors need to file their secured claims; and
 - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of the Global Market and the orders of the Court.

CHAPTER III Recognition of a Foreign Proceeding and Relief

Article 15. Application for recognition of a foreign proceeding

- (1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (2) An application for recognition shall be accompanied by:
 - (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) in the absence of evidence referred to in sub-paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings and proceedings under these Regulations in respect of the debtor that are known to the foreign representative.
- (4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of the Global Market.

Article 16. Presumptions concerning recognition

- (1) If the decision or certificate referred to in paragraph (2) of Article 15 indicates that the foreign proceeding is a proceeding within the meaning of sub-paragraph (a) of Article 2 and that the foreign representative is a person or body within the meaning of sub-paragraph (d) of Article 2, the Court is entitled to so presume.
- (2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 17. Decision to recognise a foreign proceeding

- (1) Subject to Article 6, a foreign proceeding shall be recognised if:
 - (a) the foreign proceeding is a proceeding within the meaning of sub-paragraph (a) of Article 2;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of sub-paragraph (d) of Article 2;
 - (c) the application meets the requirements of paragraph (2) of Article 15; and
 - (d) the application has been submitted to the Court referred to in Article 4.
- (2) The foreign proceeding shall be recognised:
 - (a) as a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (b) as a foreign non-main proceeding if the debtor has an establishment within the meaning of sub-paragraph (f) of Article 2 in the foreign State.
- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) The provisions of Articles 15 to 16, this Article and Article 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Article 18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the Court promptly of:

- (a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) any other foreign proceeding or proceeding under these Regulations regarding the same debtor that becomes known to the foreign representative.

Article 19. Relief that may be granted upon application for recognition of a foreign proceeding

- (1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
 - (a) staying execution against the debtor's assets;
 - (b) entrusting the administration or realization of all or part of the debtor's assets located in the Global Market to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; or
 - (c) any relief mentioned in paragraph (1)(c), (d) and (g) of Article 21.
- (2) Unless extended under paragraph (1)(f) of Article 21, the relief granted under this article terminates when the application for recognition is decided upon.
- (3) The Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

Article 20. Effects of recognition of a foreign main proceeding

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding:
 - (a) commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (b) execution against the debtor's assets is stayed; and
 - (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (2) The stay and suspension referred to in paragraph (1) of this Article shall be:
 - (a) the same in scope and effect as if the debtor had been made the subject of a winding up order under these Regulations; and
 - (b) subject to the same powers of the Court and the same prohibitions, limitations, exceptions and conditions as would apply under these Regulations in such a case, and the provisions of paragraph (1) of this Article shall be interpreted accordingly.

- (3) Paragraph (1)(a) of this Article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (4) Paragraph (1) of this Article does not affect the right to request or otherwise initiate the commencement of a proceeding under these Regulations or the right to file claims in such a proceeding.

Article 21. Relief that may be granted upon recognition of a foreign proceeding

- (1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including:
 - (a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph (1)(a) of Article 20;
 - (b) staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of Article 20;
 - (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1)(c) of Article 20;
 - (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (e) entrusting the administration or realisation of all or part of the debtor's assets located in the Global Market to the foreign representative or another person designated by the Court;
 - (f) extending relief granted under paragraph (1) of Article 19; or
 - (g) granting any additional relief that may be available to under the laws of the Global Market.
- (2) Upon recognition of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Global Market to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in the Global Market are adequately protected.
- (3) In granting relief under this Article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of the Global Market, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 22. Protection of creditors and other interested persons

- (1) In granting or denying relief under Article 19 or 21, or in modifying or terminating relief under paragraph (3) of this Article, the Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

- (2) The Court may subject relief granted under Article 19 or 21 to conditions it considers appropriate.
- (3) The Court may, at the request of the foreign representative or a person affected by relief granted under Article 19 or 21, or at its own motion, modify or terminate such relief.

Article 23. Actions to avoid acts detrimental to creditors

- (1) Upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the Court for an order under or in connection with Chapter 3 (*Voidable Transactions*) of Part 5 (*Protection of Assets in Liquidation and Administration*) of these Regulations.
- (2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the law of the Global Market, should be administered in the foreign non-main proceeding.
- (3) At any time when a proceeding under these Regulations is taking place regarding the debtor, the foreign representative shall not make an application under this Article except with the permission of the Court.

