

**CORPORATE INSOLVENCY AND  
RESTRUCTURING ACT, 2020**

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Act 1015

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**Cross-Border Insolvency Proceedings**

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REPUBLIC OF GHANA

THE ONE THOUSAND AND FIFTEENTH

# ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA  
ENTITLED

**CORPORATE INSOLVENCY AND RESTRUCTURING ACT,  
2020**

AN ACT to provide for the administration and official winding-up of insolvent companies and other bodies corporate and for related matters.

DATE OF ASSENT: *30<sup>th</sup> April, 2020.*

PASSED by Parliament and assented to by the President

*Preliminary Provisions*

## **Purpose of this Act**

1. (1) The purpose of this Act is to provide a legal regime for
  - (a) the administration of the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to as much as possible continue in existence as a going concern;
  - (b) the temporary management of the affairs, business and property of a distressed company;
  - (c) the placing of a temporary freeze on the rights of creditors and other claimants against a distressed company;

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- (d) the development and implementation of a restructuring plan which results in a better return for the creditors and shareholders of the company that would result from the immediate winding-up of a distressed company;
  - (e) the official liquidation of a body corporate;
  - (f) cross-border insolvency;
  - (g) the regulation of insolvency services; and
  - (h) netting agreements.
- (2) A company shall be placed in administration or restructuring if
- (a) the company is unable to pay the debts or current obligations of the company as the debts or obligations fall due even if the total assets of the company exceed the total liabilities of the company; or
  - (b) the company has a negative net worth.
- (3) Subsection (1) does not apply to companies carrying on the business of banking, insurance or any other business which is subject to special legislation, except where the special legislation does not provide for a rescue provision.

**Period of administration**

2. (1) The administration of a company begins when an administrator is appointed.
- (2) The administration of a company ends when
- (a) a restructuring agreement is executed by the company and the restructuring officer;
  - (b) the creditors of the company resolve that the administration should end;
  - (c) the creditors of the company appoint a liquidator by a resolution passed at a watershed meeting; or
  - (d) any of the circumstances set out in subsection (3) occurs.
- (3) The administration of a company may end where
- (a) the Court orders for the administration to end because the Court is satisfied that the company is solvent, or that for any other sufficient reason the administration should cease, and the administration ends on the date specified in the order or, if no date is specified, when the order is made;
  - (b) the convening period expires without a watershed meeting having been held or without an application having been made to extend the period;



- (c) an application is made to the Court to extend the convening period, and the application is dealt with without the convening period being extended;
  - (d) a watershed meeting ends without a resolution that the company execute a restructuring agreement;
  - (e) the company fails to execute a proposed restructuring agreement within the time permitted by subsection (2) of section 45; or
  - (f) the Court appoints a liquidator.
- (4) A company shall, from the commencement of administration, suspend the business of the company except where the company is required to do so for the beneficial administration of the company.

*Appointment of Administrator*

**Appointment of administrator**

3. (1) A person may be appointed as an administrator of a company.
- (2) A person shall not be appointed as an administrator of a company if that person is not qualified under section 155 to be an insolvency practitioner.
- (3) A person shall not be appointed as an administrator unless
- (a) that person has consented in writing and has not withdrawn the consent at the time of appointment; and
  - (b) the consent of that person has been filed with the Registrar.
- (4) For the purposes of subsections (1), (2) and (3) which relate to the appointment of an administrator, "a person" means a natural person.
- (5) An administrator may be appointed by
- (a) the company;
  - (b) the liquidator, where the company is in liquidation;
  - (c) a person holding a charge over the whole or substantially the whole of the property of the company or the receiver appointed by that person; or
  - (d) the Court.
- (6) Where a company is already in administration, an administrator may be appointed only by
- (a) the creditors, as a replacement administrator for an administrator that the creditors have removed; or
  - (b) the appointer of the first administrator, if that administrator has died, resigned or become disqualified.

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(7) A company may appoint an administrator where the directors resolve that

- (a) the company is insolvent or is likely to become insolvent in the opinion of the directors voting for the resolution; and
- (b) an administrator of the company must be appointed.

(8) A company shall not appoint an administrator if the company is already in liquidation.

(9) The private liquidator of a company in a private liquidation may appoint an administrator if the liquidator thinks that the company is insolvent or is likely to become insolvent.

(10) The appointment shall be in writing and shall state the

- (a) date of the appointment; and
- (b) the grounds that indicate the likelihood of a company becoming insolvent.

(11) A secured creditor or a receiver appointed by the creditor shall not appoint an administrator where the company is already in liquidation.

(12) The Court may appoint an administrator on the application of a creditor, the liquidator, if the company is in liquidation, the Registrar or where the Court is satisfied that

- (a) the company is or may become insolvent;
- (b) the survival of the company and the assets as a going concern are reasonably capable of being achieved in the event of an administrator being appointed;
- (c) a more advantageous realisation of the assets of the company and any related company may be achieved than on an immediate winding-up;
- (d) the appointment of an administrator may achieve a more advantageous realisation or a more expeditious settlement of a duty or liability owed by any person to the company or any related company; or
- (e) it is just and equitable to do so.

(13) The appointment of an administrator shall not be revoked, except where the administrator is removed by the Court or by the creditors.

**Appointment of one or three administrators**

4. (1) One or three persons may be appointed as administrators in any case where this Act provides for the appointment of an administrator.

(2) Where one or three persons are appointed as administrators of a company

- (a) the functions of the administrator may be performed or exercised by a majority of the administrators unless the

- order, instrument or resolution that appoints the administrators provides otherwise; and
- (b) a reference in this Act to an administrator refers to the administrator or administrators as the case requires.

**Remuneration of administrator**

5. (1) An administrator is entitled, with the approval of the committee of creditors, to charge reasonable remuneration for performing duties and exercising powers as an administrator.

(2) Where there is a disagreement on the remuneration of an administrator, the Court may, on the application of an administrator, an officer of the company, a creditor or a shareholder review or fix the remuneration of the administrator at a level that is reasonable in the circumstances.

**Vacancy in office of administrator**

6. The office of an administrator becomes vacant where the administrator

- (a) dies;
- (b) resigns;
- (c) becomes disqualified; or
- (d) is removed by the Court or by creditors.

**Resignation and removal of administrator**

7. (1) An administrator may resign by giving written notice to the company and to the appointer of the administrator.

(2) An administrator may be removed

- (a) by the Court, on the application of a creditor, the liquidator if the company is in liquidation or the Registrar;
- (b) by a resolution of creditors passed at the first meeting of the creditors; or
- (c) by a resolution of creditors at a meeting convened to consider whether to remove a replacement administrator.

(3) The creditors shall not remove an administrator by a resolution passed at a meeting of creditors unless

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- (a) a notice of the meeting to remove the administrator has been given to the
  - (i) company, and
  - (ii) administrator not less than fourteen days before the meeting at which the resolution is to be moved;
- (b) the administrator has been given the opportunity to be heard and, if desired, presents a written submission at the meeting;
- (c) the resolution also appoints a new administrator; and
- (d) the person named in the resolution as the new administrator has, before the resolution is considered, tabled at the meeting
  - (i) a signed, written consent to act as administrator; and
  - (ii) a statement of interest.

**Appointment of administrator to fill vacancy**

8. (1) The appointer of an administrator may appoint a person to fill a vacancy where the office of the administrator becomes vacant

- (a) by the death of the administrator;
- (b) through the resignation of the administrator;
- (c) on the disqualification of the administrator; or
- (d) by removal of the administrator by the Court or creditors.

(2) The directors may, by resolution, appoint an administrator to fill a vacancy.

**Creditors to consider appointment of replacement administrator**

9. (1) Unless a replacement administrator is appointed by the Court, a replacement administrator shall convene a meeting of the creditors at which the creditors may vote to remove the replacement administrator and appoint another person in place of the replacement administrator.

(2) The meeting shall be held within seven days after the date on which the replacement administrator is appointed.

- (3) The replacement administrator shall convene the meeting by
  - (a) giving written notice of the meeting to the creditors of the company; and
  - (b) publishing a notice of the meeting in a daily newspaper of national circulation.

(4) The replacement administrator shall take the steps set out in subsection (3) within two working days before the meeting.

(5) For the purpose of this section, "replacement administrator" means the person who is appointed to fill a vacancy in the office of administrator.

*Effect of Appointment*

**Role of administrator**

10. (1) The administrator, in the course of the administration,
- (a) shall have control of the business, property and affairs of the company;
  - (b) is required to investigate the affairs of the company and consider possible ways of salvaging the business of the company in the interests of creditors, employees and shareholders;
  - (c) shall carry on the business of the company and manage the property and affairs of the company with the object of salvaging the business of the company in the interests of creditors, employees and shareholders;
  - (d) may terminate or dispose of the whole or part of the business of the company, and may dispose of any of the properties of the company; and
  - (e) may perform any other function, and exercise any other power, that the company or any of the officers of the company could perform or exercise if the company were not in administration.

(2) The administrator shall file financial statements and report with the Registrar and submit copies to the directors of the company for each of the following periods:

- (a) the period of six months or shorter as the administrator may determine with effect from the date on which the administrator was appointed;
- (b) each subsequent period of six months during which the administrator holds office; and
- (c) the period between the latter period of the type referred to in paragraph (b) and the date on which the administrator vacates office.

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(3) The administrator shall file the financial statements and report within twenty-eight days after the end of the period specified in paragraphs (a), (b) or (c) of subsection (2).

(4) The financial statements and report shall be in the prescribed form and shall show

(a) for each period, the receipts and payments of the administrator; and

(b) for each period except the first, the aggregate of the receipts and payments of the administrator since the day on which the administrator was appointed.

(5) A payment made, transaction entered into, or any other action taken, in good faith, by or with the consent of the administrator of a company in administration

(a) is valid and effectual for the purpose of this Act; and

(b) shall not be set aside, if the company is placed in liquidation.

