
THE CORPORATE INSOLVENCY ACT, 2017

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GOVERNMENT OF ZAMBIA

ACT

No. 9 of 2017

I hereby signify my assent to the Bill

Date of Assent: 17th November, 2017

An Act to provide for corporate receiverships, appointment of receivers and the duties and responsibilities of receivers; business rescue, appointment, duties and responsibilities of business rescue administrators, rights of affected persons during business rescue proceedings and business rescue plans; schemes of arrangements or compromise with creditors; winding up of companies, appointment of liquidators and the duties and responsibilities of liquidators, committees of inspection, special managers and the Official Receiver; insolvency practitioners and the duties and responsibilities of insolvency practitioners; cross-border insolvency; and matters connected with, or incidental to, the foregoing.

[20th November, 2017

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Corporate Insolvency Act, 2017, and shall come into operation on the date appointed by the Minister for the coming into operation of the Companies Act, 2017.

Short title
and
commencement

2. (1) In this Act, unless the context otherwise requires—
“accounts” means the financial statements of a company or group of companies together with accompanying notes, excluding the auditors’ report or annual report of the company;

Interpretation

- ò account fairly stated ò means the annual accounts stated in a manner that ensures sufficient disclosure, reasonable detail and absence of bias;
- ò accounting records ò includeò
 - (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
 - (b) such working papers and other documents as are necessary to explain the methods and calculations by which the accounts are made up;
- ò affected person ò includes a regulator, shareholder, member, director, creditor or an employee, a former employee of a company, registered trade union representing employees of the company and the Registrar;
- ò Agency ò means the Patents and Companies Registration Agency established in accordance with the Patents and Companies Registration Agency Act, 2010;
- Act No. 15 of 2010 ò agent of the company ò includes any banker or legal practitioner of the company and any person appointed by the company as auditor;
- ò annual accounts ò means the annual financial statements of a company that give a true and fair view of the financial performance, financial position and cash flows of the company, including the consolidated financial statements for a group of companies that give a true and fair view of the group of companies' financial performance, financial position and cash flows;
- Act No.13 of 2008 ò auditor ò has the meaning assigned to the word in the Accountants Act, 2008;
- Cap. 37 ò bailiff ò means an officer appointed in accordance with the Sheriffs Act;
- Act No. 7 of 2017 ò bank ò has the meaning assigned to the word in the Banking and Financial Services Act, 2017;
- Act No. 10 of 2017 ò beneficial owner ò has the meaning assigned to the word in the Companies Act, 2017;
- Act No. 10 of 2017 ò body corporate ò has the meaning assigned to the word in the Companies Act, 2017;
- Act No. 10 of 2017 ò book ò has the meaning assigned to the word in the Companies Act, 2017;

- “board of directors” means the board of directors of a company and “board” shall be construed accordingly;
- “business” includes a trade or profession;
- “business rescue administrator” means a person qualified in accordance with section 30 and appointed as an administrator for purposes of business rescue proceedings;
- “business rescue plan” means a plan provided for in accordance with section 41;
- “business rescue proceedings” means the process of facilitating the rehabilitation of a company that is financially distressed by providing for
- (a) the temporary supervision of the company and management of its affairs, business and property;
 - (b) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; or
 - (c) the development and implementation, if approved in accordance with this Act, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result if the company was to be liquidated;
- “charge” has the meaning assigned to the word in the Companies Act, 2017;
- “committee of inspection” means a committee of inspection appointed in the course of a winding up in accordance with this Act;
- “company” has the meaning assigned to the word in the Companies Act, 2017;
- “contingent creditor” means a prospective or anticipated creditor;
- “control” means the control of a company by a person who
- (a) beneficially owns more than twenty-five percent of the issued share capital of the company;
 - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;

Act No. 10
of 2017

Act No. 10
of 2017

Act No. 10
of 2017

(c) is able to appoint or to veto the appointment of a majority of the directors of the company;

(d) is a holding company and the company is a subsidiary of that company as provided for in the Companies Act, 2017;

(e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; or

(f) has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e);

“corporate” means an entity, including a company or body corporate, that is separate and distinct from its owners and which is recognised as such by law and acts as a single entity;

“Court” means the High Court for Zambia;

“creditor” means a person who is entitled to claim that debt is owing to that person by a company and includes a person entitled to enforce a final judgment or order of the Court;

“creditors’ voluntary winding up” means a voluntary winding up of a company by the creditors where no declaration of insolvency was made;

“current liability” means a liability that would, in the ordinary course of events, be payable within twelve months after the end of the financial year to which the accounts of a company or group of companies relate;

“debenture” means a document issued by a corporate that evidences or acknowledges a debt of the corporate, whether or not it constitutes a charge on property of the corporate, in respect of money that is or may be deposited with or lent to the corporate, other than a document of the following kinds:

(a) a document acknowledging a debt incurred by the corporate in respect of money that is or may be deposited with or lent to the corporate by a person

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- (i) in the ordinary course of a business carried on by the person; and
 - (ii) in the ordinary course of such business of the corporate as is not part of a business of borrowing money and providing finance;
- (b) a document issued by a bank in the ordinary course of its banking business that evidences or acknowledges indebtedness of the bank arising in the ordinary course of that business;
- (c) a cheque or order for the payment of money or bill of exchange; and includes
- (i) a unit of a debenture;
 - (ii) debenture stock;
 - (iii) a bond; and
 - (iv) any other security issued by a company, whether constituting a charge on the assets of the company or not;
- ō debenture holder ö includes a debenture stockholder;
- ō declaration ö means a declaration of insolvency made by the Official Receiver;
- ō declaration of solvency ö means a declaration made in accordance with section 91;
- ō deed of appointment ö means the instrument by which the holder of a charge appoints a receiver;
- ō dissolution ö means the termination of a company's legal existence by liquidation in accordance with this Act;
- ō director ö means a person appointed as a director of a company in accordance with the Companies Act, 2017 and the words öthe directorsö means the directors acting collectively; Act No. 10 of 2017
- ō establishment ö means any place of operations where a debtor carries out non-transitory economic activity;
- ō financial institution ö has the meaning assigned to the word in the Banking and Financial Services Act, 2017; Act No. 7 of 2017
- ō financially distressed ö means a company is likely to be insolvent within the immediately ensuing six months;
- ō financial year ö has the meaning assigned to the word in the Companies Act; Act No. 10 of 2017

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- “foreign Court” means a judicial or other authority competent to determine foreign proceedings;
- “foreign main proceeding” means proceedings taking place in the State where the debtor’s main interests are situated;
- “foreign non-main proceeding” means foreign proceedings, other than a foreign main proceeding, taking place in a State where the debtor has an establishment;
- “foreign proceeding” means a judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which the assets and affairs of the debtor are subject to determination by a foreign Court, for the purpose of re-organisation or liquidation;
- “foreign representative” means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the re-organisation or the liquidation of the debtor’s assets or affairs or to act as a representative for the foreign proceedings;
- “general meeting” means an annual general meeting or an extraordinary general meeting;
- “goods” includes personal property;
- “liquidator” means a person appointed to wind up the affairs of a company;
- “judgment receiver” means a receiver who collects or diverts funds from a judgment debtor to the creditor;
- “independent creditor” means a person who is
- (a) a creditor of the company, including an employee of the company; and
 - (b) not related to the company, a director, or the business rescue administrator;
- “insolvency practitioner” means the Official Receiver or a person who is qualified to be appointed
- (a) a receiver, receiver manager or judgment receiver;
 - (b) a liquidator; or
 - (c) business rescue administrator;
- of a company, as specified in sections 139 and 142;
- “insolvency proceeding” means a judicial or administrative proceeding relating to bankruptcy, liquidation, receivership, judicial or statutory management or voluntary administration;