Article 24. Intervention by a foreign representative in proceedings in the Global Market

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of the Global Market are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV Cooperation with Foreign Courts and Foreign Representatives

Article 25. Cooperation and direct communication between the Court and foreign courts or foreign representatives

- (1) In matters referred to in Article 1, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a Global Market Office-holder.
- (2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 26. Cooperation and direct communication between the Global Market Office-holder and foreign courts or foreign representatives

- (1) In matters referred to in Article 1, a Global Market Office-holder shall, in the exercise of its functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
- (2) The Global Market Office-holder is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Article 27. Forms of cooperation

Cooperation referred to in Articles 25 and 26 may be implemented by any appropriate means, including:

- (a) appointment of a person or body to act at the direction of the Court;

- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by the Court of agreements concerning the coordination of proceedings; or
- (e) coordination of concurrent proceedings regarding the same debtor.

CHAPTER V Concurrent Proceedings

Article 28. Commencement of a proceeding under the Global Market after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under these Regulations may be commenced only if the debtor has assets in the Global Market; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the Global Market and, to the extent necessary to implement cooperation and coordination under Articles 25, 26 and 27, to other assets of the debtor that, under the law of the Global Market, should be administered in that proceeding.

Article 29. Coordination of a proceeding under these Regulations and a foreign proceeding

Where a foreign proceeding and a proceeding under these Regulations are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under Articles 25, 26 and 27, and the following shall apply:

- (a) When the proceeding in the Global Market is taking place at the time the application for recognition of the foreign proceeding is filed:
 - (i) any relief granted under Article 19 or 21 must be consistent with the proceeding in the Global Market; and
 - (ii) if the foreign proceeding is recognised in the Global Market as a foreign main proceeding, Article 20 does not apply.
- (b) When the proceeding in the Global Market commences after recognition, or after the filing of the application for recognition, of the foreign proceeding:
 - (i) any relief in effect under Article 19 or 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the proceeding in the Global Market; and
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of Article 20 shall be modified or terminated pursuant to paragraph (2) of Article 20 if inconsistent with the proceeding in the Global Market.
- (c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of the Global Market, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 30. Coordination of more than one foreign proceeding

In matters referred to in Article 1, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under Articles 25, 26 and 27, and the following shall apply:

- (a) any relief granted under Article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under Article 19 or 21 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding; or
- (c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under these Regulations, proof that the debtor is insolvent.

Article 32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under these Regulations regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

SCHEDULE 11

SUPPLEMENTAL PROVISIONS APPLICABLE TO PROTECTED CELL COMPANIES

1. Interpretation

In this Schedule, the defined terms listed below shall have the following meanings:

"**cell**" has the meaning given in the Companies Regulations.

"**Cell Liquidator**" means the person appointed as cell liquidator under a Cell Liquidation Order.

"**Cell Liquidation Order**" means an order under paragraph 4 (*Cell Liquidation Order*) of this Schedule.

"**cellular assets**" means the member of a cell.

"**cell member**" has the meaning given in the Companies Regulations.

"**non-cellular assets**" has the meaning given in the Companies Regulations.

2. Liquidation of a Protected Cell Company

- (1) The members of a Protected Cell Company shall not pass a resolution to appoint a liquidator to the Protected Cell Company under these Regulations or the Companies Regulations if any cell is subject to a Cell Liquidation Order.
- (2) Any resolution passed contrary to sub-paragraph (1) shall be void and of no effect.
- (3) In the liquidation of a Protected Cell Company, the liquidator—
 - (a) shall, in the course of winding-up the Protected Cell Company, wind-up each cell of the Protected Cell Company;
 - (b) shall be bound to deal with the Protected Cell Company's cellular assets and non-cellular assets in accordance with the requirements set out in Section 11 (*Application of the Insolvency Regulations to cell Companies*) of Part 36 (*Cell Companies*) of the Companies Regulations; and
 - (c) in discharge of the claims of creditors of the Protected Cell Company, shall apply the Protected Cell Company's cellular assets and non-cellular assets to those entitled to have recourse thereto.
- (4) Parts 4 (*Winding Up*) and 5 (*Protection of Assets in Liquidation and Administration*)⁵ of these Regulations shall apply to the liquidation of a Protected Cell Company with such modifications as are necessary to give effect to paragraph (3), and in the event of any conflict between the provisions of Parts 4 (*Winding Up*) and 5 (*Protection of Assets in Liquidation and Administration*) and this Schedule the provisions of this Schedule shall prevail.