(6) For the purposes of this section, “administrator” includes a restructuring officer.

**Powers of administrator**

11. (1) An administrator has the power to perform the functions and discharge the duties of an administrator under this Act.

(2) Without limiting subsection (1), the power of the administrator includes the power to

(a) begin, continue, discontinue and defend legal proceedings;

(b) carry on the business of the company to the extent necessary for the administration; and

(c) appoint any other person to act on behalf of the administrator pursuant to paragraph (a).

(3) An administrator is the agent of the company when performing a function or exercising a power under subsection (2).

(4) For purposes of paragraph (a) of subclause (2), an administrator shall sue in the name of the company.

**Effect on company officers**

12. (1) The appointment of an administrator does not result in the removal of the directors of the company from office.

(2) A director of a company that is in administration shall not exercise a power, perform a function, be responsible for managing the affairs of the company or purport to do so as an officer of the company except

- (a) with the prior, written approval of the administrator; or
- (b) as expressly permitted under this Act.

**Effect on employees**

13. (1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.

(2) The administrator shall pay the wages or salary that has accrued to an employee during the administration of the company as a result of any contract of employment entered into by the company before the appointment of the administrator unless the administrator has given due notice of the termination of the contract within twenty-one days after the appointment of the administrator.

(3) The Court may, on the application of the administrator, extend the period of twenty-one days within which notice of termination is to be given, on terms that the Court considers appropriate.

**Effect on dealing with property of company**

14. (1) A transaction or dealing by a company in administration or by a person on behalf of the company, that affects the property of the company is void unless the transaction or dealing was entered into

- (a) by the administrator, on behalf of the company;
- (b) with the prior written consent of the administrator; or
- (c) in pursuance of an order of a Court.

- (2) Subsection (1) does not apply to a payment made by a bank
- (a) out of an account kept by the company with the bank;
  - (b) in good faith and in the ordinary course of the business of the bank; and
  - (c) on or before the day on which the bank was notified in writing by the administrator that the administration had begun or before the bank had reason to believe that the company was in administration, whichever was earlier.

**Effect on transfer of shares**

- 15.** (1) Subject to subsections (2) and (3), a person shall not
- (a) transfer a share in a company in administration; or
  - (b) alter the rights or liabilities of a shareholder of a company in administration.
- (2) An administrator may consent to the transfer of a share in a company in administration where the administrator is satisfied that the transfer is in the best interests of the shareholders and creditors of the company.
- (3) The Court may make an order for
- (a) the transfer of a share of a company in administration, where the consent of the administrator has been sought and the administrator has refused or failed to respond within fourteen days; or
  - (b) the alteration of the rights and liabilities of a shareholder in a company in administration.

**Investigation of affairs of company**

- 16.** The administrator shall within twenty one days after the administration of a company commences,
- (a) investigate the business, property, affairs and financial circumstances of the company; and
  - (b) form an opinion as to whether it will be in the interest of the creditors for
    - (i) the company to execute a restructuring agreement;
    - (ii) the administration to end; or
    - (iii) a liquidator to be appointed.

**Statement of directors**

- 17.** (1) After the appointment of an administrator, the directors shall, within seven days, submit to the administrator, financial statements in relation to the company including
- (a) statement of financial position;
  - (b) statement of comprehensive income;
  - (c) statement of changes in equity;
  - (d) statement of cash flows; and
  - (e) description of significant accounting policies and explanatory notes to the financial statements prepared in compliance with International Financial Reporting Standards approved



or adopted by the Institute of Chartered Accountants or any other standards approved or adopted by the Institute.

(2) The administrator may extend the time for compliance with subsection (1) for a further seven days.

(3) The administrator shall table the financial statements of the directors

(a) at the first meeting of the creditors; or

(b) at the watershed meeting where the administrator has extended the time for compliance by the directors under subsection (2).

(4) A director who fails to submit financial statements

(a) under subsection (1), or

(b) within the time determined by the administrator under subsection (2),

is liable to pay to the Registrar, an administrative penalty of two hundred and fifty penalty units.

**Right to obtain documents and information**

18. An administrator may exercise any of the powers vested in a liquidator under section 97 with respect to access to documents and information.

**Report by administrator**

19. (1) An administrator shall lodge a report with the Registrar and specify any matter that, in the opinion of the administrator, should be brought to the notice of the Registrar.

(2) The administrator shall report to the Registrar as soon as practicable, where the administrator believes that

(a) a past or present officer or shareholder of the company may have committed an offence involving dishonesty or an offence in contravention of the Companies Act, 2019 (Act 992); or

(b) a person who has taken part in the formation, promotion, administration, management or liquidation of the company

(i) may have misapplied or retained or become liable or accountable for the money or property of the company in Ghana or elsewhere; or

(ii) may have been guilty of negligence, default or breach of duty or trust in relation to the company.

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(3) Where the administrator makes a report to the Registrar under subsections (1) and (2), the administrator shall give the Registrar the assistance the Registrar may reasonably require by way of

- (a) provision of information;
- (b) access to documents; and
- (c) facilities to inspect and copy documents.

(4) Where the Court is satisfied on the application of an interested person, that there is a need for the administrator to make a report and the administrator has not done so, the Court may direct the administrator to make the report.

(5) For the purpose of subsection (4), an “interested person” means a creditor or a past or present officer or shareholder of the company.

**Administrator to call meetings of creditors**

20. (1) An administrator shall call

- (a) the first meeting of creditors;
- (b) a watershed meeting; and
- (c) other meetings of creditors that are required by the committee of creditors or the administrator.

(2) At a meeting of creditors or class of creditors held, a resolution shall be adopted if the resolution is supported by the votes of creditors or class of creditors holding at least fifty-one percent of the value of the debt owed to the creditors or class of creditors voting in person or by proxy vote or by postal vote.

(3) The administrator or a nominee of the administrator shall

- (a) chair a meeting of creditors, and
- (b) have a casting vote.

(4) The administrators of related companies may call meetings of creditors of the respective companies to be held at the same time and place, but only with the consent of every creditor.

(5) In the case of a joint meeting, a creditor of a company in administration may vote only on a resolution that relates to the administration of the company of which that person is a creditor.

(6) For the purpose of subsection (4), a creditor is taken to have consented to the joint meeting where

- (a) written notice that complies with subsection (7) accompanies the notice of meeting; and

(b) the creditor has not objected to the joint meeting within the time and in the manner specified in the written notice.

(7) The notice shall

(a) be in writing; and

(b) state

(i) the postal, electronic mail, business and residential addresses of the administrator;

(ii) the names of the related companies in respect of which the joint meeting is to be held;

(iii) that the creditor to whom the notice is sent may object to the joint meeting by sending a written objection to the administrator at the postal, electronic mail, business or residential address of the administrator within the time specified in the notice; and

(iv) that the creditor will be taken to have agreed to the joint meeting unless the creditor objects in accordance with the notice.

(8) For the purpose of subparagraph (iii) of paragraph (b) of subsection (7), the administrator shall, within fourteen days, determine the time for receipt of an objection.

#### **First meeting of creditors**

21. (1) The administrator shall call the first meeting of creditors to

(a) establish a committee of creditors where necessary; or

(b) determine whether to replace the administrator.

(2) The meeting shall be held within ten days after the date on which the administration begins.

(3) The administrator shall call the first meeting of creditors by

(a) giving written notice of the meeting to the creditors of the company on record as disclosed by the records kept by the company, as is reasonably practicable; and

(b) the publication of a notice of the meeting in a daily newspaper of national circulation.

(4) The administrator shall take the steps set out in subsection (3), not less than seven days before the meeting.

(5) The administrator shall table at the first meeting of creditors referred to in paragraph (b) of subsection (2) of section 7, an interests statement that complies with subsection (6).

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(6) The interests statement shall disclose whether the administrator, or a firm of which the administrator is a partner, has a relationship, whether professional, business or personal, with the company in administration or any of the officers of the company, shareholders or creditors.

(7) The administrator shall make the inquiries that are reasonably necessary to ensure that the interests statement is complete before tabling the interests statement.

**Functions of committee of creditors**

22. (1) The functions of the committee of creditors of a company in administration include

- (a) advising the administrator about matters that relate to the administration;
- (b) receiving and considering reports by the administrator; and
- (c) approving the remuneration and other terms of engagement of the administrator.

(2) The administrator shall report to the committee, matters that relate to the administration as and when the committee reasonably requires.

(3) Despite subsection (2), the committee shall not give directions to the administrator.

**Membership of committee of creditors**

23. (1) A person may be a member of the committee of creditors only if that person is

- (a) a creditor of the company;
- (b) an agent of a creditor under a power of attorney; or
- (c) authorised in writing by a creditor to be a member.

(2) Members of the committee of creditors shall not be less than three and more than five in number.

**Watershed meeting**

24. (1) The administrator shall convene a watershed meeting after the convening period.

(2) The convening period is the extension of the period between the date of the appointment of the administrator and the twenty-eighth day after the date of the appointment, and includes any period under subsection (3).

(3) The Court may extend the convening period on the application of the administrator.

(4) Despite subsection (3), the Court shall not extend the convening period if the application is made after the convening period has expired, unless the Court is satisfied that a substantial injustice will result if the convening period is not extended.

- (5) The administrator shall convene the watershed meeting by
- (a) giving written notice of the watershed meeting to the creditors of the company; and
  - (b) the publication of notice of the watershed meeting in a daily newspaper of national circulation.

(6) The administrator shall take the steps set out in subsection (5) not less than seven days before the meeting.