- õ insolvent ò means having liabilities that exceed the value of assets, having stopped paying debts in the ordinary course of business or being unable to pay them as they fall due;
- õ liquidation ò means the process of converting the property of a company into cash in order to settle the company's debt and other liabilities;
- õ member ò means a shareholder or stockholder of a company or a subscriber to a company limited by guarantee;
- õ members voluntary winding-up ò means the termination of a corporation, initiated by the board of directors and approved by the shareholders;
- õ officer ò includes a
- (a) director, secretary or executive officer of a body corporate; and
 - (b) local director of a foreign company;
- õ Official Receiver ò means the person appointed as official receiver under the Bankruptcy Act; Cap. 82
- õ Oath ò has the meaning assigned to the word in the Constitution; Cap. 1
- õ ordinary resolution ò has the meaning as assigned to the word in the Companies Act, 2017; Act No. 10 of 2017
- õ property ò means the assets of the company, including money, goods, choses in action and land, whether real or personal, legal or equitable and situated in Zambia or elsewhere, and obligations, easements and every description of estate, interest and profit, present or future, vested or contingent and arising out of, or incidental to the property;
- õ proposal ò means a proposal for a voluntary arrangement or for extension of time;
- õ provable claim ò includes any claim or liability provable in proceedings commenced or lodged in accordance with this Act by a creditor;
- õ provisional liquidator ò means the Official Receiver or any person appointed provisionally by the Court after the presentation of a winding up petition but before the making of a winding up order;
- õ receiver ò means a disinterested individual appointed as a receiver, receiver manager or judgment receiver, in accordance with this Act, for a corporate or other person, for the protection or collection of property that is the subject of diverse claims, is litigated or has been litigated or income arising from the property of the corporate or other person, and includes the Official Receiver;

Act No. 15 of
2010

“recognised professional body” means a professional body recognised by the Minister as a professional body, in accordance with this Act;

“record” includes a computer record and any other non-documentary record;

“Register of Liquidators” means a Register of liquidators kept by the Registrar in accordance with this Act;

“Register of Insolvency Practitioners” means the Register kept by the Registrar in accordance with section 143;

“Register of receivers” means a Register of receivers kept by the Registrar in accordance with this Act;

“Registrar” means the Registrar appointed under the Patents and Companies Registration Agency Act, 2010;

“relative” in relation to an individual means

(a) a parent, spouse, son, daughter, brother, sister, nephew, niece, uncle, aunt, grandparent or cousin of the individual;

(b) a parent, child, brother or sister of the spouse of the individual; or

(c) a nominee or trustee of any of the persons specified in paragraph (a) or (b);

“secured creditor” means a person holding a mortgage, pledge, charge or lien on, or against, the property of the debtor or any part thereof as security for a debt due or accruing to that person from a debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable;

“securities” means

(a) shares;

(b) debt securities;

(c) public debt securities;

(d) derivatives;

(e) any rights, options or derivatives in respect of any such shares, debt securities or public debt securities;

(f) any rights under a contract to secure a profit or avoid a loss by reference to fluctuations in

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- (i) the value or price of any shares, debt securities or public debt securities;
 - (ii) the value or price of a group of shares, debt securities or public debt securities; or
 - (iii) an index of shares, debt securities or public debt securities;
- (g) unit trusts and interests under collective investment schemes;
 - (h) commercial paper;
 - (i) depository receipts;
 - (j) warehouse receipts; or
 - (k) any other instrument commonly known as securities or which are prescribed by a relevant authority;
- excluding bills of exchange, promissory notes, certificates of deposit issued by a bank;
- “security agreement” means an agreement under which property becomes subject to a security for the performance of an obligation;
- “service provider” means an entity or person who supplies water and sanitation services, electricity, telecommunications or such other services as may be prescribed;
- “shares” means an ownership interest or stocks issued or proposed to be issued by a company in the capital of the company;
- “shareholder” has the meaning assigned to the word in the Companies Act, 2017, and includes a person who is the beneficial owner of, holds shares in, or is in a position to exert control over more than fifteen percent of the shares of a company or body corporate;
- “solvency test” means a test to determine that
- (a) a company is able to pay its debts as they become due in the normal course of business; and
 - (b) the value of the company’s assets is greater than the value of its liabilities, including contingent liabilities;
- “special manager” means a person appointed in accordance with section 81 to manage an estate or business of a company, or the interests of the creditors or members generally, where the liquidator is satisfied of the necessity of such an appointment due to the nature of the estate or business;

Act No. 10 of 2017	<p>“special resolution” has the meaning assigned to the word in the Companies Act, 2017;</p> <p>“successor in title” means the successor of a person and includes an heir, executor, liquidator, administrator or other legal representative of a person, as the case may be;</p> <p>“supervision” means the oversight imposed on a company during that company’s business rescue proceedings;</p> <p>“transaction” includes a gift, agreement or arrangement, and “entering into a transaction” shall be construed accordingly;</p> <p>“trustee” means a trustee in bankruptcy of a member, as provided in section 54;</p> <p>“voluntary arrangement” means an arrangement entered into by a company and that company’s creditors by way of</p> <p style="margin-left: 40px;">(a) a composition for the satisfaction of the company’s debts;</p> <p style="margin-left: 40px;">(b) a scheme; or</p> <p style="margin-left: 40px;">(c) arrangement of the company’s affairs.</p> <p>“voting interest” means an interest that is appraised and valued in accordance with section 39; and</p> <p>“winding up” means the process of settling accounts and liquidating assets in anticipation of a company’s dissolution.</p>
Act No. 10 of 2017 Act No. 41 of 2016 Act No. 7 of 2017	<p>(2) A word or term used in this Act which is not defined but is defined in the Companies Act, Securities Act, 2016, or the Banking and Financial Services Act, 2017, shall have the meaning assigned to it in those Acts.</p>

PART II

RECEIVERSHIP

Reference to receiver under enabling instrument	<p>3. A reference in this Act to the appointment of a receiver under powers vested in any instrument, includes a reference to an appointment made under powers which, by virtue of any law, are implied in, and have effect as if, vested in that instrument.</p>
Appointment of receiver	<p>4. (1) Where a charge over property of a company has become enforceable, the Court may, on the application of the chargee, appoint a receiver of the property.</p> <p>(2) The Court may, in the case of a floating charge, whether or not the charge has become enforceable, on the application of the chargee, appoint a receiver of the property and undertaking of the</p>

company if the charge is satisfied that events have occurred or are about to occur which render it unjust to the chargee that the company should retain power to dispose of the company's assets.

(3) A person may appoint a receiver under deed of appointment.

(4) An individual shall not be appointed as a receiver unless the individual is eligible for appointment as provided in section 9.

(5) A person shall not be appointed as receiver as a means of enforcing a debenture where there is no secured interest.

5. (1) A person who obtains an order for the appointment of a receiver, or who appoints a receiver under a deed of appointment, as specified in section 4, shall, within fourteen days after obtaining the order or making the appointment, lodge a notice of the order or appointment with the Registrar, in the prescribed form.

Notification
of
appointment
of receiver

(2) A person who is appointed as a receiver shall, within fourteen days after the appointment, lodge with the Registrar and the Official Receiver a notice in the prescribed form.

(3) Where a person ceases to be a receiver, the person shall, within seven days after ceasing to be a receiver, lodge with the Registrar a notice that the person has ceased to be a receiver.

(4) The Registrar shall, on the lodgment of a notice as specified in subsection (1) or (3), cause a notice of the appointment of the person as receiver or the cessation of the person as receiver, to be published in the *Gazette*.

6. (1) Where a receiver is appointed over all or a part of the assets of a company, unless the Court otherwise directs, the directors of a company shall, within three months of the appointment of the receiver, prepare and submit to the receiver a statement as to the affairs of the company as at the date of the appointment of the receiver, showing

Statement of
company's
affairs

- (a) the particulars of the company's assets and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by each of the creditors;
- (d) the dates when the securities were respectively given;
and
- (e) such further information as may be prescribed or as the receiver may require.

(2) The statement, referred to in subsection (1), shall be verified by a statutory declaration of at least one director or the secretary of the company not later than seven days after the preparation of the statement.

(3) Where the directors of a company fail or neglect to prepare the statement referred to in subsection (1), the receiver shall, not more than three months after the expiry of the period referred to in subsection (1), prepare a statement of the affairs of the company, from the available information.

(4) A receiver may, subject to the direction of the Court, by notice in the prescribed manner and form, require a person to verify, by statutory declaration, such part of the statement, specified in subsection (1), as that person is in a position to verify, if that person

(a) is, or was, within two years before the date of the appointment of the receiver, an officer of the company; or

(b) took part in the formation of the company, if the company was formed less than two years before the date of the appointment of the receiver.

(5) A person required to verify a statement, in accordance with subsection (4), shall, within fourteen days after receiving the notice referred to in that subsection, or within such extended period as the receiver or the Court may specify, submit a statutory declaration verifying the statement specified in subsection (3) or such part of the statement as that person is in a position to verify.

(6) A receiver shall, within twenty-one days after receiving the statement submitted in accordance with subsection (1) or a statutory declaration submitted in accordance with subsection (5), cause copies to be

(a) filed with the Court, if the receiver is appointed by the Court;

(b) lodged with the Registrar;

(c) delivered to the Official Receiver, if the Official Receiver is not the receiver; and

(d) lodged with the holder of the charge by virtue of which the receiver was appointed.