⁵ To be considered whether Part 2 (Administration) is to apply to cell companies

3. Application of these Regulations to cells

- (1) Subject to sub-paragraph (2), these Regulations shall apply to a cell of a Protected Cell Company which is the subject of a Cell Liquidation Order as if, where the context admits—
 - (a) the cell was a separate Company;
 - (b) the cell members were members of that separate Company;
 - (c) the cellular assets attributable to the cell were the assets of that separate Company; and
 - (d) references to liquidation or winding-up include a reference to a Cell Liquidation Order; and
 - (e) references to Insolvency Proceedings include a reference to a Cell Liquidation Order.
- (2) Parts 3 (*Receivership*) and 7 (*Cross-Border Insolvency*) and Chapters 1 (*General*), 2 (*Voluntary winding up*), 3 (*Members' voluntary winding up*), 4 (*Creditors' voluntary winding up*), 5 (*Provisions applying to both kinds of voluntary winding up*) and 6 (*Compulsory winding up*) of Part 4 (*Winding Up*) of these Regulations shall not apply to a cell of a Protected Cell Company⁶.
- (3) In the event of any conflict between the provisions of this Schedule and other provisions of these Regulations, the provisions of this Schedule shall prevail.

4. Cell Liquidation Order

- (1) Subject to the provisions of this paragraph 4, if in relation to a Protected Cell Company the Court is satisfied—
 - (a) that the cellular assets attributable to a particular cell of the Protected Cell Company are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and
 - (b) that the making of an order under this paragraph 4 would achieve the purposes set out in sub-paragraph (3),

the Court may make a Cell Liquidation Order under this paragraph 4 in respect of that cell.

- (2) A Cell Liquidation Order may be made in respect of one or more cells of a Protected Cell Company.
- (3) A Cell Liquidation Order is an order directing that the business and cellular assets attributable to a cell shall be managed by a Cell Liquidator specified in the order for the purposes of—
 - (a) the orderly closing down of the business attributable to the cell; and
 - (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.
- (4) Where the Court makes a Cell Liquidation Order it shall, at the same time, appoint a liquidator to act as Cell Liquidator under the Cell Liquidation Order.

⁶ To be considered whether Part 2 (Administration) is to apply to cell companies

- (5) A Cell Liquidator appointed under this paragraph 4 must be a person registered as an insolvency practitioner under Part 10 (*Insolvency Practitioners*) of these Regulations.

5. Application for a Cell Liquidation Order

- (1) An application for a Cell Liquidation Order in respect of a cell of a Protected Cell Company may be made by—

- (a) the Protected Cell Company;
- (b) the Directors of the Protected Cell Company;
- (c) any creditor of the Protected Cell Company in respect of that cell;
- (d) any cell member in respect of that cell; or
- (e) the Regulator.

- (2) Notice of an application to the Court for a Cell Liquidation Order in respect of a cell of a Protected Cell Company shall be served upon—

- (a) the Protected Cell Company;
- (b) the Regulator; and
- (c) such other persons, if any, as the Court may direct,

each of whom shall be given an opportunity of making representations to the Court before the Cell Liquidation Order is made.

- (3) The Court, on hearing an application for a Cell Liquidation Order, may, instead of making the order sought or dismissing the application, make an interim order or adjourn the hearing, conditionally or unconditionally.

- (4) The Court may make a Cell Liquidation Order subject to such terms and conditions as it considers appropriate.

- (5) A Cell Liquidation Order shall—

- (a) not be made if a liquidator is appointed to the Protected Cell Company; and
- (b) be discharged upon the appointment of a liquidator in respect of the Protected Cell Company, unless the Court orders otherwise on being satisfied that it is desirable to do so in order to protect the interests of members or creditors, or potential members or creditors, of the cell.

6. Functions and powers of a Cell Liquidator

- (1) The Cell Liquidator of a cell of a Protected Cell Company may—

- (a) do all such things as may be necessary or expedient for the purposes set out in paragraph 4(3) (*Cell Liquidation Order*) of this Schedule; and

- (b) exercise all the functions and powers of the Directors in respect of the business and cellular assets attributable to the cell.
- (2) The Cell Liquidator may at any time apply to the Court for—
- (a) directions as to the extent or exercise of any function or power; or
 - (b) an order as to any matter arising in the course of the liquidation of the cell.
- (3) In exercising his functions and powers the Cell Liquidator shall be deemed to act as agent of the Protected Cell Company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, negligent, or acts in bad faith.
- (4) Any person dealing with the Cell Liquidator in good faith and for value need not inquire whether the Cell Liquidator is acting within his powers.