(7) The notice required under subsection (5) shall be accompanied with

- (a) a report by the administrator in respect of
  - (i) the business, property, affairs and financial statements of the company pursuant to section 16; and
  - (ii) any other matter material to the decisions of the creditors to be considered at the meeting;
- (b) a statement that sets out the opinion of the administrator, with reasons for that opinion, about whether it is in the interest of the creditors of the company
  - (i) to execute a restructuring agreement;
  - (ii) for the administration to end; or
  - (iii) for the company to be placed in liquidation; and
- (c) a statement that sets out the details of the proposed agreement, if a restructuring agreement is proposed.

(8) The watershed meeting shall be held within seven days after the end of the convening period or extended convening period, as the case may be.

(9) Subject to subsection (10), the directors of the company shall attend the watershed meeting, including any occasion to which the meeting is adjourned, but shall not be required to answer questions at the meeting.

(10) A director is not required to attend the watershed meeting where

- (a) the director has a valid reason for not attending; or

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(b) the administrator or the creditors by resolution have the director from attending.

(11) A director who attends the watershed meeting shall take leave for the entire or part of the meeting if required by a resolution of the creditors to do so.

(12) The administrator and the directors of the company under administration shall inform the meeting of any voting agreement of which the administrator or a director, as the case may be is aware, that requires one or more creditors to vote in a particular way on any resolution that will or may be voted on by the meeting, before the meeting votes on any resolution.

**Power of Court regarding meeting of creditors**

25. (1) A creditor or an administrator that is dissatisfied with the outcome of proceedings regarding a meeting of creditors, may apply to the Court for an appropriate order.

(2) Where the Court is satisfied that

- (a) a resolution at a meeting of creditors was passed, rejected required to be decided by a casting vote as the case may be,
- (b) the resolution referred to in paragraph (a) would not have been passed, rejected or required to be decided by a casting vote if the vote cast by a particular related creditor was disregarded, and
- (c) the passing of the resolution, or the failure to pass the resolution
  - (i) is contrary to the interests of the creditors or a class of creditors as a whole, or
  - (ii) has prejudiced or is likely to prejudice, the interests of the creditor that voted for or against the resolution to an extent that is unreasonable,

the Court may make any of the orders specified in subsection (4).

(3) For the purpose of subparagraph (ii) of paragraph (c) of subsection (2), the Court may determine whether a resolution is unreasonable having regard to

- (a) the benefits accruing to the related creditor, or to any of the related creditors, from the resolution, or from the failure to pass the resolution;

(b) the nature of the relationship between the related creditor and the company, or between the related creditors and the company; and

(c) any other related matter.

(4) The Court may

(a) order that the resolution be set aside,

(b) order that a new meeting be held to consider and vote on the resolution,

(c) order that a specified related creditor shall not vote on the resolution or on a resolution to vary or amend the resolution, or

(d) make any other order that the Court considers appropriate on the application of a creditor or the administrator.

(5) In this section

(a) “promoter”

(i) means a person who is instrumental in the formulation of a plan or programme in accordance with which securities are offered to the public;

(ii) includes each person who is a director of the company where a company is a promoter;

(iii) does not include a director or officer of the issuer of the securities or a person acting solely in a professional capacity;

(b) “related creditor” means a creditor that is a related entity of the company in administration;

(c) “related entity” in relation to the company in administration, means

(i) a promoter;

(ii) a relative or spouse of a promoter;

(iii) a relative of a spouse of a promoter;

(iv) a director or shareholder;

(v) a relative or spouse of a director or shareholder;

(vi) a relative of a spouse of a director or shareholder;

(vii) a related company;

(viii) a beneficiary under a trust of which the company in administration is or has at any time been a trustee;

- (ix) a relative or spouse of that beneficiary;
- (x) a relative of a spouse of that beneficiary;
- (xi) a company, one of whose directors is also a director of the company in administration; or
- (xii) a trustee of a trust under which a person is a beneficiary, if that person is a related entity of the company in administration under this subsection.

**Pooled property owners**

26. (1) On the application of the administrator, the Court may order that, for the purpose of this section, pooled property owners are a separate class.

(2) A pooled property owner is bound by a restructuring agreement as if the pooled property owner has voted in favour of the resolution at the watershed meeting where

- (a) the Court has ordered that the pooled property owners are a separate class;
- (b) the creditors, including the pooled property owners, approved the resolution at the watershed meeting; and
- (c) the requisite majority of the pooled property owners were included in the creditors who voted in favour of the resolution.

(3) A separate meeting of the pooled property owners is not necessary to vote on the resolution.

(4) This section shall be in addition to, and not in derogation of sections 48 and 49.

(5) In this section,

- (a) “pooled property owner” means an owner or lessor of property that is pooled in a single enterprise forming part of the business of a company in administration;
- (b) “requisite majority” means at least fifty-one per cent of the pooled property owners voting in person or by proxy vote or by postal vote; and
- (c) “resolution” means a resolution that a company in administration executes the restructuring agreement specified in the resolution.

**Adjournment of watershed meeting**

27. A watershed meeting may be adjourned to a day that is not more than forty-two days after the first day on which the meeting is held, unless



the Court, on the application of the administrator, orders that the meeting be adjourned for more than forty-two days.

**Decisions at watershed meeting**

28. (1) At a watershed meeting, the creditors may resolve that the
- (a) company execute a restructuring agreement specified in the resolution; or
  - (b) administration should end.

(2) The resolution shall be carried if the resolution is supported by the votes of at least fifty-one percent of the creditors voting in person, by proxy or by postal vote in accordance with sections 20 and 21.

**Proposed agreement not fully approved**

29. (1) The administrator shall inform the creditors at the watershed meeting of

- (a) the right of the creditors to inspect and comment on the draft agreement;
- (b) the ultimate responsibility of the administrator for drafting the agreement; and
- (c) the fact that the executed agreement may differ from the draft.

(2) Where at a watershed meeting, the creditors resolve that the company execute a restructuring agreement, but the proposed agreement is not fully approved at the meeting, the administrator shall take the steps as set out in section 46.

*Protection of Property of Company*

**Unenforceable charge**

30. Subject to the provisions of sections 37, 38, 60 and 80, a person shall not enforce a charge over the property of the company during the administration of that company except by an order of the Court.

**Recovery of property**

31. (1) During the administration of a company, the owner or lessor of property shall not, except with leave of the Court, take possession of the property or otherwise recover the property that

- (a) was used or occupied by the company, or
- (b) is in the possession of the company.

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(2) Subsection (1) does not prevent a person from giving a notice to a company under an agreement relating to property that is used or occupied by, or is in the possession of, the company.

**Proceedings in Court**

**32.** During the administration of a company, a person shall not commence or continue proceedings in a Court against the company or in relation to any property of the company except with leave of the Court and on terms that the Court considers appropriate.

**Enforcement process**

**33.** During the administration of a company, a person shall not commence or continue an enforcement process in relation to the property of the company except with leave of the Court and on terms that the Court considers appropriate.

**Duties of court officer in relation to property of company**

**34.** (1) Where the Registrar of the Court or any other officer of the Court receives written notice that a company is in administration, the Registrar or an officer of the Court shall not

- (a) take action to sell a property of the company under an execution process;
- (b) pay to a person other than the administrator
  - (i) proceeds of the sale of the property of the company under an execution process where the sale has already taken place;
  - (ii) moneys of the company seized under an execution process; or
  - (iii) money in lieu of seizure or sale of property of the company under an execution process;
- (c) take action in respect of the attachment of a debt due the company; or
- (d) pay to a person other than the administrator, money received as a result of the attachment of a debt due the company.

(2) The officer of the Court shall deliver to the administrator, any property of the company that is in the possession of the officer of the Court due to an execution process.

(3) The officer of the Court shall pay to the administrator

proceeds or moneys of a kind referred to in paragraph (b) or (d) of subsection (1) that

- (a) is in the possession of the officer of the Court; or
- (b) has been paid into Court and has not since been paid out.

(4) The cost of the execution or attachment is a first charge over property delivered under subsection (2) or proceeds or money paid under subsection (3).

(5) For the purpose of subsection (4), the officer of the Court may retain the cost of the execution or attachment of the property delivered under subsection (2) or proceeds or money paid under subsection (3).

(6) Despite subsection (1), the Court may permit the officer of the Court to take action, or make a payment where the Court is satisfied that it is appropriate to do so.

(7) Despite this section, a person who buys property in good faith under a sale pursuant to an execution process, conducted six months prior to the administration or restructuring of the company obtains a good title to the property as against the company and the administrator if at the date of commencement of restructuring or administration, the person

- (a) has made full payment for the property to the Court; and
- (b) has met all the terms and conditions of the sale.

(8) Where the person referred to in subsection (7) fails to meet the criteria specified in paragraphs (a) and (b) of subsection (7), the sale shall be set aside.

**Liability of director or relative**

35. (1) A guarantee in respect of a liability of the company in administration shall not be enforced against

- (a) a director of the company;
- (b) the spouse or relative of the director; or
- (c) any related company or party

during the period of administration of a company except with leave of the Court and on the terms that the Court considers appropriate.

(2) In this section, "liability" includes a debt or other obligation.

*Rights of Secured Creditor*

**Interpretation**

36. (1) For the purposes of sections 37 and 38, unless the context otherwise requires,

(a) “decision period”, in relation to a charge holder and to a charge over property of a company in administration, means the period that

(i) begins when notice of the appointment of an administrator is given to the charge holder under section 72, or in any other case, on the day when the administration begins; and

(ii) ends at the close of the fourteenth day after the notice of the administration began;

(b) “enforce”, in relation to a secured creditor holding a charge over property of a company in administration, includes

(i) to appoint a receiver of property of the company under a power contained in an instrument relating to the charge;

(ii) to obtain an order for the appointment of a receiver of property for the purpose of enforcing the charge;

(iii) to give notice to convert a floating charge into a fixed charge;

(iv) to enter into possession or assume control of property;

(v) to appoint a person to enter into possession or assume control as agent for the secured creditor or for the company; or

(vi) to exercise as secured creditor or as a receiver or person so appointed, a right, power or remedy that exists because of the charge, whether that right power or remedy arises under an instrument that relates to the charge, under an enactment or otherwise.