(7) A person required under this section to verify a statement shall be paid, out of the assets of the company, such costs and expenses incurred in and relating to the verification of information, as the receiver considers reasonable, subject to an appeal to the Court.

(8) The Registrar may, where a receiver does not

(a) submit a statement of affairs, in accordance with subsection (1), issue a reminder to the receiver to submit the statement within fourteen days; and

(b) comply with the notice issued by the Registrar under paragraph (a), cause the receiver to be disqualified from acting as a receiver under this Act.

(9) A statement made in accordance with this section may be used as evidence in any proceedings against a person making it.

7. (1) Where a person or an officer contravenes section 6, the person or officer commits an offence and is liable, on conviction-

Offences relating to statement of affairs

(a) to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both; and

(b) in the case of a continuing offence, to a fine not exceeding fifty thousand penalty units for each day that the failure continues or to imprisonment for a period not exceeding eighteen months, or to both.

(2) Despite the generality of subsection (1), a person that provides false or misleading information with respect to a statement of affairs made in accordance with section 6 commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

8. Where a receiver is appointed on behalf of the holder or trustee of any debenture of a company that is secured by a floating charge, or possession is taken by or on behalf of the holder or trustee of the debenture of property comprised in or subject to the charge, if the company is not at the time in the course of being wound-up, the debts which in every winding-up are to be paid in priority to all other debts, as provided in this Act, shall

Payment of preferential creditors

(a) be paid out of any assets coming into the hands of the receiver or the person taking possession in priority to any claim for principal or interest in respect of the debentures; and

(b) the date of the appointment of the receiver or of possession being taken, shall be considered to be the date of commencement of the winding-up.

9. (1) An individual is eligible for appointment as a receiver if that individual has been practicing as a chartered accountant or a legal practitioner for a period of at least seven years and is accredited by the Registrar as an insolvency practitioner.

Eligibility for appointment as receiver

(2) An individual who wishes to perform the function of a receiver shall apply for accreditation in the prescribed manner and form and pay the prescribed fee.

(3) An individual shall not be appointed, act or continue to act as a receiver of the property or undertaking of a company if the individual is—

- (a) by reason of a mental disability incapable of performing the functions;
- (b) prohibited or disqualified from so acting by any order of a court of competent jurisdiction;
- (c) a mortgagee or chargee of the company;
- (d) an undischarged bankrupt;
- (e) a person who is, or has been within the previous two years, a director or officer of the company or any related body corporate, except with the leave of the court;
- (f) a trustee under any trust deed for the benefit of debenture holders of the company, except with the leave of the court;
- (g) a person who has been convicted, within the previous five years, of an offence involving fraud or dishonesty; or
- (h) a person who has been removed, within the previous five years, from an office of trust by order of a court of competent jurisdiction.

(4) Accreditation as a receiver is valid for a period of one year from the date of accreditation and is subject to renewal in the prescribed manner and form and upon payment of the prescribed fees.

(5) Accreditation that is not renewed in accordance with subsection (4) is void.

(6) A person who acts or continues to act as a receiver, contrary to this Act, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Disqualification
of body
corporate or
firm from
appointment
as receiver

10. (1) Subject to subsection (2), a body corporate or firm is not qualified for appointment as a receiver and a body corporate or firm which acts as such is liable to a fine not exceeding two hundred thousand penalty units.

(2) This section does not apply to the Official Receiver.

Remuneration
of receiver

11. (1) Subject to subsection (2), a receiver is entitled to the payment of a fee which shall be a percentage of the proceeds of the receivership.

(2) Despite the generality of subsection (1), the fee payable to a receiver shall not exceed an amount that may be prescribed by statutory instrument.

(3) Despite subsections (1) and (2), the Court may, on the application of a company, liquidator or receiver by order, fix the amount to be paid by way of remuneration to a receiver and may, on application made by the company, or liquidator or receiver, vary or amend the order.

(4) The power of the Court as specified in subsection (3) shall ò

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor, where the Court is satisfied that there are special circumstances making it proper to do so;

(b) be exercisable despite the receiver dying or ceasing to be the receiver before the making of the order or the application therefor; and

(c) extend to requiring the receiver or the personal representatives of the receiver to account for any amount that the receiver may have been paid or retained for remuneration, before the making of the order, that is in excess of the remuneration fixed for that period.

(5) A receiver who collects a fee in excess of the prescribed fees, shall be personally liable, to reimburse the amount of the excess fees so collected or to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

12. A receiver appointed by the Court shall be an officer of the Court and shall be considered, in relation to the property or undertaking, not to be an officer of the company, and shall act in accordance with the directions and instructions of the Court.

Receivers
appointed
by Court

13. (1) A receiver appointed under a deed of appointment shall, subject to section 14, be considered to be an agent and officer of the company, and not an agent of the persons by or on behalf of whom the receiver is appointed, and the receiver shall act in accordance with the deed of appointment under which the receiver is appointed, and with any directions of the Court specified in an order of the Court.

Receivers
appointed
under deed
of
appointment

(2) The Court may, on the application of a receiver, make such order as it considers necessary to provide direction, in any matter relating to the performance of the receiver's functions or declaring the rights of persons before the Court or otherwise.

Liabilities of
receivers on
contracts

14. (1) Where a contract was entered into by a receiver in the proper performance of the receiver's functions, the receiver has, subject to the rights of any prior encumbrances, an indemnity in respect of any liability relating to the property.

(2) Where the receiver was appointed under a deed of appointment, and a contract was entered into by the receiver with the express or implied authority of the person appointing the receiver, the receiver is indemnified from liability, to the extent to which the receiver is unable to recover on any assets under a charge, in accordance with the deed of appointment.

(3) A receiver is personally liable on any contract entered into by the receiver in contravention of this Act.

Statement of
appointment
of
receivership
on stationery

15. (1) Where a receiver has been appointed, every invoice, order or business letter issued by or on behalf of the company or receiver, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

(2) If the company fails to comply with this section, the company, receiver or any officer concerned, commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units for each document not containing the statement.

Management
of assets
before
disposal

16. (1) A receiver shall, before disposing of any asset under a charge, manage the asset so as to realise the monies owed to the secured creditor without disposing the asset by sale, unless the management of the asset shall be further depleted or not satisfy the debts owed to the secured creditor.

(2) Subject to subsection (1), a receiver shall, where the receiver decides to dispose of an asset under a charge by sale, dispose of the asset at the highest possible amount and shall, after satisfying the secured creditor's debt and the receiver's fees, pay the difference to the company.

(3) A receiver shall, unless directed by the Court or by a resolution of creditors or members passed at a general meeting or by a committee of inspection

(a) dispose of an asset under a charge by public tender or by the most transparent manner in the circumstances; and

(b) not less than 21 days before the disposal, notify the Registrar in the prescribed manner and form, of the intention to dispose of the asset.

(4) A receiver who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units.

17. Where a receiver is appointed of the whole, or substantially the whole of the undertaking of a company, on behalf of the holders of any debentures secured by a floating charge, sections 73, 118 and 126 apply as if the company had been ordered to be wound-up and the receiver had been appointed liquidator.

Statement of affairs and accounts where receiver appointed

18. (1) Except where section 17 applies, a receiver shall within thirty days, or such longer period as the Registrar may allow

Accounts of receivers

- (a) after the end of the period of six months from the date of the receiver's appointment, and of every subsequent period of three months until the receiver ceases to act, lodge simultaneously with the Registrar and Official Receiver an abstract showing the receiver's receipts and payments during that period of three months; and
- (b) within thirty days, or such longer period as the Registrar may allow, after ceasing to be receiver, lodge with the Registrar an abstract showing the receiver's receipts and payments during the twelve month period from the last abstract, if any, and the total of the receipts and payments during the whole period of the receiver's appointment.

(2) The Registrar may require a receiver to produce any document, or information concerning the affairs of the company.

(3) A receiver who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one thousand penalty units for each day that the failure continues.

19. (1) A receiver shall, as soon as is practicable, report the matter, in writing, to the Registrar or official Receiver, where the receiver, in the course of performing the functions and duties of a receiver determines that

Report by receiver

- (a) there is a contravention of, or failure to comply with, any of the provisions of this Act by any person; and
- (b) the circumstances are such that the matter has not been or will not be adequately dealt with by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of the holding company.

(2) The Court may, on its own motion, or on the application of the Registrar or Official Receiver, or of any person interested in the appointment of the receiver, require the receiver to submit a report, to the Registrar or Official Receiver, on any matter relating to the company in which the receiver has information.