7. Effect of Cell Liquidation Order

- (1) When an application has been made for, and during the period of operation of, a Cell Liquidation Order,
- (a) no proceedings may be instituted or continued by, or against, the Protected Cell Company in relation to the cell in respect of which the Cell Liquidation Order was made, or against the business or cellular assets attributable to that cell; and
 - (b) no steps may be taken to enforce any security or in the execution of legal process in respect of the business or cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made,

except with the consent of the Cell Liquidator or with leave of the Court.

- (2) During the period of operation of a Cell Liquidation Order, the Directors shall not exercise any powers or functions in respect of the business or the cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made, without the consent of the Cell Liquidator.

8. Distribution of Cellular Assets

- (1) Subject to Sections 268 (*Insolvency of clearing and settlement intermediaries or Authorised Market Institutions*) and **Error! Reference source not found.** (*Client Assets*) of these Regulations, the cellular assets attributable to the cell in respect of which the Cell Liquidation Order was made shall be applied by the Cell Liquidator in satisfaction of the following liabilities in the order of priority of—
- (a) all remuneration and expenses properly incurred by the Cell Liquidator in winding up the cell;
 - (b) any preferential debts of the Protected Cell Company which are attributable to the business or cellular assets of the cell;
 - (c) the remainder of the cell's liabilities in accordance with sub-paragraph (3); and
- subject to that application, any surplus shall be distributed in accordance with sub-paragraphs (4) and (5).

- (2) Creditors of a cell that is subject to a Cell Liquidation Order shall be regarded as preferential creditors of the cell to the extent they would be preferential creditors under Schedule 8 (*Preferential Debts*) of these Regulations if—
 - (a) the cell was a Company; and
 - (b) the Cell Liquidator was a liquidator under these Regulations.
- (3) The cell's liabilities (other than the remuneration and expenses of the Cell Liquidator and preferential debts) rank equally between themselves in the Cell Liquidation and shall be paid in full unless the cellular assets are insufficient to meet them, in which case they abate in equal proportions among themselves.
- (4) Subject to the Articles of the Protected Cell Company, any surplus shall be distributed among the cell members in respect of the cell that is subject to the Cell Liquidation Order or the persons otherwise entitled to the surplus, in each case according to their respective rights and interests in or against the Protected Cell Company.
- (5) Where there are no cell members in respect of the cell and no persons otherwise entitled to the surplus, any surplus shall be paid to the Protected Cell Company and shall become a non-cellular asset of the Protected Cell Company.

9. Discharge and variation of Cell Liquidation Orders

- (1) An application to Court may be made by a Cell Liquidator to—
 - (a) discharge the Cell Liquidation Order if he thinks the purpose for which the order was made has been achieved or substantially achieved or is incapable of being achieved; or
 - (b) vary the Cell Liquidation Order.
- (2) The Court, on hearing an application for the discharge or variation of a Cell Liquidation Order, may make such order as it considers appropriate, may dismiss the application, may make any interim order or may adjourn the hearing, conditionally or unconditionally.
- (3) Upon the Court discharging a Cell Liquidation Order in respect of a cell on the ground that the purpose for which the order was made has been achieved or substantially achieved—
 - (a) the Court may direct that any payment made by the Cell Liquidator to any creditor of the Protected Cell Company in respect of that cell shall be deemed full satisfaction of the liabilities of the Protected Cell Company to that creditor in respect of that cell; and
 - (b) the creditor's claims against the Protected Cell Company in respect of that cell shall be thereby deemed extinguished but nothing in this sub-paragraph (3) shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the Protected Cell Company.
- (4) The Court may, upon discharging a Cell Liquidation Order in respect of a cell of a Protected Cell Company, direct that the cell shall be dissolved on such date as the Court may specify.
- (5) When a cell of a Protected Cell Company has been dissolved under sub-paragraph (4), the Protected Cell Company may not undertake business or incur liabilities in respect of that cell.

10. Remuneration of Cell Liquidator

The remuneration of a Cell Liquidator shall be fixed by the Court and shall be payable, in priority to all other claims, from—

- (a) the cellular assets attributable to the cell in respect of which the Cell Liquidator was appointed; and
- (b) to the extent that these may be insufficient, from the non-cellular assets of the Protected Cell Company,

but not from any of the cellular assets attributable to any other cell of the Protected Cell Company.