**Leave to enforce security**

37. (1) A secured creditor affected by the appointment of an administrator may apply to the Court within the decision period, for the grant of leave to the secured creditor to enforce the security of the secured creditor.

(2) A secured creditor who makes an application to the Court shall, give notice of the application to the administrator.

(3) The administrator shall

- (a) file an affidavit informing the Court whether the administrator supports or opposes the application,
- (b) file a report on the assets and liabilities of the company under administration that are known to the administrator, and
- (c) state any respect in which, to the knowledge of the administrator, the statement of assets and liabilities of the company may be incomplete.

(4) The Court may

- (a) proceed to make a determination on the application at the hearing; or
- (b) where the Court considers it essential to receive further information and reports from either the secured creditor or the administrator in order to effectively determine the application, adjourn the hearing for that purpose for a period of not more than twenty-one days.

(5) The Court may, in determining the application of the secured creditor, grant leave to the secured creditor to enforce the security of the secured creditor over the property of the company where the Court is satisfied that in the circumstances of the case, serious prejudice will be caused to the secured creditor if the application is not granted and that outweighs the prejudice which shall be caused to other creditors arising from the grant of the application.

(6) The Court may, in making an order consider

- (a) the fact that the secured creditor, a receiver, or any other person involved in the enforcement of the security shall not be required to perform a specified function or exercise a specified power except as permitted by further order of the Court;
- (b) the limitation of the enforcement of the security to specified property; or

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(c) the directive that the enforcement by a creditor of the security of the creditor by any sale of property shall be conducted in the manner laid down by the Court or subject to any further leave or directions from the Court.

(7) A secured creditor granted leave to enforce a security shall, at intervals not exceeding three months, report to the administrator on the enforcement of the security and the proceeds recovered by the secured creditor.

(8) The Court, in the case of perishable property, on an application under this section, may make an order to grant leave to the secured creditor to immediately enforce the security so far as it is a security over perishable property and to hold any proceeds that are recovered by the secured creditor in trust for the administrator pending the determination of the application by the Court under subsection (5).

(9) Nothing in this section shall prevent a person from giving a notice under a security agreement.

**Recovery of property before administration**

38. (1) Where a receiver or any other person before the commencement of the administration of a company,

(a) enters into possession or assumes control of property used or occupied by, or in the possession of the company; or

(b) exercises any other power in relation to the property,

in order to enforce a right of the owner or lessor of the property to take possession of the property or otherwise recover the property, sections 30 and 31 shall not prevent the receiver or that other person from performing a function or exercising a power in relation to the property.

(2) Section 14 does not apply to a transaction or dealing that affects the property and is entered into in the performance of a function or the exercise of a power of the receiver or other person.

*Restructuring Officer*

**Restructuring officer**

39. (1) The administrator of a company in administration shall be the restructuring officer, unless the creditors at the watershed meeting by resolution appoint an individual to be the restructuring officer.

(2) A person shall not be appointed a restructuring officer unless that person

- (a) is qualified to act as an insolvency practitioner; or
- (b) has consented in writing and has not withdrawn the consent at the time when the restructuring agreement is executed.

(3) The appointment of a restructuring officer is irrevocable, except by an order of the Court.

(4) One or three persons may be appointed as restructuring officers.

(5) Where three persons are appointed as restructuring officers jointly

- (a) the function or power of the restructuring officer may be performed or exercised by any one of the restructuring officers or all of the restructuring officers together, except where the order, instrument or resolution that appoints the persons provides otherwise; and
- (b) a reference in this Act to a restructuring officer refers to one or three of the restructuring officers as the case may be.

**Vacancy in the office of restructuring officer**

**40.** (1) The office of a restructuring officer shall be vacant if the restructuring officer

- (a) resigns by giving written notice to the company;
- (b) becomes disqualified under section 155;
- (c) is removed by the Court; or
- (d) dies.

(2) The Court may

- (a) remove a restructuring officer, and appoint a person in the place of the restructuring officer; or
- (b) appoint a new restructuring officer

if the restructuring agreement has not yet terminated but for some reason the restructuring officer is not performing the functions of a restructuring officer.

(3) The Court may make an order under subsection (2) on the application of

- (a) the Registrar,
- (b) a creditor of the company,
- (c) a shareholder, or
- (d) the private liquidator if the company is in private liquidation.

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(4) Where there are three restructuring officers, there is a vacancy if one of the restructuring officers

- (a) resigns;
- (b) becomes disqualified under section 155;
- (c) is removed by the Court; or
- (d) dies.

(5) The creditors may appoint a new restructuring officer in the case of a vacancy.

**Remuneration of restructuring officer**

**41.** (1) A restructuring officer is entitled, with the approval of the committee of creditors, to charge reasonable remuneration for the discharge of duties and exercise of powers as a restructuring officer.

(2) Where there is a disagreement as to the remuneration of a restructuring officer, the Court may, on the application of a restructuring officer, an officer, a creditor or a shareholder of the company, review or fix the remuneration of the restructuring officer at a level that is reasonable in the circumstances.

**Sale of shares by restructuring officer**

**42.** (1) A restructuring officer may sell existing shares in the company

- (a) with the written consent of the shareholder concerned; or
- (b) with leave of the Court on an application of the administrator on notice, where the shareholder does not consent.

(2) The shareholder, a creditor or the Registrar may oppose an application by the administrator.

*Restructuring Agreement*

**Application of sections 44 to 59**

**43.** Sections 44 to 59 shall apply where the creditors at a watershed meeting resolve that the company executes a restructuring agreement.

**Preparation and content of restructuring agreement**

**44.** (1) The restructuring officer shall prepare a document that sets out the content of the agreement.

- (2) The document shall specify
  - (a) who the restructuring officer is;
  - (b) funding of the restructuring agreement;



- (c) the property of the company that will be available to pay creditors;
- (d) whether the property is owned by the company at the time when the company executes the agreement;
- (e) the nature and duration of any moratorium period for which the agreement provides;
- (f) the extent to which the company will be released from the liabilities of the company;
- (g) the conditions for the agreement to come into operation;
- (h) the circumstances in which the agreement terminates;
- (i) the order in which the proceeds of realisation of the property of the company will be distributed among creditors who are bound by the agreement; and
- (j) the day, on or before which claims of the creditors must have arisen if the claims are to be admissible under the restructuring agreement which shall not be later than the day when the administration began.

(3) The document shall be deemed to include the provisions prescribed under sections 2 to 78, except the provisions that the document expressly excludes.

(4) A restructuring agreement shall include post-commencement financing.

#### **Execution of restructuring agreement**

45. (1) A restructuring agreement takes effect when the agreement is executed by the company in administration and the restructuring officer.

(2) The restructuring agreement shall be executed within

- (a) twenty-one days after a watershed meeting has approved that restructuring agreement; or
- (b) a further period that the Court orders, if the restructuring officer has applied to the Court for an extension of time before the end of the initial period of twenty-one days after approval at the watershed meeting.

(3) The company shall not execute the restructuring agreement unless the directors of the company have, by resolution, authorised the execution of the agreement by the company or on behalf of the company.

(4) Subsection (3) applies despite section 12, but does not limit the functions and powers of the administrator of the company.

**Procedure if restructuring agreement not fully approved**

46. (1) Where, at a watershed meeting, the creditors resolve that the company executes a restructuring agreement, but the proposed agreement is not fully approved at the meeting

- (a) the restructuring officer shall draft the complete agreement and circulate the agreement to the creditors within fourteen days after the meeting;
- (b) the creditors may inspect the agreement for a period of three working days after the end of the period specified in paragraph (a); and
- (c) the company and the restructuring officer shall execute the agreement within two working days after the end of the period specified in paragraph (b).

(2) The Court may extend the period referred to in paragraph (a) of subsection (1) by ten working days, on an application by the restructuring officer, but only if the application is made within that period.

(3) The Court may extend the period referred to in paragraph (c) of subsection (1) by additional two working days on an application by the restructuring officer, but only if the application is made within that period.

**Acts of creditor**

47. A creditor shall not so far as that creditor will be bound by an agreement if the agreement has already been executed

- (a) do anything inconsistent with the agreement, except with the leave of the Court; or
- (b) take a step that is prohibited under section 51, during the period between the time of the passage of a resolution at the watershed meeting that the company executes a restructuring agreement and
  - (i) the execution of the agreement by the company and the restructuring officer; or
  - (ii) the expiry of the period during which the agreement is executed.

**Failure of company to execute restructuring agreement**

48. Where the creditors at a watershed meeting pass an ordinary resolution that the company executes a restructuring agreement, and the company fails to do so within the deadline for execution, the restructuring officer shall apply to the Court for leave to convert the administration of the company into official liquidation.

**Persons bound by restructuring agreement**

**49.** A restructuring agreement binds

- (a) the creditors of the company, to the extent provided by section 50;
- (b) the company;
- (c) the officers and shareholders of the company; and
- (d) the restructuring officer.

**Extent to which restructuring agreement binds creditors**

**50.** (1) A restructuring agreement binds creditors including secured creditors regarding claims that arise on or before the day specified in the agreement in accordance with paragraph (i) of subsection (2) of section 44.

(2) A secured creditor shall not realise or otherwise enforce the secured charge of the creditor except where

- (a) the agreement provides for the secured creditor to realise or enforce the charge and the secured creditor at the watershed meeting voted in favour of the resolution as a result of which the company executed the agreement; or
- (b) the Court makes an order to that effect under section 52.

(3) An owner or lessor of property shall not exercise rights in relation to property, except where

- (a) the agreement provides for the exercise of rights in relation to an owner or lessor of property who at the watershed meeting voted in favour of the resolution as a result of which the company executed the agreement; or
- (b) the Court makes an order to that effect under section 52.