Vacation of
office by
receiver

20. (1) The office of a receiver becomes vacant where the receiver

(a) dies;

(b) becomes ineligible for appointment as specified in section 9;

(c) is removed by order of the Court; or

(d) is removed from the Register of Insolvency Practitioners in accordance with section 143.

(2) A receiver may resign from office by giving one month's notice, in writing, to the appointing authority or the Court, of the receiver's intention to resign.

(3) A receiver may be removed by the Court, on application to the Court by the holder of a charge by virtue of which the receiver was appointed, or by revocation of the deed of appointment.

(4) Where a receiver vacates office

(a) the receiver's remuneration and any expenses properly incurred by the receiver; and

(b) any indemnity to which the receiver is entitled out of the property of the company;

shall be paid out of the property of the company which is subject to a charge and such remuneration shall have priority in accordance with this Act as a secured creditor.

(5) Where a receiver ceases to be receiver or is removed by the Court, the holder of the charge by virtue of which the receiver was appointed shall, within fourteen days of the cessation of the receivership or removal of the receiver, notify the Registrar and Official Receiver in the prescribed form and manner of the cessation or removal and the Registrar shall enter the notice in the Register of Receivers.

(6) If, by the expiry of a period of thirty days following the removal of a receiver or the cessation of a receivership and no other receiver is appointed, the deed by virtue of which the receiver was appointed shall cease to attach to the property.

(7) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

PART III

BUSINESS RESCUE PROCEEDINGS

21. (1) Subject to subsection (2) (a), the member may by special resolutions, resolve that the company voluntarily begins business rescue proceedings and place the company under supervision, if the board has reasonable grounds to believe that
- Resolution
to begin
business
rescue
proceedings
- (a) the company is financially distressed; and
 - (b) there appears to be a reasonable prospect of rescuing the company;
- and there is need to
- (i) maintain the company as a going concern;
 - (ii) achieve a better outcome for the company's creditors as a whole than is likely to be the case if the company were to be liquidated; or
 - (iii) realise the property of the company in order to make a distribution to one or more secured or preferential creditors.
- (2) A resolution made in accordance with subsection (1)
- (a) shall not be adopted if liquidation proceedings have been initiated by or against the company; and
 - (b) becomes effective after it has been filed with the Registrar.
- (3) Within thirty days after the board has filed the resolution, referred to in subsection (1), or such longer time as the Registrar, on application by the company, may allow, the company shall
- (a) give notice of the resolution and its effective date, to every affected person in the prescribed manner; and
 - (b) appoint a business rescue administrator.
- (4) The company shall, after appointing a business rescue administrator
- (a) file a notice with the Registrar of the appointment of the business rescue administrator, within seven business days after making the appointment; and
 - (b) publish a copy of the notice of appointment of the business rescue administrator to each affected person, within twenty-one business days after the notice is filed.
- (5) If a company fails to comply with subsection (3) or (4)
- (a) the company's resolution to begin business rescue proceedings and place the company under supervision shall lapse after a period of sixty days from the adoption of the resolution; and

(b) the company shall not file a further resolution for a period of three months after the date on which the resolution lapsed unless the Court approves the company filing a further resolution.

(6) A company that adopts a resolution to begin business rescue proceedings shall not adopt a resolution to begin liquidation proceedings, unless the resolution has lapsed as specified in subsection (5), or until the business rescue proceedings have ended as provided in section 24 (2).

(7) Where the board has reasonable grounds to believe that the company is financially distressed but does not adopt the resolution to begin business rescue proceedings, the board shall deliver a notice to each affected person and its reasons for not adopting such a resolution.

Objections
to resolution
to begin
business
rescue
proceedings

22. (1) Subject to subsection (2), at any time after the adoption of a resolution as specified in section 21 and until the adoption of a business rescue plan in accordance with section 43, an affected person may apply to a Court for an order^o

(a) setting aside the resolution on the grounds that^o

- (i) there is no reasonable basis for believing that the company is financially distressed;
- (ii) there is no reasonable prospect for rescuing the company; or
- (iii) the company has failed to satisfy the procedural requirements set out in section 21;

(b) setting aside the appointment of the business rescue administrator, on the grounds that the business rescue administrator^o

- (i) is not qualified as provided in section 30;
- (ii) is not independent of the company or its management; or
- (iii) lacks the necessary skills, having regard to the company's circumstances; or

(c) requiring the business rescue administrator to provide security in an amount and on terms and conditions that the Court considers necessary, to secure the interest of the company and any affected person.

(2) A director who voted in favour of a resolution to begin business rescue proceedings as provided in section 21 shall not apply to the Court, as specified in subsection (1), to set aside the resolution or the appointment of the business rescue administrator,

unless the director satisfies the Court that in supporting the resolution, the director acted in good faith, on the basis of information that was subsequently found to be false or misleading.

(3) An affected person making an application, in terms of subsection (1), shall

- (a) serve a copy of the application on the company and the Official Receiver; and
- (b) notify each affected person of the application in the prescribed manner.

(4) An affected person may participate in the hearing of an application made in terms of this section.

(5) The Court may, when determining an application made in accordance with paragraph (a) of subsection (1)

- (a) set aside the resolution
 - (i) on any ground set out in that subsection; or
 - (ii) if, having regard to all of the evidence, the Court determines that it is otherwise just and equitable to do so; and
- (b) afford the business rescue administrator sufficient time to form an opinion whether
 - (i) the company appears to be financially distressed; or
 - (ii) there is a reasonable prospect of rescuing the company;

and after receiving a report from the business rescue administrator, may set aside the company's resolution, if the Court determines that the company is not financially distressed or there is no reasonable prospect of rescuing the company.

(6) The Court may, where it makes an order under paragraph (a) or (b) of subsection (5) make any further appropriate order, including

- (a) an order placing the company under liquidation; or
- (b) if the Court finds that there were no reasonable grounds for believing that the company is insolvent, make an order for costs against any director who voted in favour of the resolution to begin business rescue proceedings, unless the Court is satisfied that the director acted in good faith.

(7) If, after considering an application made in accordance with paragraph (b) of subsection (1), the Court makes an order setting aside the appointment of the business rescue administrator

- (a) the Court shall appoint another business rescue administrator who is qualified as specified in section 30, recommended by, or accepted by, the holders of a majority of the independent creditors' voting interests who were represented in the hearing before the Court; and
- (b) the provisions of paragraph (b) of subsection (5), if relevant, shall apply to the business rescue administrator.

Court order
to commence
business
rescue
proceedings

23. (1) An affected person may apply to the Court for an order to place the company under supervision and begin business rescue proceedings, unless a company has adopted a resolution to commence business rescue proceedings in accordance with section 21.

(2) An applicant referred to in subsection (1) shall

- (a) serve a copy of the application on the company and the Registrar and the Official Receiver; and
- (b) notify each affected person of the application in the prescribed manner.

(3) An affected person has a right to participate in the hearing of an application under this section.

(4) The Court may after considering an application made in accordance with subsection (1)

(a) make an order placing the company under supervision and begin business rescue proceedings, if the Court determines that

- (i) the company is financially distressed;
- (ii) the company has failed to pay any amount in terms of an obligation under a contract with respect to employment-related matters; or
- (iii) it is otherwise just and equitable to do so for financial reasons, and there is a reasonable prospect of rescuing the company; or

(b) dismiss the application and make a further appropriate order, including an order placing the company under liquidation.

(5) The Court shall, where an application is made in accordance with subsection (1), appoint the Official Receiver as the interim business rescue administrator pending an appointment of a business rescue administrator by an affected person or the creditors.

(6) An affected person or the creditors shall, where the Court makes an order as specified in subsection (4)(a), appoint a business rescue administrator.

(7) If liquidation proceedings have been commenced by or against a company at the time an application is made as provided in subsection (1), the liquidation proceedings shall be suspended until-

- (a) the Court has adjudicated upon the application; or
- (b) the business rescue proceedings terminate, if the Court makes the order applied for.

(8) A company that has been placed under supervision in accordance with this section shall

- (a) not adopt a resolution placing itself in liquidation until the termination of the business rescue proceedings; and
- (b) notify each affected person of the order within five days after the date of the order.

24. (1) Business rescue proceedings shall commence when the Court makes an order placing the company under supervision in accordance with this Act.