SCHEDULE 12

REMUNERATION

Remuneration in administration, winding up and in relation to a Deed of Company Arrangement

1. Application of Schedule

- (1) This Schedule applies to the remuneration of-
 - (a) administrators,
 - (b) liquidators in creditors' voluntary windings up or windings up by the Court; and
 - (c) liquidators in members' voluntary windings up where expressly specified (but not otherwise).
- (2) The paragraphs which by virtue of sub-paragraph (1)(c) apply in members' voluntary windings up are paragraphs—
 - (a) 2 (*Remuneration: principles*);
 - (b) 3(5) to (8) and (10) (*Remuneration: procedure for initial determination*);
 - (c) 5(1), (6) and (7) (*Remuneration: recourse by administrator or liquidator to the Court*);
 - (d) 7 (*Remuneration: new administrator or liquidator*);
 - (e) 8 (*Remuneration: apportionment of set fees*);
 - (f) 9(1)(c), (2), (3), (4) and (5) to (8) (*Creditors' or members' claim that remuneration is, or other expenses are, excessive*); and
 - (g) 10 (*Remuneration in winding up where assets realised on behalf of charge holder*).
- (3) This Schedule does not apply to the remuneration of provisional liquidators.

2. Remuneration: principles

- (1) An administrator or liquidator (including in a members' voluntary winding up) is entitled to receive remuneration for services as Office-holder.
- (2) The basis of remuneration must be fixed-
 - (a) as a percentage of the value of-
 - (i) the property with which the administrator has to deal; or
 - (ii) the assets which are realised, distributed or both realised and distributed by the liquidator;

(b) by reference to the time properly given by the Office-holder and the Office-holder's staff in attending to matters arising in the administration, in connection with the Deed of Company Arrangement or winding up;

(c) as a set amount;

or any combination of them; and different bases may be fixed in respect of different things done by the Office-holder.

(3) Where the basis of remuneration is fixed as in sub-paragraph (2)(a), different percentages may be fixed in respect of different things done by the Office-holder.

(4) The matters to be determined in fixing the basis of remuneration are-

(a) which of the bases set out in sub-paragraph (2) are to be fixed and (where appropriate) in what combination;

(b) the percentage or percentages (if any) to be fixed under sub-paragraphs (2)(a) and (3);

(c) the amount (if any) to be set under sub-paragraph (2)(c).

(5) In arriving at that determination, regard must be had to the following matters-

(a) the complexity (or otherwise) of the case;

(b) any respects in which, in connection with the Company's affairs, there falls on the Office-holder, any responsibility of an exceptional kind or degree;

(c) the effectiveness with which the Office-holder appears to be carrying out, or to have carried out, the Office-holder's duties as such; and

(d) the value and nature of the property with which the Office-holder has to deal.

(6) If the Office-holder is a lawyer and employs the firm, or any partner in it, to act on behalf of the Company, profit costs must not be paid unless expressly authorised in the determination.

3. Remuneration: procedure for initial determination

(1) It is for the creditors' committee, subject to sub-paragraph (4), to determine the basis of remuneration in an administration or winding up (except in a members' voluntary winding up).

(2) (a) If there is no committee in an administration or winding up, or the committee does not make the requisite determination, and-

(i) in an administration, the case does not fall within sub-paragraph (3); or

(ii) in a creditors' voluntary winding up or a winding up by the Court, subject to sub-paragraph (4),

the basis of remuneration may be fixed by a resolution of a meeting of creditors.

(b) Where there is a Deed of Company Arrangement, the basis of remuneration may be fixed by a resolution of a meeting of creditors.