**Prohibited acts**

**51.** (1) A person who is bound by a restructuring agreement shall not

- (a) apply or continue with an application, to the Court for the appointment of a liquidator of the company,
- (b) commence or continue proceedings against the company or in relation to any property of the company except with leave of the Court; or
- (c) commence or continue an enforcement process against the property of the company except with leave of the Court,

while the agreement is in force.

(2) In this section, “property” includes property used or occupied by the company or in the possession of the company.

**Enforcement of charge or recovery of property**

52. (1) The Court may, at any time after creditors have resolved at a watershed meeting that a restructuring agreement be executed, order that

- (a) a secured creditor may realise or otherwise enforce the secured charge of the creditor; or
- (b) the owner or lessor of property that is used or occupied by the company or is in the possession of the company, take possession of the property or otherwise recover the property or exercise rights in relation to the property.

(2) The Court may make an order under subsection (1) subject to the terms that the Court considers appropriate.

(3) The Court may make an order under subsection (1) where the Court is satisfied that

- (a) the achievement of the purposes of the restructuring agreement would not be adversely affected if the order is made; and
- (b) the secured interests of the creditor, property owner or lessor affected by the order will not be prejudiced to an extent that outweighs prejudice to other creditors if an order is not made, having regard to the terms of the restructuring agreement and the order, and any other relevant matters.

(4) An application for an order under this section may be made

- (a) where the agreement has not yet been executed by the administrator; or
- (b) where the agreement has been executed by the restructuring officer.

**Effect of restructuring agreement on debts of the company**

53. (1) A restructuring agreement releases the company from a debt only where

- (a) the agreement provides for the release; and
- (b) the creditor concerned is bound by the agreement.

(2) The release of the company from a debt shall not discharge or otherwise affect the liability of

- (a) a guarantor of the debt; or
- (b) a person who has indemnified the creditor concerned against default by the company in relation to the debt.

**Court ruling on validity of restructuring agreement**

54. (1) The Court may rule on the validity of a restructuring agreement if there is doubt, on a specific ground, as to whether the agreement complies with this Act.

- (2) An application may be made by
  - (a) the restructuring officer;
  - (b) a shareholder or creditor of the company; or
  - (c) the Registrar

to the Court for the determination of the validity of the restructuring agreement.

- (3) The Court may, on an application under this section, declare
  - (a) a provision of the agreement void; or
  - (b) the agreement void.

(4) Where the Court declares that the agreement is void in contravention of this Act, the Court may validate the agreement, if the Court is satisfied that

- (a) a provision of this section was substantially complied with; and
- (b) injustice will result for anyone bound by the agreement if the contravention is not disregarded.

(5) Where the Court declares that a provision of the agreement is void, the Court may vary other provisions of the agreement if the restructuring officer consents.

#### **Variation of restructuring agreement by creditors**

55. (1) The creditors may vary a restructuring agreement by a resolution passed at a meeting convened under section 58, except that the variation shall not be materially different from the proposed variation set out in the notice of the meeting.

(2) A creditor of a company in administration may apply to the Court for an order to cancel the variation of the agreement by the creditors.

- (3) The Court may, on hearing the application,
  - (a) cancel or confirm the variation subject to any condition that the Court deems appropriate; and
  - (b) make any other order that the Court considers appropriate.

#### **Termination of restructuring agreement**

56. (1) A restructuring agreement may be terminated

- (a) by the Court under section 57; or
- (b) by a resolution of the creditors under section 59; or

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(2) A restructuring agreement terminates where the agreement specifies circumstances in which the agreement will terminate and those circumstances occur.

**Termination of restructuring agreement by Court**

57. (1) The Court may terminate a restructuring agreement on the application of

- (a) the company;
- (b) a creditor;
- (c) the restructuring officer; or
- (d) any other person with an interest in the termination of the agreement.

(2) The Court may terminate a restructuring agreement where the Court is satisfied that

- (a) an information breach has occurred;
- (b) there has been a material contravention of the agreement by a person bound by the agreement;
- (c) effect cannot be given to the agreement without injustice or undue delay;
- (d) the agreement or a provision of the agreement which if implemented under the agreement, or an act proposed to be done under the agreement shall be
  - (i) oppressive or unfairly prejudicial to, or unfairly discriminatory against, one or more of the creditors; or
  - (ii) contrary to the interests of the company as a whole; or
- (e) the agreement be terminated for some other reason.

(3) The Court shall not terminate the agreement without first taking into account the rights of third parties.

(4) In this section

“information breach” means

- (a) the giving of false or misleading information about the business, property, affairs or financial circumstances of the company
  - (i) to the administrator or a creditor; or
  - (ii) in a report or statement under subsection (7) of section 24 that accompanies a notice of meeting at which a resolution that the company executes a restructuring agreement was passed; or

- (b) an omission from the report or statement referred to in subparagraph (ii) of paragraph (a) of subsection (4), where the information or the omission, as the case may be, can reasonably have been expected to be material to the creditors in deciding whether to vote in favour of the resolution that the company execute the restructuring agreement.

**Meeting of creditors to consider proposed variation or termination of restructuring agreement**

58. (1) The restructuring officer

(a) may convene a meeting of the creditors of the company to consider a variation to, or the termination of, the agreement; or

(b) shall convene a meeting if requested in writing by creditors whose claims against the company are not less than twenty per cent of the total value of every claim of a creditor.

(2) The restructuring officer shall convene the meeting by

(a) giving written notice to the creditors of the company; and

(b) the publication of a notice of the meeting in a daily newspaper of national circulation.

(3) The restructuring officer shall take the steps set out in subsection (2) not less than seven days before the meeting.

(4) The notice given to the creditors shall set out any resolution to vary or terminate the agreement that is to be considered by the meeting.

(5) The restructuring officer shall preside at the meeting.

**Termination of restructuring agreement by creditors**

59.(1) The creditors, by a resolution passed at a meeting convened under section 58 may terminate a restructuring agreement if a material breach of the agreement has occurred and the breach has not been rectified.

(2) The creditors may pass an ordinary resolution for the winding-up of the company where the notice of the meeting sets out a proposed ordinary resolution that the company be wound up by official liquidation.

*Liability of Administrator*

**Acts of administrator**

60. (1) A payment made, transaction entered into, or any other related act or action taken or done, in good faith, by or with the consent

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of the administrator of a company in administration, shall not be set aside in the liquidation of the company.

(2) Sections 121 to 124 do not apply to a transaction by a company in administration where the transaction is

- (a) carried out by or with the authority of the administrator or restructuring officer appointed under section 39;
- (b) specifically authorised by the restructuring agreement and carried out by the restructuring officer; or
- (c) by order of the Court.

**Liability for debt**

**61.** (1) An administrator is not liable for the debts of the company except as provided in this section.

(2) An administrator is liable for debts that the administrator incurs, in the performance or exercise, or purported performance or exercise, of the functions and powers as administrator, for

- (a) the purpose of funding the company;
- (b) any services rendered; or
- (c) any property hired, leased or occupied.

(3) Subsection (2) has effect despite any agreement to the contrary, but without limiting the rights of the administrator against the company or any other person.

(4) An administrator is liable, to the extent specified in subsection (5), for the rent and other payments that become due by the company under an agreement

- (a) made before the administration began; and
- (b) that relates to the use, possession or occupation of property by the company.

(5) An administrator is liable for rent and other payments that accrue in the period

- (a) commencing fourteen days after the administration begins; and
- (b) during which
  - (i) the company continues to use or occupy, or be in possession of the property; and
  - (ii) the administration continues; and
- (c) ending on the earliest of any of the following:
  - (i) the end of the administration;
  - (ii) the giving of a notice under section 62;



- (iii) the appointment of a receiver of the property where an order is made under section 52 to permit a secured creditor or owner of property to enforce a charge or exercise rights in relation to property;
  - (iv) the appointment of an agent by a secured creditor of the property, under the provisions of a charge over the property, to enter into possession or to assume control of the property where an order is made to that effect under section 52; or
  - (v) where a secured creditor takes possession or assumes control of the property under the provisions of a charge over the property where an order is made to that effect under section 52.
- (6) An administrator shall not be deemed to
- (a) have adopted the agreement; or
  - (b) be liable under the agreement subject to subsection (5).
- (7) This section shall not affect the liability of the company for rent or any other payment due under the agreement.

**Non-use notice**

62. (1) An administrator is not liable under section 61 for any period during which a non-use notice is in force which
- (a) is given by the administrator to the owner or the lessor of the property within fourteen days after the administration commences;
  - (b) specifies the property to which the notice relates; and
  - (c) states that the company does not propose to use the property or otherwise exercise any rights in relation to the property.
- (2) A notice under subsection (1) ceases to have effect where
- (a) the administrator, in writing to the owner or lessor, revokes the notice; or
  - (b) the company exercises, or purports to exercise, a right in relation to the property.
- (3) For the purpose of paragraph (b) of subsection (2), the company does not exercise, or purport to exercise, a right in relation to the property merely because the company continues to occupy, or to be in possession of, the property, unless the company
- (a) also uses the property; or
  - (b) asserts a right, as against the owner or the lessor, to continue to occupy or be in possession.

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(4) A notice under this section shall not affect the liability of the company for rent and other payments.

(5) The Court may exempt an administrator from liability for rent and other payments under this section, but the order of the Court shall not affect the liability of the company.

**Indemnity of administrator**

**63.** (1) An administrator shall be indemnified out of the property of the company for

- (a) a liability incurred in the performance of the duties but not a liability incurred in bad faith or negligently; and
- (b) the remuneration to which the administrator is entitled.

(2) Subject to section 64, the right of indemnity of an administrator under this section has priority over the debts of the company.

(3) An administrator has a lien on the property of the company to secure a right of indemnity under this section.

(4) A lien has priority over a charge to the same extent as the right of indemnity has priority over a debt secured by the relevant charge.