Duration of
business
rescue
proceedings

(2) Business rescue proceedings shall terminate when

- (a) the Court
 - (i) sets aside the resolution or order that began the proceedings; or
 - (ii) converts the proceedings to liquidation proceedings;
- (b) a business rescue administrator files with the Registrar and the Official Receiver a notice of the termination of the business rescue proceedings; or
- (c) a business rescue plan is
 - (i) proposed and rejected in accordance with this Part, and no affected person applies to revise the plan in accordance with section 44; or
 - (ii) adopted in accordance with this Part, and the business rescue administrator subsequently files a notice of substantial implementation of the plan.

(3) If a company's business rescue proceedings have not terminated within twelve months after the start of those proceedings, or such longer time as the Court, on application by the business rescue administrator, may allow, the business rescue administrator shall

- (a) prepare a report on the progress of the business rescue proceedings and update the report at the end of each subsequent month until the end of the business rescue proceedings; and

(b) deliver the report and each update, in the prescribed manner, to each affected person and to the

(i) Court, if the proceedings have been the subject of a Court order; and

(ii) Registrar and Official Receiver, in all cases.

General moratorium on legal proceedings against company

25. (1) A legal proceeding shall not be brought, against a company or in relation to any property belonging to the company or lawfully in its possession, during business rescue proceedings, except

(a) with the written consent of the business rescue administrator;

(b) with the leave of the Court and in accordance with any terms and conditions the Court considers suitable in any particular matter related to the business rescue proceedings;

(c) as a set-off against any claim made by the company in any other legal proceedings, irrespective of whether those proceedings commenced before or after the business rescue proceedings began;

(d) criminal proceedings against any of the company's directors or officers; or

(e) proceedings concerning any property or right over which the company exercises the powers of a trustee.

(2) A guarantee or surety by a company in favour of any other person may not be enforced by any person against the company during business rescue proceedings, except with leave of the Court and in accordance with any terms and conditions the Court considers just and equitable in the circumstances.

(3) If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time shall be suspended during business rescue proceedings.

Protection of property interests

26. (1) Subject to subsections (2) and (3), during business rescue proceedings

(a) a company may dispose, or agree to dispose, of property only

(i) in the ordinary course of its business;

(ii) in a *bona fide* transaction at arm's length for fair value and approved in advance, in writing by the business rescue administrator; or

- (iii) in a transaction specified within, and undertaken as part of the implementation of, a business rescue plan that has been approved as provided in section 43;
 - (b) a person who, as a result of an agreement made in the ordinary course of the company's business before the business rescue proceedings began, is in lawful possession of any property owned by the company, may continue to exercise any right in respect of that property as specified in that agreement, subject to section 29; and
 - (c) a person shall not exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the business rescue administrator consents in writing.
- (2) A business rescue administrator shall not unreasonably withhold consent as specified in subsection (1) (c), having regard to
- (a) the purposes of this Part;
 - (b) the circumstances of the company; and
 - (c) the nature of the property and the rights claimed in respect of it.
- (3) Where the company, during business rescue proceedings, wishes to dispose of any property over which another person has a security or title interest, the company shall
- (a) obtain the prior consent of that person, unless the proceeds of the disposal is sufficient to fully discharge the indebtedness protected by the person's security or title interest; and
 - (b) promptly
 - (i) pay to the person an amount, from the proceeds of the sale of the property, that the company owes the person; or
 - (ii) provide security for the amount the company owes the person.

27. (1) Where a company is required to pay any remuneration, reimbursement for expenses or other amount of money, relating to an employee, during business rescue proceedings, and the company fails to pay, the money shall be

- (a) regarded as post-commencement financing; and

Post-
commencement
finance

(b) paid in the order of preference set out in subsection (3) (a).

(2) The company may, during business rescue proceedings, obtain financing, other than as specified in subsection (1), which

(a) may be secured to the lender by an asset of the company to the extent that the asset is not otherwise encumbered; and

(b) shall be paid in the order of preference set out in subsection (3) (a).

(3) After the payment of the business rescue administrator remuneration and expenses, referred to in section 35, and other costs arising out of the business rescue proceedings, all claims specified in

(a) subsection (1) shall be treated equally, but shall have preference over

(i) claims specified in subsection (2), irrespective of whether they are secured or unsecured; and

(ii) unsecured claims against the company; and

(b) subsection (2) shall have preference in the order in which they were incurred over all unsecured claims against the company.

(4) Where business rescue proceedings are superseded by a liquidation order, the preference conferred in terms of this section shall remain in force, except to the extent of any claims arising out of the costs of liquidation.

Effect of
business
rescue on
employees
and
contracts

28. (1) Despite a provision of an agreement to the contrary

(a) the employees of the company immediately before the beginning of business rescue proceedings shall, during a company's business rescue proceedings, continue in employment on the same terms and conditions, unless

(i) changes occur in the ordinary course of attrition; or

(ii) the employees and the company, in accordance with applicable labour laws, agree to different terms and conditions; and

(b) any redundancy or retrenchment of such an employee as specified in the business rescue plan shall be subject to the Constitution, Employment Act and other applicable employment legislation.

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(2) Despite a provision of an agreement to the contrary, a business rescue administrator may, with leave of the Court during business rescue proceedings, cancel entirely or partially or

conditionally suspend a provision of an agreement to which the company was a party at the beginning of business rescue proceedings, other than an agreement of employment.

(3) A party to an agreement that has been suspended or cancelled, or a provision which has been suspended or cancelled, in terms of subsection (2), may assert a claim against the company only for damages.

(4) Where liquidation proceedings are converted into business rescue proceedings, the liquidator shall be a creditor of the company to the extent of any outstanding claim by the liquidator for any remuneration due for work performed or compensation for expenses incurred before the business rescue proceedings began.

29. (1) An alteration in the classification or status of any issued securities of a company, during business rescue proceedings, other than by a transfer of securities in the ordinary course of business, shall be invalid unless

- (a) the Court otherwise directs; or
- (b) it is specified in an approved business rescue plan.

(2) A director of the company shall during business rescue proceedings

- (a) continue to exercise the functions of a director, subject to the authority of the business rescue administrator;
- (b) exercise any management function within the company, in accordance with the express instructions or direction of the business rescue administrator, to the extent that it is reasonable so to do; and
- (c) remain bound by the common law and statutory duties of a director.

(3) A director shall, during business rescue proceedings, attend to the requests of the business rescue administrator and provide the business rescue administrator with any information about the company's affairs.

(4) A board or director shall not, during business rescue proceedings, take any action on behalf of the company without obtaining the approval of the business rescue administrator.

(5) A business rescue administrator may, during the business rescue proceedings, remove a director from office on the grounds that the director has

- (a) failed to comply with a requirement of this Part; or
- (b) by act or omission impeded or is impeding the
 - (i) business rescue administrator in the performance of the administrators powers and functions;

Invalidation
of transfer
of
securities
other than
by
ordinary
course of
business

- (ii) business rescue administrator's management of the company; or
- (iii) development or implementation of a business rescue plan in accordance with this Part .

Qualifications of business rescue administrators

30. (1) A person may be appointed as a business rescue administrator if that person qualifies to be appointed as a receiver or has other qualification as prescribed.

(2) Accreditation as a business rescue administrator is valid for a period of one year from the date of accreditation and shall be subject to renewal annually.

Removal and replacement of business rescue administrator

31. (1) A business rescue administrator may be removed from office

- (a) by a Court order as provided in section 22; or
- (b) as provided in section 143.

(2) If a business rescue administrator dies, resigns or is removed from office, the company or creditor who appointed the business rescue administrator shall, within twenty-one days, appoint another business rescue administrator.

General powers and duties of business rescue administrator

32. (1) A business rescue administrator, during business rescue proceedings, has, in addition to any other powers and duties set out in this Part

- (a) full management control of the company without the board and management;
- (b) the power to delegate any power or function to a person who was part of the board or management of the company;
- (c) the power to
 - (i) remove any person from office who was part of the management of the company; or
 - (ii) appoint a person as part of the management of a company, subject to subsection (2); and
- (d) the responsibility to
 - (i) develop a business rescue plan to be considered by affected persons, in accordance with this Part;
 - (ii) implement a business rescue plan that is adopted in accordance with this Part; and
 - (iii) issue any notices required to be issued in relation to the business rescue proceedings.

(2) A business rescue administrator shall not, except with the approval of the Court, appoint a person as part of the management of the company or an advisor to the company or business rescue administrator, if that person

- (a) has any relationship with the company that would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; or
- (b) is related to a person who has a relationship with the company as provided in paragraph (a).