- (3) If the administrator has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*) and there is no creditors' committee, or the committee does not make the requisite determination, the basis of the administrator's remuneration may be fixed by the approval of-
- (a) each secured creditor of the Company; or
 - (b) if the administrator has made or intends to make a distribution to preferential creditors-
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.
- (4) Where-
- (a) a Company which is in administration moves into winding up under Section 131(1) (*Moving from administration to creditors' voluntary liquidation*) and the administrator becomes the liquidator; or
 - (b) a winding-up order is made immediately upon the appointment of an administrator ceasing to have effect and the Court under Section 217(3) (*Appointment of provisional liquidator or of liquidator following administration*) appoints as liquidator the person whose appointment as administrator has ceased to have effect,
- the basis of remuneration fixed under this paragraph for the administrator is treated as having been fixed for the liquidator, and sub-paragraphs (1) and (2) do not apply.
- (5) In a members' voluntary winding up, it is for the Company in general meeting to determine the basis of remuneration.
- (6) If not fixed as above, the basis of the administrator's remuneration or the liquidator's remuneration in a voluntary winding up (including a members' voluntary winding up) must, on application by the administrator or liquidator be fixed by the Court.
- (7) An application under sub-paragraph (6) may not be made by the administrator or liquidator without having first sought fixing of the basis in accordance with sub-paragraph (1), (2), (3) or (5) (as the case may be).
- (8) In a members' voluntary winding up, the liquidator must deliver at least 14 days' notice of an application under sub-paragraph (6) to the Company's contributories, or such one or more of them as the Court may direct; and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.
- (9) If, in a winding up by the Court, the basis of remuneration is not fixed as above after the liquidator has requested the creditors to fix the basis in accordance with sub-paragraph (2) or in any event within 18 months after the date of the liquidator's appointment, the liquidator is entitled to such sum as is arrived at (subject to sub-paragraph (10)) by-

- (a) applying the realisation scale set out in [*identify scale to be used*]⁷ to the moneys received by the liquidator from the realisation of the assets of the Company (after deducting any sums paid to secured creditors in respect of their securities and any sums spent out of money received in carrying on the business of the Company); and
 - (b) adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in [*identify scale to be used*] to the value of assets distributed to creditors of the Company (including payments made in respect of preferential debts) and to contributories.
- (10) Where a number of persons are appointed as administrators or joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned and any dispute arising between them may be referred-
- (a) to the Court, for settlement by order; or
 - (b) to the creditors' committee, a meeting of creditors or (in a members' voluntary winding up) the Company in general meeting, for settlement by resolution.

4. Remuneration: recourse by administrator or liquidator to creditors

(1) If the basis of-

- (a) the administrator's remuneration has been fixed by the creditors' committee; or
- (b) the liquidator's remuneration has been fixed by the creditors' committee; or
- (c) the liquidator's remuneration had, in a case falling within paragraph 3 (*Remuneration: procedure for initial determination*), been fixed by the creditors' committee in a preceding administration and the administrator had not subsequently requested an increase under this paragraph,

and the Office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate, the Office-holder may request that the amount be increased or the basis changed by resolution of the creditors.

(2) If the administrator of a Company has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*), the basis of his remuneration has been fixed by the creditors' committee, and the administrator of the Company considers an amount fixed to be insufficient or basis fixed to be inappropriate, the administrator of the Company may request that the amount be increased or the basis changed by the approval of-

- (a) each secured creditor of the Company; or
- (b) if the administrator of the Company has made or intends to make a distribution to preferential creditors-
 - (i) each secured creditor of the Company; and
 - (ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the Company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

⁷ Realisation scale to be determined.

5. Remuneration: recourse by administrator or liquidator to the Court

- (1) If the basis of-
 - (a) the remuneration of an administrator has been fixed-
 - (i) by the creditors' committee, the administrator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or
 - (ii) by resolution of the creditors; or
 - (b) the liquidator's remuneration has been fixed-
 - (i) by the creditors' committee, the liquidator has requested that the amount be increased or the basis changed by resolution of the creditors, but the creditors have not changed it; or
 - (ii) by resolution of the creditors; or
 - (iii) under paragraph 3(4) or (9) (*Remuneration: procedure for initial determination*); or
 - (iv) in a members' voluntary winding up, by the Company in general meeting,

and the Office-holder considers an amount fixed to be insufficient or basis fixed to be inappropriate, the Office-holder may apply to the Court for an order increasing the amount or changing the basis.
- (2) If the administrator of a Company has made a statement under Section 70(6)(b) (*Requirement for initial creditors' meeting*), the basis of his remuneration has been fixed by the approval of creditors in accordance with paragraph 4(2) (*Remuneration: recourse by administrator or liquidator to creditors*) and he considers an amount fixed to be insufficient or basis fixed to be inappropriate, he may apply to the Court for an order increasing the amount or changing the basis.
- (3) Where an application is made under sub-paragraph (2), the administrator of a Company must deliver notice to each of the creditors whose approval was sought under paragraph 4(2) (*Remuneration: recourse by administrator or liquidator to creditors*).
- (4) The administrator of a Company or liquidator (except in a members' voluntary winding up) must deliver at least 14 days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.
- (5) If there is no creditors' committee, the Office-holder's notice of the application must (except in a members' voluntary winding up) be delivered to such one or more of the Company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.
- (6) In a members' voluntary winding up, the liquidator must deliver at least 14 days' notice of the application to the Company's contributories, or such one or more of them as the Court may direct and the contributories may nominate one or more of their number to appear, or be represented, and to be heard on the application.