*Power of the Court*

**General powers of Court**

**64.** (1) The Court may make any order that the Court considers appropriate in respect of the administration of a company.

(2) The Court may terminate an administration where the Court is satisfied that

- (a) the company is solvent;
- (b) the provisions on the administration of companies are not being complied with; or
- (c) for some other justifiable reason the administration should end

(3) The Court may make an order under this section on the application of

- (a) the company;
- (b) a creditor of the company;
- (c) the administrator;
- (d) the restructuring officer;

- (e) the Registrar; or
- (f) any other person with an interest in the administration of the company.

**Order to protect creditor during administration**

65. The Court may, on the application of the Registrar or a director of a company, make an order which the Court considers necessary to protect the interests of the creditors of the company in administration.

**Validity of appointment of administrator or restructuring officer**

66. (1) Where there is doubt, on a specific ground, as to the validity of the appointment of a person as administrator or restructuring officer, any of the following persons may apply to the Court for a ruling on the validity of the appointment:

- (a) the person appointed;
- (b) the company in question; or
- (c) a creditor of the company.

(2) The Court, in making the ruling that the appointment is invalid, is not limited to the grounds specified in the application.

**Application by administrator or restructuring officer to Court for directions**

67. (1) An administrator or a restructuring officer may apply to the Court for directions in respect of the performance or exercise of any of the functions and powers of the administrator or restructuring officer.

(2) An administrator or a restructuring officer may apply to the Court for directions in relation to the operations of, or for giving effect to the restructuring agreement.

**Supervision of administrator or restructuring officer**

68. (1) The Court may make an order that the Court considers appropriate where the Court is satisfied that

- (a) the management of the business, property or affairs of the company by an administrator or a restructuring officer is prejudicial to the interests of a creditor or shareholder of the company; or
- (b) the conduct of an administrator or a restructuring officer has been, is or will be prejudicial to the interests of a creditor or shareholder.

- (2) An application for an order under this section may be made by
- (a) a creditor or shareholder of the company;
  - (b) the Registrar; or

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- (c) any other person with interest in the administration of the company.

**Order to remedy default**

**69.** (1) The Court may order an administrator or a restructuring officer to remedy the default of that administrator or restructuring officer.

- (2) An order may be made where
  - (a) the administrator or restructuring officer has failed, as required by this Act or any other enactment, to make or file any return, account, or other document or to give a notice, and has not remedied the default within fourteen days after service on the administrator, a notice by a shareholder or creditor of the company in administration requiring that the default be remedied; or
  - (b) the administrator or restructuring officer has failed, after being required at any time by the liquidator of the company to do so
    - (i) to render proper accounts of, and to provide appropriate vouchers for the receipts and payments as administrator or restructuring officer; or
    - (ii) to pay to the liquidator an amount properly payable to the liquidator.
- (3) An application for an order under this section may be made by
  - (a) a shareholder or creditor of the company, in the case of a default referred to in paragraph (a) of subsection (2);
  - (b) the liquidator in the case of a default referred to in paragraph (b) of subsection (2); or
  - (c) the Registrar; or
  - (d) any other person with interest in the administration or restructuring of the company.

**Power of Court to make an order in relation to vacancy in the office of administrator or restructuring officer**

**70.** (1) The Court may make any order the Court considers appropriate where the Court is satisfied that

- (a) the office of the administrator is vacant or no administrator is acting in the case of a company in administration; or
- (b) the office of the restructuring officer is vacant or no restructuring officer is acting in the case of a restructuring agreement.

- (2) An application for an order may be made by
  - (a) a creditor or shareholder of the company; or
  - (b) the Registrar.

**Prohibition order against an administrator or restructuring officer**

71. (1) The Court shall make a prohibition order in respect of a person where the Court is satisfied that, that person is unfit to act as an administrator or a restructuring officer.

(2) The Court may, make a prohibition order for a period not exceeding five years.

(3) A person against whom a prohibition order is made shall not act as an insolvency practitioner.

(4) The Court may make an order under this section in respect of a past or current administrator or restructuring officer of a company in administration on the application of

- (a) the company or a shareholder of the company;
- (b) a creditor of the company;
- (c) the administrator or restructuring officer of the company;
- (d) the Registrar; or
- (e) any other person interested in the administration of the company.

(5) The applicant shall deliver to the Registrar a copy of an order made under subsection (1) within ten working days after the order is made.

(6) The Registrar shall keep on file indexed by reference to the name of the administrator or restructuring officer concerned a copy of the order delivered.

(7) In this section, “failure to comply” means a failure of an administrator or restructuring officer to comply with a relevant duty that arises

- (a) under this or any other enactment; or
- (b) under any order or direction of the Court.

*Notices*

**Notice of appointment**

72. (1) An administrator or a restructuring officer appointed by a company, the liquidator, a secured creditor or the Court shall

- (a) lodge a notice of the appointment with the Registrar for publication in the *Companies Bulletin* before the end of the next working day after the appointment;

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- (b) publish a notice of the appointment in the *Companies Bulletin* within three working days after the appointment; and
- (c) give written notice of the appointment within seventy-two hours after the appointment to
  - (i) each person who holds a charge over the whole, or substantially the whole, of the property of the company; or
  - (ii) each person who holds two or more charges over the property of the company where the property of the company subject to those charges together, is the whole, or substantially the whole, of the property of the company; and
- (d) publish a notice of the appointment in a daily newspaper of national circulation.

(2) The Registrar shall cause to be published in the *Companies Bulletin* the appointment of the administrator.

(3) A secured creditor who appoints an administrator under section 3 shall give written notice of the appointment to the company before the end of the next working day.

**Notice of execution of restructuring agreement**

**73.** The restructuring officer shall, within fourteen days after a restructuring agreement is executed

- (a) send to each creditor a written notice of the execution of the agreement;
- (b) file a copy of the agreement with the Registrar; and
- (c) publish a notice of the execution of the agreement in
  - (i) a daily newspaper of national circulation; and
  - (ii) the *Companies Bulletin*.

**Notice of failure to execute restructuring agreement**

**74.** The restructuring officer shall, where a company does not meet the deadline for the execution of a restructuring agreement,

- (a) publish a notice of the failure in a daily newspaper of national circulation, and
- (b) file a copy of the notice, within seventy-two hours with the Registrar for publication in the *Companies Bulletin*.

**Notice of termination by creditors of restructuring agreement**

75. The restructuring officer shall, where the creditors terminate a restructuring agreement

- (a) send a notice of the termination to each of the creditors;
- (b) publish the notice twice in a daily newspaper of national circulation; and
- (c) file a copy of the notice with the Registrar within fourteen days.

**Notice of administration**

76. (1) A company in administration shall set out in each document issued or signed by or on behalf of the company that evidences or creates a legal obligation of the company, after the name of the company where the name first appears the words, "in administration" for as long as the company is in administration.

(2) The Court may exempt the company from the requirement of subsection (1) on an application by the company.

**Notice of change of name**

77. (1) A company in administration that changes the name twelve months before the appointment of the administrator shall include the former name in any document of the company where the name appears.

(2) Where a company to which subsection (1) applies is in the course of the administration placed in liquidation, the liquidator shall include the former name of the company in any document of the company where the name appears.

**Effect of contravention of sections 72 to 77**

78. A contravention of sections 72 to 77 shall not affect the validity of anything done under sections 72 to 77 unless the Court orders otherwise.

*Commencement of Official Liquidation*

**Purpose of sections 80 to 149**

79. (1) The purpose of sections 80 to 149 is to provide for the official winding up of a body corporate in a manner that results in the maximisation of the realisation of the estate of the insolvent company and the distribution of the estate having regard to the equitable treatment of stakeholders in the company.

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(2) Where the Registrar is appointed as official liquidator, sections 80 to 107 shall apply.

**Appointment of liquidator for company in administration**

**80.** (1) A liquidator may be appointed for a company in administration

- (a) by the Court, on an application under section 86;
- (b) by resolution of the creditors at a watershed meeting; or
- (c) at a meeting convened under section 58 to consider the termination of a restructuring agreement.

(2) The Court may adjourn the hearing of the application under section 86 for the appointment of a liquidator for a company in administration where the Court is satisfied that, it is in the interest of the creditors of the company for the company to continue in administration rather than be placed in liquidation.

(3) The Court shall not appoint a liquidator of a company in administration where the Court is satisfied that it is in the interest of the creditors of the company for the company to continue in administration rather than have a liquidator appointed.

(4) The appointment by the Court of a liquidator for a company that is in administration ends the administration.

(5) Where a liquidator is appointed to a company that is in administration under a restructuring agreement, the person in control of the company immediately before the appointment of the liquidator shall lodge with the Registrar

- (a) a copy of the report of the administrator that accompanied the notice to creditors of the watershed meeting; and
- (b) a further report that updates the report of the administrator with any matters of which the administrator is aware that
  - (i) are not referred to in the report of the administrator, or that have changed since that report; and
  - (ii) affect the financial position of the company.

(6) Where there is no administrator or restructuring officer to act when the company is placed in liquidation, the directors of the company at the date of liquidation shall take the steps described in this section and act in the stead of the administrator or restructuring officer.



**Modes of winding-up**

81. (1) The official winding-up of a company may be commenced by a

- (a) special resolution of the company;
- (b) petition addressed to the Registrar;
- (c) petition to the Court;
- (d) conversion from a private liquidation; or
- (e) conversion from administration or restructuring of the company.

(2) Unless a contrary intention appears, sections 82 to 147 apply with respect to the winding-up of a company in any of the modes of winding up.

**Procedure on resolution**

82. (1) A special resolution of a company for the official winding-up of the company shall state that, the company shall be wound up by way of an official winding-up.

(2) A copy of the special resolution and the notice for the meeting shall be served on the Registrar.