(3) A business rescue administrator, during business rescue proceedings

- (a) is an officer of the Court and shall report to the Court in accordance with any rules of, or orders made by, the Court with respect to the proceedings;
- (b) shall have the responsibilities, duties and liabilities of a director of the company; and
- (c) is not liable for any act or omission done in good faith in the exercise of the powers and performance of the functions of the administrator, except
 - (i) as provided in paragraph (b); and
 - (ii) in accordance with any relevant law for the consequences of any act or omission amounting to gross negligence in the exercise of the powers and performance of the functions of the business rescue administrator.

(4) A business rescue administrator shall not, where the business rescue process terminates with an order placing the company in liquidation, be appointed as liquidator of the company.

33. (1) A business rescue administrator shall, as soon as practicable after being appointed, investigate the affairs, business, property and financial situation of the company, and consider whether there is any reasonable prospect of the company being rescued.

Investigation
of affairs of
company

(2) If, during business rescue proceedings, the business rescue administrator concludes that

- (a) there is no reasonable prospect of the company being rescued, the business rescue administrator shall
 - (i) inform, in the prescribed manner the Court, the company and all affected persons; and

- (ii) apply to the Court for an order to discontinue the business rescue proceedings and place the company into liquidation;
- (b) there are no reasonable grounds to believe that the company is financially distressed, the business rescue administrator shall inform, in the prescribed manner, the Court, company and all affected persons and
 - (i) if the business rescue process was confirmed by Court order or initiated by an application to the Court, as provided in this Part, apply to the Court for an order terminating the business rescue proceedings; or
 - (ii) file a notice of termination of the business rescue proceedings with the Registrar.

(3) A business rescue administrator shall forward evidence to an appropriate authority for further investigation and direct the management to take any necessary steps to rectify the matter, including recovering any misappropriated assets of the company where there is evidence, before the business rescue proceedings began, of

- (a) voidable transactions or a failure by a company or any director in the performance of any material obligation relating to the company; or
- (b) reckless trading, fraud or other contravention of any law relating to the company.

Directors to
co-operate
with and
assist
business
rescue
administrator

34. (1) A director shall, within fourteen days after business rescue proceedings commence, deliver to the business rescue administrator books and records relating to the affairs of the company and are in the director's possession.

(2) A director who knows where the books and records relating to the company are kept shall, within fourteen days after business rescue proceedings commence, inform the business rescue administrator of such locations.

(3) A board shall, within thirty days after business rescue proceedings commence, or such longer period as the business rescue administrator allows, provide the administrator with a statement of affairs containing, at a minimum, particulars of

- (a) any material transaction involving the company or the assets of the company, and occurring within twelve months immediately before the business rescue proceedings commenced;

- (b) all Court, arbitration or administrative proceedings, including pending enforcement proceedings, involving the company;
- (c) the assets and liabilities of the company, and the company's income and disbursements within the immediately preceding twelve months;
- (d) the number of employees and any collective agreements or other agreements relating to the rights of employees;
- (e) any debtors and their obligations to the company; and
- (f) any creditors and their rights or claims against the company.

(4) A person is not entitled to retain possession of any book or record of the company, or to claim or enforce a lien over such book or record as against the business rescue administrator.

(5) A director who contravenes this section, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

35. (1) A business rescue administrator shall be entitled to payment of a fee as shall be prescribed by the Minister, by statutory instrument.

Remuneration
of business
rescue
administrator

(2) A business rescue administrator who knowingly collects remuneration in excess of the prescribed amount is personally liable to reimburse the amount of the excess remuneration so collected and commits an offence and is liable, on conviction, to a fine, not exceeding three hundred thousand penalty units or to a term of imprisonment not exceeding three years or both.

(3) A business rescue administrator's claim for remuneration shall, to the extent that the claim remains unpaid, rank in priority to the claims of all other secured and unsecured creditors.

36. (1) A creditor is entitled to

- (a) notice of every Court proceeding, decision, meeting or other event concerning the business rescue proceedings;
- (b) participate in any Court proceedings arising during the business rescue proceedings; and
- (c) participate in business rescue proceedings to the extent provided in this Part.

Participation
by creditors

(2) In addition to the rights set out in subsection (1), a creditor has

- (a) the right to vote to amend, approve or reject a proposed business rescue plan, as provided in this Part; and

(b) a further right, if the proposed business rescue plan is rejected, to

- (i) propose the development of an alternative plan as provided in this Part, within thirty days; or
- (ii) present an offer to acquire the interests of any or all of the other creditors as provided in this Part, within thirty days.

(3) The creditors of a company are entitled to form a creditors' committee through which the creditors are entitled to be consulted, by the business rescue administrator, during the development of the business rescue plan.

(4) In making a decision under this Part

(a) a secured or unsecured creditor shall have a voting interest equal to the value of the amount owed to that creditor by the company; and

(b) a concurrent creditor who would be subordinated in a liquidation shall have a voting interest, as independently and expertly appraised and valued at the request of the business rescue administrator, equal to the amount that the creditor could reasonably expect to receive in a liquidation of the company.

(5) A business rescue administrator shall

(a) determine whether a creditor is independent for the purposes of this Part;

(b) request a suitably qualified person to independently and expertly appraise and value an interest referred to in subsection (4) (b); and

(c) give a written notice of the appraisal and valuation to the person concerned, at least fifteen days before the date of the meeting to be convened under section 42.

(6) A person aggrieved with the business rescue administrator's determination, as provided in subsection (5), may, within fourteen days after receiving a notice of a determination, apply to the Court to

(a) review the business rescue administrator's determination that the person is, or is not, an independent creditor; or

(b) review, re-appraise and re-value that person's voting interest, as specified in subsection (5).

Participation
by holders
of
company's
securities

37. A holder of any issued security of the company is, during the business rescue proceedings, entitled to

(a) a notice of each Court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings;

- (b) participate in any Court proceedings arising during the business rescue proceedings;
- (c) participate in the business rescue proceedings to the extent provided for in this Part;
- (d) vote to approve or reject a proposed business rescue plan as provided in this Part, if the plan would alter the rights associated with the class of securities held by that person; and
- (e) where the business rescue plan is rejected
 - (i) propose the development of an alternative plan, as provided in this Part; or
 - (ii) present an offer to acquire the interests of any or all of the creditors or other holders of the company's securities as provided in this Part.

38. A shareholder is during the business rescue proceedings, entitled to

Participation
by
shareholders

- (a) a notice of each Court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings;
- (b) participate in any Court proceedings arising during the business rescue proceedings;
- (c) participate in business rescue proceedings to the extent provided for in this Part;
- (d) vote to approve or reject a proposed business rescue plan as provided in this Part, if the plan would alter the rights associated with the class of shares held by that person;
- (e) where the business rescue plan is rejected
 - (i) propose the development of an alternative plan, as provided in this Part, or
 - (ii) present an offer to acquire the interests of any or all of the creditors or other holders of the company's securities as provided for in this Part.

39. (1) A business rescue administrator shall, within thirty days, after being appointed, convene and preside over a first meeting of creditors, at which

First meeting
of creditors

- (a) the business rescue administrator
 - (i) shall inform the creditors on whether a reasonable prospect of rescuing the company exists; and
 - (ii) may receive proof of claims by creditors; and
- (b) the creditors may appoint a committee of creditors.

(2) A business rescue administrator shall give seven days' notice of the convening of the first meeting of creditors to every creditor whose name and address is known or can reasonably be obtained setting out the

(a) date, time and place of the meeting; and

(b) agenda for the meeting.

(3) At a meeting of creditors, other than a meeting convened in accordance with section 42, a decision shall be passed by a simple majority vote of the independent creditors voting on a matter.

Functions,
duties and
membership
of
committees
of creditors
and
employees

40. (1) A committee of creditors, appointed in accordance with this Part

(a) may consult with the business rescue administrator on any matter relating to the business rescue proceedings, but shall not direct or instruct the business rescue administrator on any matter related to the proceedings;

(b) shall, on behalf of the general body of creditors receive and consider reports relating to the business rescue proceedings; and

(c) shall act independently of the business rescue administrator to ensure fair and unbiased representation of creditors' interests.

(2) A person may be a member of a committee of creditors if that person is

(a) an independent creditor of the company;

(b) an agent, proxy or attorney of an independent creditor or other person acting under a general power of attorney; or

(c) authorised in writing by an independent creditor to be a member.

Proposal of
business
rescue plan

41. (1) A business rescue administrator shall, after consulting the creditors, the management of the company, and where applicable, shareholders, prepare a business rescue plan for consideration and possible adoption at a meeting held in accordance with section 42.