- (7) The Court may, if it appears to be a proper case (including in a members' voluntary winding up), order the costs of the Office-holder's application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor or contributory so appearing or being represented, to be paid as an expense of the administration or liquidation or an expense for the purposes of the Deed of Company Arrangement, as the case may be.

6. Remuneration: review at request of administrator or liquidator

- (1) Where, after the basis of the Office-holder's remuneration has been fixed, there is a material and substantial change in the circumstances which were taken into account in fixing it, the Office-holder may request that it be changed.
- (2) The request must be made-
- (a) where the creditors' committee fixed the basis, to the committee;
 - (b) where the creditors fixed the basis, to the creditors;
 - (c) where the court fixed the basis, by application to the Court;
 - (d) where, in a winding up, the remuneration was determined under paragraph 3(9) (*Remuneration: procedure for initial determination*), to the liquidation or creditors' committee if there is one and otherwise to the creditors;

and the preceding provisions of this Schedule apply as appropriate.

- (3) Where paragraph 4 (*Remuneration: recourse by administrator or liquidator to creditors*) is applied in accordance with sub-paragraph (2), ignore the words in paragraph 4(1)(c) (*Remuneration: recourse by administrator or liquidator to creditors*), "and the administrator had not subsequently requested an increase under this paragraph".
- (4) Any change in the basis for remuneration applies from the date of the request under sub-paragraph (2) and not for any earlier period.

7. Remuneration: new administrator or liquidator

If a new administrator or liquidator (including in a members' voluntary winding up) is appointed in place of another, any determination, resolution or Court order in effect under the preceding provisions of this Schedule immediately before the former Office-holder ceased to hold office continues to apply in relation to the remuneration of the new Office-holder until a further determination, resolution or Court order is made in accordance with those provisions.

8. Remuneration: apportionment of set fees

- (1) In a case (including in a members' voluntary winding up) in which the basis of the Office-holder's remuneration is a set amount under paragraph 2(2)(c) (*Remuneration: principles*) and the former Office-holder ceases (for whatever reason) to hold office before the time has elapsed or the work has been completed in respect of which the amount was set, application may be made for determination of what portion of the amount should be paid to the former Office-holder or the former Office-holder's personal representative in respect of the time which has actually elapsed or the work which has actually been done.
- (2) Application may be made-

- (a) by the former Office-holder or the former Office-holder's personal representative within the period of 28 days beginning with the date upon which the former Office-holder ceased to hold office; or
 - (b) by the Office-holder for the time being in office if the former Office-holder or the former Office-holder's personal representative has not applied by the end of that period.
- (3) Application must be made-
 - (a) where the creditors' committee fixed the basis, to the committee;
 - (b) where the creditors fixed the basis, to the creditors for a resolution determining the portion;
 - (c) where the Company in general meeting fixed the basis, to the Company for a resolution determining the portion; or
 - (d) where the Court fixed the basis, to the Court for an order determining the portion.
- (4) The applicant must deliver a copy of the application to the Office-holder for the time being or to the former Office-holder or the former Office-holder's personal representative, as the case may be ("**the recipient**").
- (5) The recipient may, within 21 days of receipt of the copy of the application, deliver notice of intent to-
 - (a) make representations to-
 - (i) the creditors' committee,
 - (ii) the creditors; or
 - (iii) the Company in general meeting; or
 - (b) appear or be represented before the Court, as the case may be.
- (6) No determination may be made upon the application until expiry of the 21 days referred to in sub-paragraph (5) or, if the recipient does deliver notice of intent in accordance with that sub-paragraph, until the recipient has been afforded the opportunity to make representations or to appear or be represented, as the case may be.
- (7) If the former Office-holder or the former Office-holder's personal representative (whether or not the original applicant) considers that the portion determined upon application to the creditors' or committee or the creditors is insufficient, that person may apply-
 - (a) in the case of a determination by the committee, to the creditors for a resolution increasing the portion;
 - (b) in the case of a resolution of-
 - (i) the creditors (whether under sub-paragraph (3)(b) or under sub- paragraph (7)(a)); or

- (ii) the Company in general meeting, to the Court for an order increasing the portion;

and sub-paragraphs (4) to (6) apply as appropriate.