(3) The Registrar or a representative of the Registrar shall be afforded the opportunity to attend the meeting at which the special resolution is passed.

(4) When a company has passed a special resolution for the official winding-up of the company, a copy of the resolution shall be sent immediately by the directors of the company to the Registrar.

(5) The Registrar shall publish the resolution in the *Companies Bulletin* after receipt of the resolution.

(6) When the special resolution is passed, the official liquidator shall take immediate control of the assets of the company.

(7) After the passage of the resolution, a director, officer, liquidator or the official liquidator shall not dispose of the assets of the company without the approval of the Court unless the disposal is in the normal course of business.

(8) Where a person, other than a body corporate, contravenes subsection (7), that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than five years or to both.

**Procedure on petition to the Registrar**

83. (1) Subject to subsections (2) and (3), a person who is  
(a) a creditor of a company, or  
(b) a member or contributory of a company  
may present a petition to the Registrar for the official winding-up of the company.

(2) A member of a company with shares is not entitled to present a winding-up petition unless the shares or some of the shares of that member

- (a) were originally allotted to that member;
- (b) have been held by that member, and registered in the name of that member for at least six months during the eighteen months preceding the date of the presentation of the petition; or
- (c) have devolved on that member by operation of law.

(3) The Registrar shall not consider a winding-up petition presented by a contingent or prospective creditor

- (a) unless a security for costs that the Registrar considers reasonable has been given, and
- (b) until a prima facie case for winding-up has been established to the satisfaction of the Registrar.

(4) The Registrar may order the official winding-up of the company on the petition if the Registrar is satisfied that the company is unable to pay the debts of the company.

(5) For the purpose of sections 80 to 148, a company is unable to pay the debts of the company if

- (a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum of money of not more than ten thousand currency points then due, has served on the company a written demand requiring the company to pay the sum of money that is due and the company has for thirty days after the demand, neglected to pay the sum of money or to secure or compound for the sum of money to the reasonable satisfaction of the creditor;
- (b) an execution or any other process issued on a judgment or order of the Court in favour of a creditor of a company is returned unsatisfied in whole or in part; or
- (c) it is proved to the satisfaction of the Registrar that the company is unable to pay the debts of the company.

(6) The Registrar shall in determining whether a company is unable to pay the debts of the company, take into account the contingent and prospective liabilities of the company.

(7) The petitioner shall serve a copy of the petition on the company on or before the day on which the petition is presented to the Registrar.

(8) Where two or more petitions are presented in respect of the same company, a winding-up order made in respect of any of the petitions shall be deemed to have been made in respect of each petition presented.

(9) A further petition shall not be presented in respect of a company regarding a winding-up order that has been made before the termination of the official winding-up proceedings.

(10) The Registrar shall

- (a) place on record a copy of the winding-up order for the company concerned, and
- (b) publish the order in the *Companies Bulletin*.

**Procedure on petition to the Court**

84. (1) The following persons may present a petition to the Court for the official winding-up of the company only on grounds specified in paragraphs (c), (d) and (e) of subsection (2):

- (a) The Registrar,
- (b) a creditor of the company,
- (c) a member of a company with shares or contributory of the company, or
- (d) the Attorney-General.

(2) The Court may order the official winding-up of a company on a petition presented where

- (a) the company
  - (i) does not commence the business which the company is authorised by the constitution of the company to carry on, or
  - (ii) suspends business for a year within a year after the incorporation of the company;
- (b) the company does not have members;
- (c) the business or objects of the company are unlawful;
- (d) the company is operated for an illegal purpose;

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- (e) the business being carried out by the company is not authorised by the constitution of the company;
  - (f) the company is unable to pay the debts of the company; or
  - (g) the Court is of the opinion that it is just and equitable that the company should be wound up.
- (3) In the determination of whether the company is unable to pay the debts of the company, subsection (5) of section 83 applies.
- (4) On the hearing of the winding-up petition, the Court may
- (a) dismiss the petition,
  - (b) adjourn the hearing conditionally or unconditionally, or
  - (c) make an interim order, or any other appropriate order subject to subsection (5).
- (5) The Court shall not refuse to make a winding-up order only on the grounds that
- (a) the assets of the company have been mortgaged to an amount equal to, or in excess of, those assets; or
  - (b) the company does not have assets.
- (6) Where the petition is presented by members or contributories of the company on the grounds that it is just and equitable that the company should be wound up, the Court shall make a winding-up order if the Court is of the opinion that
- (a) the petitioners are entitled to relief by winding-up of the company or by some other means, and
  - (b) in the absence of any other remedy, it is just and equitable that the company should be wound up.
- (7) Despite subsection (6), where the Court finds that, an alternative remedy is available to the petitioners and that the petitioners acted unreasonably in seeking to have the company wound up instead of pursuing the alternative remedy, the Court shall not make a winding-up order.
- (8) After the winding-up order is made, the Registrar of the Court shall forward a copy of the order to the Registrar.
- (9) After receipt of the order, the Registrar shall make a minute of the winding-up order in the books of the Registrar relating to the company and publish the order in the *Companies Bulletin*.
- (10) Subject to this section, the Court may appoint the Registrar as the liquidator to exercise all or any of the powers of a liquidator at any time between the presentation of a petition and the making of a winding-up order.

**Procedure on conversion from private liquidation to official winding-up**

85. (1) The Registrar may make a winding-up order to convert a private liquidation into an official winding-up if the liquidator gives notice under a private liquidation in accordance with the Companies Act, 2019 (Act 992) alleging that the company may not be able to pay the debts of the company in full within the period stated in the declaration of insolvency.

(2) The notice shall be accompanied with a statement in the prescribed form of the assets and liabilities of the company.

(3) For the purpose of this section, proceedings taken on a private liquidation are validly taken unless the Court otherwise directs.

**Procedure on conversion from administration to official winding-up**

86. (1) The Registrar may by an application to the Court, make a winding-up order to convert the administration of a company into an official winding-up when the administrator gives notice that the administration has been converted into official liquidation.

(2) A statement in the prescribed form of the assets and liabilities of the company shall accompany the notice.

(3) For the purpose of this section, proceedings taken on an administration are validly taken unless the Court otherwise directs.

**Stay of proceedings**

87. (1) On the commencement of winding-up proceedings against a company, civil proceedings against the company shall be stayed and any transfer of shares of the company within that period is void.

(2) The Court may, on an application made by a party to the petition or the Registrar, stay the proceedings by or against the company, or regarding the property of the company during the interval between the presentation of a petition for an official winding-up and the commencement of the winding-up.

(3) In accordance with subsection (2), a disposition of the property of the company, including things in action and a transfer of shares is void, unless the Court otherwise directs.

**Costs of application for liquidation**

88. (1) The liquidator shall pay the reasonable costs of the person who applied to the Court for an order that the company be wound up, including the costs incurred by legal counsel and client in procuring the order.

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(2) The costs of the application shall be determined in accordance with the rules of Court.

(3) An applicant shall bear the cost of an unsuccessful application for the winding-up of a company.

*Effect of Commencement of Official Liquidation*

**Period of commencement**

**89.** (1) An official winding-up under this Act commences

(a) on the passage of a resolution for the winding-up of the company, or

(b) on the making of a winding-up order.

(2) The words “commencement of a winding-up” and the cognate expressions shall be construed accordingly.

**Cessation of functions of directors**

**90.** On the commencement of a winding-up, the functions of the directors of the company shall vest in the liquidator who assumes a fiduciary position to the company.

**Cessation of business of company**

**91.** (1) On the commencement of a winding-up, the company shall cease to carry on the business of the company except where the company is required to do so for the beneficial winding-up of the company.

(2) The corporate status and the corporate powers of the company shall continue until the company is dissolved despite any provision to the contrary in the constitution of the company.

**Custody of property of company**

**92.** (1) The property of a company shall be vested in the liquidator during winding-up proceedings except as otherwise directed by the liquidator.

(2) Subject to subsection (1), the liquidator shall take into custody or keep under control, the property and things in action to which the company is or appears to be entitled.

(3) The property in the possession of the company at any time within six months before the commencement of a winding-up shall be presumed to be vested in the company unless the contrary is shown.

(4) The liquidator may require a member or contributory and a trustee, receiver, banker, an agent or officer of the company after the commencement of a winding-up, to pay, deliver, convey, surrender or transfer to the liquidator immediately, or within a reasonable time that the liquidator may direct, the money, property or books, records, returns, and other relevant documents in the possession of the person to which the company is entitled.

**Prohibition of civil proceedings**

93. A person shall not, on the commencement of a winding-up proceed with or commence an action or civil proceedings against the company, other than proceedings by a secured creditor for realisation of the security of that secured creditor, except

- (a) by leave of the Court; and
- (b) subject to the terms that the Court may impose.

**Transfer of shares on commencement of winding-up**

94. A transfer of shares made after the commencement of any winding-up is void unless the transfer is made to the liquidator or with the approval of the Court.

*The Liquidator*

**Nomination and appointment of liquidator by creditors of a company**

95. (1) The creditors of a company may nominate and appoint a person to be a liquidator for the purpose of winding-up the affairs and distributing the assets of that company.

(2) A person shall not be appointed a liquidator if that person is not qualified under section 155 to be an insolvency practitioner.

- (3) A person shall not be appointed a liquidator unless
- (a) that person has consented in writing and has not withdrawn the consent at the time of appointment, and
  - (b) the consent of the person has been filed with the Registrar.

(4) Where the creditors are unable to appoint a liquidator, the creditors shall, within seven days, notify the Registrar, who is the official liquidator to be the liquidator.

(5) In sections 96 to 107, references to “the liquidator” include references to “the official liquidator” where the official liquidator is selected by the Government.

**Status of the liquidator in an official winding up**

96. (1) In an official winding-up, the liquidator stands in a fiduciary relationship to the company as if the liquidator were a director of the company.