(2) A business rescue plan shall contain all the information reasonably required to assist the affected persons in making the decision to accept or reject the plan, which plan shall be divided into three Parts as follows:

(a) Part A shall contain background information and shall include

-
- (i) a complete list of all the material assets of the company, indicating which assets were held as security at the commencement of the business rescue proceedings;
 - (ii) a complete list of creditors at the commencement of the business rescue proceedings and a categorisation of creditors as secured, statutory preferential creditors, concurrent or unsecured;
 - (iii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
 - (iv) a complete list of the holders of the company's issued securities;
 - (v) a copy of the written agreement relating to the business rescue administrator's remuneration;
 - (vi) a statement as to whether the business rescue plan includes a proposal made informally by a creditor; and
 - (vii) a statement as to the basis for the business rescue administrator's remuneration;
- (b) Part B shall include the following proposals:
- (i) the nature and duration of any moratorium for which the business rescue plan makes provision;
 - (ii) the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company or another company;
 - (iii) the ongoing role of the company, and the treatment of any existing agreements;
 - (iv) the property of the company that is to be available to pay creditors' claims in terms of the business rescue plan;
 - (v) the order of preference in which the proceeds of the property of the company shall be applied to pay creditors if the business rescue plan is adopted;
 - (vi) the benefits of adopting the business rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation; and
 - (vii) the effect that the business rescue plan shall have on the holders of each class of the company's issued securities;
- (c) Part C shall contain assumptions and conditions, including the following:
- (i) a statement of the conditions that need to be satisfied for the business rescue plan to come into operation and be fully implemented.

- (ii) the effect, if any, that the business rescue plan shall have on the number of employees and their terms and conditions of employment;
- (iii) the circumstances in which the business rescue plan will terminate; and
- (iv) a projected financial statement for the next three years, prepared on the assumption that the proposed business plan is adopted.
- (3) The financial statements referred to in subsection (2) (c) (iv)ô
- (a) shall include a notice of any material assumptions on which the projections are based; and
- (b) may include alternative projections based on varying assumptions and contingencies.
- (4) A business rescue administrator shall conclude a proposed business rescue plan with a declaration stating thatô
- (a) information provided appears to be accurate, complete and up to date; and
- (b) projections provided are based on estimates made in good faith and on factual information and assumptions as set out in the statement.
- (5) A company shall publish the business rescue plan within thirty days after the date on which the business rescue administrator was appointed, or such longer time as may be allowed byô
- (a) the Court, on application by the company; or
- (b) the holders of a majority of the creditors's voting interests.
- 42.** (1) A business rescue administrator shall, within twenty one days after publication of the business rescue plan, convene and preside over a meeting of affected persons called for the consideration of the plan.
- (2) A business rescue administrator shall, at least ten days before the meeting convened in accordance with subsection (1), deliver a notice of the meeting to all affected persons setting outô
- (a) the date, time and place of the meeting;
- (b) the agenda of the meeting; and
- (c) a summary of the rights of affected persons to participate in and vote at the meeting.
- (3) A meeting convened in accordance with this section may be adjourned, as necessary or expedient, but for a period not exceeding sixty days, until a decision regarding the company's future has been taken in accordance with this Part.

Meeting to
determine
future of
company

-
43. (1) A business rescue administrator shall, at a meeting convened in accordance with section 42
- Consideration and approval of business rescue plan
- (a) introduce a proposed business rescue plan for consideration by the affected persons and, where applicable, by the shareholders;
 - (b) inform the meeting on whether a reasonable prospect of the company being rescued continues to exist;
 - (c) invite discussion and conduct a vote on any motions to
 - (i) amend the proposed plan as proposed and seconded by the affected person which have a positive effect on the business rescue plan; or
 - (ii) adjourn the meeting in order to revise the plan for further consideration; and
 - (d) call for a vote for preliminary approval of the proposed business rescue plan or the plan as amended, if applicable, unless the meeting has first been adjourned in accordance with subsection (2) (c) (ii).
- (2) A proposed business rescue plan shall be approved, at a meeting convened in accordance with section 42, on a preliminary basis if in a vote called in accordance with subsection (1) (d)
- (a) it is supported by the holders of more than seventy-five percent of the affected persons' voting interests; and
 - (b) the votes in support of the proposed plan include at least fifty percent of the independent creditors' voting interests, if any.
- (3) Where a proposed business rescue plan
- (a) is not approved on a preliminary basis, as provided in subsection (2), the plan shall be considered as having been rejected and may be considered further as provided in section 44;
 - (b) does not alter the rights of the holders of any class of the company's securities, the approval of the plan on a preliminary basis as provided in subsection (2) shall constitute the final adoption of the plan, subject to satisfaction of any conditions on which that plan is contingent; or
 - (c) alters the rights of any class of holders of the company's securities
 - (i) the business rescue administrator shall immediately hold a meeting of the holders of the class or classes of securities whose rights would be

altered by the plan and require them to vote on the adoption of the proposed business rescue plan; and

- (ii) if, in a vote referred to in subparagraph (i), a majority of the holders support the adoption of the plan, the plan shall be adopted, subject to any conditions imposed or reject the plan, the plan may be considered further as provided in section 44.

(4) A business rescue plan that has been adopted shall bind the company, every creditor, affected person and holder of the company's securities, whether or not that person

- (a) was present at the meeting;
 (b) voted in favour of adoption of the plan; or
 (c) had proven their claims against the company.

(5) A company, under the direction of the business rescue administrator, shall take all necessary steps to

- (a) satisfy any conditions that have been imposed relating to a business rescue plan; and
 (b) implement the business rescue plan as adopted.

(6) A business rescue administrator may, in order to implement a business rescue plan that has been adopted

- (a) determine the consideration for, and issue, any authorised securities of the company, despite the Companies Act, 2017 or Securities Act, 2016 relating to the procedures to be followed for the issuance of shares and for the determination of consideration to be received for the issued shares; and

- (b) amend the company's articles of association to authorise and determine the preferences, rights, limitations and other terms of any securities that are not otherwise authorised, but may be issued in terms of the business rescue plan, notwithstanding the provisions of the Companies Act, 2017, or the Securities Act, 2016, relating to amendment of the articles of association, the authorisation of shares to be issued and the preferences, rights, limitations and other terms that apply to those shares.

Act No. 10
of 2017
Act No. 41
of 2016

Act No. 10
of 2017
Act No. 41
of 2016

(7) Except to the extent that an approved business rescue plan provides otherwise, a pre-emptive right of any shareholder of the company, as provided in the Companies Act, 2017, or Securities Act, 2016, shall not apply to an issue of shares by the company in terms of the business rescue plan.

Act No. 10
of 2017

Act No. 41
of 2016

(8) A business rescue administrator shall, when the business rescue plan has been substantially implemented, file a notice of the substantial implementation of the business rescue plan with the Registrar and official Receiver.

44. (1) A business rescue administrator may where a business rescue plan has been rejected as provided in this Part

Failure to
adopt
business
rescue plan

- (a) seek a vote of approval from the holders of voting interests to prepare and publish a revised plan as prescribed; or
- (b) advise the meeting that the company shall apply to the Court to set aside the result of the vote on the grounds that it was inappropriate.

(2) Where a business rescue administrator does not take any action under subsection (1) (a), any affected person present at the meeting may

- (a) call for a vote of approval from the holders of voting interests requiring the business rescue administrator to prepare and publish a revised plan;
- (b) apply to the Court to set aside the result of the vote on the grounds that the vote was inappropriate; or
- (c) make a binding offer, either as an individual or as a combination of affected persons, to purchase the voting interests of one or more persons who opposed adoption of the business rescue plan, at a value independently and expertly determined, on the request of the business rescue administrator, to be a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated.

(3) A business rescue administrator shall, where the business rescue administrator, or an affected person, informs the meeting that an application shall be made to the Court, as provided in subsections (1) and (2), adjourn the meeting

- (a) for ten days, unless that application is made to the Court during that time; or
- (b) until the Court has disposed of the application.

(4) A business rescue administrator shall, when directed by the meeting to prepare and publish a revised business rescue plan

(a) conclude the meeting after that vote and prepare and publish a new or revised business rescue plan within ten days; and

(b) the provisions of this Part shall apply afresh to the publication and consideration of that new or revised plan.

(5) A business rescue administrator shall, where an affected person makes an offer under subsection (2)(c)â

(a) adjourn the meeting for not more than ten days, as may be necessary to afford the business rescue administrator an opportunity to make necessary revisions to the business rescue plan to appropriately reflect the results of the offer; and

(b) set a date for resumption of the meeting, without further notice.