9. Creditors' or members' claim that remuneration is, or other expenses are, excessive

- (1) The following may apply to the Court for one or more of the orders in sub-paragraph (8)-

- (a) a secured creditor;
- (b) an unsecured creditor with either-
 - (i) the concurrence of at least ten (10)% in value of the unsecured creditors (including that creditor); or
 - (ii) the permission of the Court; or
- (c) in a members' voluntary winding up-
 - (i) members of the Company with at least ten (10)% of the total voting rights of all the members having the right to vote at general meetings of the Company; or
 - (ii) a member of the Company with the permission of the Court.

- (2) An application may be made on the grounds that-

- (a) the remuneration charged by the Office-holder;
- (b) the basis fixed for the Office-holder's remuneration under paragraphs 2 (*Remuneration: principles*) and 3 (*Remuneration: procedure for initial determination*); or
- (c) expenses incurred by the Office-holder,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (2)(b), inappropriate.

- (3) The application by a creditor or member must be made no later than eight weeks (or, in a case falling within Sections 245 (*Removal or resignation of liquidator*), four weeks) after receipt by the applicant of the progress report, or the final account or report under Section 189 (*Final meeting prior to dissolution*) or 220 (*Duty to summon final meeting*) (as applicable) which first reports the charging of the remuneration or the incurring of the expenses in question ("**the relevant report**").
- (4) If the Court thinks that no sufficient cause is shown for a reduction, it must deliver to the applicant notice to that effect; and-
 - (a) if, within five business days of delivery of that notice, the applicant applies to the Court to fix a venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court will do so; but

- (b) if the applicant does not deliver notice in accordance with sub-paragraph (4)(a), the Court may dismiss the application without a hearing.
- (5) The Court must fix a venue for the application to be heard, and deliver notice to the applicant if the application is not dismissed-
 - (a) after a hearing under sub-paragraph (4)(a); or
 - (b) without a hearing in accordance with sub-paragraph (4)(b).
 - (6) The venue must be fixed for not less than 28 days after delivery to the applicant of the notice under sub-paragraph (4).
 - (7) The applicant must, at least 14 days before the hearing, deliver to the Office-holder a notice stating the venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.
 - (8) If the Court considers the application to be well-founded, it must make one or more of the following orders-
 - (a) an order reducing the amount of remuneration which the Office-holder is entitled to charge;
 - (b) an order reducing any fixed amount;
 - (c) an order changing the basis of remuneration;
 - (d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration, expenses for the purposes of the Deed of Company Arrangement or winding up expenses;
 - (e) an order that the administrator or liquidator or the administrator's or liquidator's personal representative pay to the Company the amount of the excess of remuneration or expenses or such part of the excess as the Court may specify;

and may make any other order that it thinks just; but an order under sub-paragraph (8)(b) or (c) may be made only in respect of periods after the period covered by the relevant report.

- (9) Unless the Court orders otherwise under sub-paragraph (10), the costs of the application must be paid by the applicant, and are not payable as an expense of the administration or as winding up expenses.
- (10) The Court may order that the costs may be payable by the applicant, by the respondent or as an expense.

10. Remuneration in winding up where assets realised on behalf of charge holder

- (1) A liquidator (including in a members' voluntary winding up) who realises assets on behalf of a secured creditor is entitled to such sum by way of remuneration as is arrived at-
 - (a) in a winding up where the assets are subject to a charge which when created was a mortgage or a fixed charge, by applying the realisation scale set out in [*specify scale*]

*to be used*⁸ to the moneys received by the liquidator in respect of the assets realised (after deducting any sums spent out of money received in carrying on the business of the Company);

- (b) in a winding up where the assets realised are subject to a charge which when created was a floating charge, by-
 - (i) applying the realisation scale set out in [*specify scale to be used*] to moneys received by the liquidator from the realisation of those assets (ignoring any sums received which are spent in carrying on the business of the Company); and
 - (ii) adding to the sum arrived at under paragraph 10(1)(a) such sum as is arrived at by applying the distribution scale set out in [*specify scale to be used*] to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts.
- (2) The sum to which the liquidator is entitled must be taken out of the proceeds of the realisation.

11. Voting on remuneration

Where a resolution is proposed in an insolvent or compulsory winding up which affects a person in relation to that person's remuneration or conduct as liquidator, that person and the partners and employees of that person must not vote on it, whether as creditor, contributory, proxy-holder or corporate representative, unless the proxy specifically directs the proxy-holder to vote in that way.

⁸ Realisation scale to be determined.