(2) The Companies Act, 2019 (Act 992) applies to the liquidator in the manner and to the extent that the Act applies to a director.

(3) A liability shall not attach to the

(a) liquidator in respect of a breach of duty imposed on the liquidator by or under this Act; or

(b) Republic in respect of a breach of duty referred to in paragraph (a) except for the reimbursement of the moneys lost to the company through the default of the liquidator.

(4) This section does not affect the institution against a public officer of criminal proceedings or of disciplinary proceedings under the Civil Service Act, 1993 (P.N.D.C.L. 327).

**Powers of the liquidator in an official winding up**

97. In an official winding-up the liquidator may

(a) bring or defend an action or any other legal proceeding in the name and on behalf of the company;

(b) carry on the business of the company so far as it is necessary for the beneficial winding-up of the company;

(c) appoint a legal practitioner or any other professional to assist the liquidator in the performance of the functions of the liquidator;

(d) pay any class of creditors in full;

(e) make a compromise or an agreement, with creditors or persons claiming to be creditors to have present or future claims, certain or contingent, ascertained or sounding only in damages against the company or whereby the company may be rendered liable subject to the Companies Act, 2019 (Act 992);

(f) make a compromise on

(i) calls and liabilities to calls,

(ii) debts and liabilities capable of resulting in debts, or

(iii) present or future claims, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a



- contributory or alleged contributory, or any other debtor or person apprehending liability to the company, and the questions relating to or affecting the assets or the winding-up of the company on the terms that may be agreed;
- (g) take security for the discharge of the calls, debts, liabilities or claim and give complete discharge in respect of any of them;
  - (h) sell the property and things in action of the company by public auction or private contract, with power to transfer the whole of that property or those things to a person or company or to sell the property or those things in parcels;
  - (i) do the acts and execute, in the name and on behalf of the company, the agreements, receipts and any other documents and for that purpose use, when necessary, the seal of the company;
  - (j) prove and rank the claims in the bankruptcy and insolvency of a contributory for a balance against the estate of the contributory, and may receive dividends in the bankruptcy or insolvency regarding the balance, as a separate debt due from the bankrupt or insolvent and proportionately with the other separate creditors;
  - (k) draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect regarding the liability of the company as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of the business of the company;
  - (l) raise the requisite money on the security of the assets of the company;
  - (m) take out letters of administration of a deceased contributory and perform in the name of the liquidator or do any other act necessary to obtain payment for money due from the contributory or the estate of the contributory which cannot conveniently be done in the name of the company, and in those cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator; and

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- (n) do any other act necessary for winding-up the affairs of the company and the distribution of the assets of the company.

**Delegation of functions**

98. (1) The liquidator may delegate a function required or authorised to be done by or in relation to the liquidator to a public officer authorised in that behalf by the liquidator or under any other enactment but the liquidator shall not be relieved from the ultimate responsibility for the performance of the delegated function.

(2) A public officer acting on behalf of the liquidator is presumed to be authorised unless the contrary is shown.

(3) A reference to the liquidator in an enactment includes a public officer authorised or presumed to be authorised under subsection (2).

(4) Where the liquidator considers it necessary, for the performance of the functions of the liquidator, the liquidator may make the appropriate payment for the services of a professional who is not a public officer.

**Powers of the Court**

99. (1) A person aggrieved by an act done by the liquidator in the performance of functions of the liquidator under this Act, may apply to the Court which shall make an appropriate order.

(2) Where a person refuses or fails to comply with a requirement by the liquidator under this Act, the liquidator may apply to the Court, which may order the requirements to be carried out.

(3) Where the liquidator is in doubt as to a matter in connection with the functions of the liquidator under this Act, the liquidator may apply to the Court for directions.

**Liquidation Fund**

100. (1) There is established by this Act the Liquidation Fund.

(2) The moneys received by the liquidator referred to under sections 101 to 111 and sections 120 to 127 shall be paid into the Liquidation Fund and the moneys disbursed by the liquidator referred to under those sections shall be paid out of the Liquidation Fund.

(3) There shall be a Fees Account within the Liquidation Fund.

(4) The moneys received by the liquidator by way of fees and any other charges shall be credited to the Fees Account.

(5) The payments required or authorised to be disbursed from the Liquidation Fund are charged on that Fund.

*General Duties of Liquidator in Administration of Property of Company*

**Collection of debts**

**101.** On the commencement of the winding-up, the liquidator shall secure

- (a) the payment of a debt owed to the company or any other discharge of the debt; and
- (b) any obligation the right to which has passed to the liquidator under section 109.

**Vesting property in liquidator**

**102.** (1) On the commencement of the winding-up, the liquidator shall by notice in the *Companies Bulletin* direct that the whole property or a part of the property of whatever description that belongs to the company or that is held by trustees on behalf of the company, shall vest in the liquidator in the official name of the liquidator and the property to which the notice relates shall vest accordingly.

(2) The liquidator may bring or defend the acts or any other legal proceedings which relate to the property of the company or which it is necessary to bring or defend for the purpose of effectually winding-up the company and recovering the property of the company.

**Realising assets**

**103.** (1) On the commencement of a winding-up, the liquidator shall realise as soon as practicable, the assets that are not held as cash by the means and for the return that will produce for distribution to the creditors of the company, sums of money representing the full value of the assets.

(2) Subsection (1) does not require the realisation of assets which cannot be readily or advantageously disposed of.

**Verifying debts ranking for dividends**

**104.** (1) At the conclusion of the first meeting of creditors after the appointment of the liquidator or, if a first meeting is not held, as soon as practicable after the admission of the proof of debt under section 111, the liquidator shall take practical steps to verify the accuracy of each admitted proof of debt.

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(2) The liquidator may give notice to a creditor holding a security that, if the security is not realised within the period specified in the notice, which shall not be more than six months, the security shall be treated as surrendered.

(3) Subject to sections 105 to 115, a debt shall rank for dividend at any time if the debt is at that time included in an admitted proof, and the value of the debt shall be taken to be the value shown at that time in the admitted proof.

**Set-off**

**105.** (1) A set-off shall be allowed if

- (a) the set-off involves pre-application debt obligations by the creditor and debtor company;
- (b) the debtor company was not rendered insolvent immediately after the set-off; and
- (c) the transaction was in the ordinary course of business, subject to subsection (2).

(2) A transaction entered into for the purpose of set-off where there is fraud and collusion shall not be allowed.

(3) A transaction shall be deemed to be fraudulent if the transaction is

- (a) entered into after an application for winding-up; or
- (b) made in circumstances where the creditor knew or ought to have known that the company was insolvent.

**Amendment of admitted proof of debt**

**106.** (1) Where the value of a debt or security included in an admitted proof of debt has changed otherwise than in respect of interest accruing after the commencement of the winding-up order, the proof of debt is subject to amendment in order to alter the value shown in the admitted proof of debt to give effect to the change.

(2) Where a debt or security is incorrectly included in an admitted proof or the value of a debt or security at the date of the commencement of the winding-up order is incorrectly stated, the proof is subject to amendment in order to rectify the error.

(3) Where a creditor desires to withdraw the claims of the creditor to the whole or a part of the debt included in an admitted proof, the proof is subject to amendment in order to cancel the debt or reduce the value of the debt accordingly.

(4) Where an admitted proof is subject to amendment under this section,

- (a) the liquidator may, except in the case of an amendment under subsection (3), give notice to the creditor to specify the proposed amendment and invite the creditor to consent to the proposed amendment within the period specified in the notice, or
- (b) the creditor may, where the liquidator has not given the notice, give notice to the liquidator to specify the proposed amendment and, except in the case of amendment under subsection (3), invite the liquidator to consent to the proposed amendment within the period specified in the notice.

(5) Where notice of a proposed amendment is given under subsection (4), the liquidator shall amend the proof of debt accordingly if,

- (a) the party to whom the notice is given consents to the amendment;
- (b) consent is not given but, on an application by the creditor or liquidator, the Court orders the amendment to be made; or
- (c) the amendment is proposed by the creditor under subsection (3).

#### **Classification and priority of debt**

**107.** (1) On the commencement of liquidation, the liquidator shall, in relation to each debt which ranks for dividend, ascertain into which class the debt or a part of the debt falls.

(2) A debt shall be classified according to the ranking specified in subsection (3).

(3) A debt classified as a

- (a) Class A debt is a debt in respect of Post-Commencement Financing which takes priority over all other creditor claims including secured and preferential class and shall be paid in full;
- (b) Class B is a preferential debt which
  - (i) ranks equally between other preferential debts against the estate of the company;

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- (ii) shall be paid in full unless the remainder of the estate is insufficient to meet the preferential debt in which case the preferential debt shall be paid in equal proportions; and
- (iii) is debt or part of a debt which answers to either of the following descriptions:
  - (aa) remuneration owed to an employee of the company regarding employment during the whole or a part of the four months preceding the date of commencement of administration or winding-up; or
  - (bb) rates, taxes or similar payments owed to the Republic or a local authority which have become due and payable within the year preceding the date of the commencement of administration or winding-up;
- (c) Class C debt is a secured debt and shall be secured by a fixed charge against an asset of the company;
- (d) Class D debt is a debt or a part of a debt which does not fall within a Class E debt and is, or was, within the year preceding the commencement of winding-up, owed to a director or former director of the company;
- (e) Class E debt is a debt or a part of a debt which satisfies any of the following conditions:
  - (i) excess benefit restored to the liquidator under section 123; or
  - (ii) excess interest that is a portion of a debt which, whether it is stated to do so or not, represents interests at a rate in excess of five percent above the Bank of Ghana policy rate;
- (f) Class F debt is an unsecured debt that is not secured by a charge of any kind over an asset of the company and does not fall into any of the other classes in this section;
- (g) Class G debt is debt in respect of preference shareholders; and
- (h) Class H debt is debt in respect of ordinary shareholders.