(6) A business rescue administrator shall, where no person takes any action in accordance with subsection (1), promptly file a notice of the termination of the business rescue proceedings.

(7) A holder of a voting interest, or a person acquiring that interest in terms of a binding offer, may apply to the Court to review, re-appraise and re-value a determination by an independent expert in terms of subsection (1) (b).

Discharge of debts and claims

45. (1) A business rescue plan may provide that, where the plan is implemented in accordance with the approved terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor shall lose the right to enforce the relevant debt or part of it.

(2) Where a business rescue plan has been approved and implemented in accordance with this Part, a creditor shall not be entitled to enforce any debt owed by the company immediately before the beginning of the business rescue proceedings, except to the extent provided for in the business rescue plan.

PART IV

SCHEMES OF ARRANGEMENTS AND COMPROMISE

Compromise between company, creditors and members

46. (1) In this section, ðarrangementö includes a re-organisation of the share capital of the company by the consolidation of shares of different classes, or by the division of shares in shares of different classes or by both methods.

(2) This section applies to a company, irrespective of whether or not it is financially distressed.

(3) A company, creditor or member of a company may apply to the Court for an order that a meeting of the creditors or members or class of members, as the case may be, be convened and conducted to consider the compromise or arrangement.

(4) Where a compromise or arrangement is proposed between

(a) a company and its creditors or any class of its creditors;
or

(b) a company and its members or any class of its members;

the Court may, on the application referred to in subsection (3), or, in the case of a company being wound-up, of the liquidator, order a meeting of the creditors, class of creditors, members or class of members, as the case may be, to be convened and conducted to consider the compromise or arrangement.

(5) Subject to an order of the Court, the Companies Act, 2017 shall apply to a meeting of members or a class of members ordered to be convened as specified in this section.

Act No. 10
of 2017

(6) Subject to an order of the Court, the Companies Act, 2017 shall apply, with the necessary modifications, to a meeting of creditors or class of creditors ordered to be convened as specified in this section.

Act No. 10 of
2017

(7) Unless the Court orders otherwise, the voting power at a meeting of creditors ordered to be convened as specified in this section shall be assigned to the creditors in proportion to the amount of the debt outstanding from the company to each creditor.

(8) Where a meeting, by extraordinary resolution, agrees to a compromise or arrangement, the compromise or arrangement

(a) shall be binding on all the creditors or class of creditors or on the members or class of members, as the case may be; and

(b) shall be binding on the company if and when

(i) it has been approved by order of the Court; and

(ii) a copy of the order of the Court has been lodged with the Registrar.

(9) Where an extraordinary resolution agreeing to a compromise or arrangement has been passed at a meeting convened as specified in this section, the company or any person who was entitled to vote at the meeting may apply to the Court for approval of the compromise or arrangement.

(10) At a hearing by the Court of the application for approval of the compromise or arrangement, a member or creditor of the company claiming to be affected thereby is entitled to be represented and to object.

(11) The Court may prescribe such terms, as it considers appropriate, as a condition of its approval, including a condition that a member shall have the right to require the company to purchase shares at a price fixed by the Court or to be determined in a manner provided in the order, and, in that case, for the reduction of the company's capital accordingly.

(12) Where an order is made approving the compromise or arrangement—

(a) the company shall lodge a copy of the order with the Registrar within twenty-one days after the making of the order; and

(b) a copy of the order shall be annexed to or incorporated in every copy of the articles issued after the order was made.

(13) Where an order, made under this section, has the effect of altering the share capital of the company, the Registrar, on lodgment of the copy of the order, shall issue a replacement certificate of the share capital of the company, worded to meet the circumstances of the case.

(14) If a company fails to comply with subsection (11) (a), the company, and each officer in default, commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

(15) If a company issues a copy of its articles that does not comply with subsection (11) (b), the company and each officer in default commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units in respect of each copy issued.

Effect of
compromise
or
arrangement
with
creditors and
members

47. (1) Where a meeting of creditors or any class of creditors or of members or any class of members is convened in accordance with this Part, the company shall prepare a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors in the company or a related body corporate, whether as directors or as members or as creditors of the company or otherwise, and the effect of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(2) Where a compromise or arrangement affects the rights of debenture holders of the company, the statement, prepared in accordance with subsection (1), shall apply to debenture holders of a company or trustee related thereto.

(3) A copy of the statement specified in subsection (1) shall be sent to every creditor or member with the notice of the meeting to be convened in accordance with this Part.

(4) A notice of a meeting, to be convened in accordance with this Part, shall be issued by advertisement in a newspaper of general circulation in Zambia and in any other media and shall include a copy of the statement or specify where the members or creditors entitled to attend the meeting may obtain copies of the statement, which statement shall be given free of charge to any creditor or member.

(5) If a company fails to comply with this section, the company, and each officer in default, commits an offence and shall be liable, on conviction, to a fine not exceeding fifteen thousand penalty units.

(6) It is a defence to a prosecution under subsection (5) to show that failure was due to the refusal of another person to supply the necessary particulars relating to an interest in the company or related body corporate.

48. (1) Where an application is made to the Court, as specified in this Part, to approve a compromise or arrangement and it is shown to the Court that

Reconstruction
and
amalgamation
of
companies

(a) the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for-

(i) the reconstruction of any company or group of companies; or

(ii) the amalgamation of any two or more companies;
and

(b) under the scheme, the whole or any part of the undertaking or property of a company, in this section referred to as *the transferor company*, is to be transferred to another company, in this section referred to as *the transferee company*;

the Court may, by order approving the compromise or arrangement or by a subsequent order, provide for any of the following:

(i) the transfer to the transferee company of the whole or any part of the undertaking and property or liabilities of the transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like interests in the transferor company which under the compromise or arrangement

are to be allotted or appropriated by the transferor company to or for any person;

- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (iv) the dissolution, without winding-up, of the transferor company;
- (v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent to the compromise or arrangement; or
- (vi) such incidental, consequential and supplementary matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order, made in accordance with this section, provides for the transfer of property or liabilities

- (a) the property shall, by virtue of the order, be transferred to, and vest in, the transferee company and shall, if the order so directs, be freed from any charge which is under compromise or arrangement to cease to have effect; and
- (b) the liabilities shall, by virtue of the order, be transferred to, and become the liabilities of, the transferee company.

(3) Where an order is made, in accordance with this section, every company in relation to which the order is made shall cause a copy of the order to be lodged with the Registrar within fifteen days after the making of the order.

(4) If a company fails to comply with subsection (3), the company, and each officer in default, commit an offence and are liable, on conviction, to a fine not exceeding ten thousand penalty units for each day that the failure continues.

PART V

WINDING-UP OF COMPANIES GENERALLY

References
to member
of company

49. For the purposes of this Part, a reference to a "member" includes, unless the context otherwise requires, a reference to a person claiming or alleged to be liable to contribute to the assets of the company in a winding up for the purpose of any proceedings for determining, and proceedings prior to the final determination of, the persons who are so liable, including the presentation of a winding-up petition.

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|--|---|
| <p>50. The winding-up of a company in accordance with this Part shall be by any of the following modes:</p> <p>(a) winding-up by the Court; or</p> <p>(b) voluntary winding-up, being a</p> <p style="padding-left: 40px;">(i) members' voluntary winding-up; or</p> <p style="padding-left: 40px;">(ii) creditors' voluntary winding-up.</p> | <p>Modes of winding-up</p> |
| <p>51. (1) This section applies to a company limited by guarantee, an unlimited company and a company having shares which are not fully paid up.</p> <p>(2) Where a company is wound-up, every member at the time of the commencement of the winding-up shall, subject to section 40, be liable to contribute to the assets of the company an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding-up and for the adjustment of the rights of the members among themselves.</p> <p>(3) A sum due to a member by way of dividends or otherwise</p> <p style="padding-left: 40px;">(a) shall not be regarded as a debt of the company payable to that member in a case of competition between the member and any other creditor who is not a member; and</p> <p style="padding-left: 40px;">(b) may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.</p> | <p>Liability of members on winding-up</p> |
| <p>52. (1) Despite any other provision in this Act, in the case of a public company or a private company limited by shares, a member is not required to make a contribution exceeding the amount, if any, unpaid on the shares in respect of which the person is liable as a member.</p> <p>(2) Despite any other provision in this Act, in the case of a company limited by guarantee, a member is not required to make a contribution exceeding the amount that the member undertook, in the declaration of guarantee, to contribute to the assets of the company in the event of its being wound-up.</p> | <p>Limitation of liability</p> |
| <p>53. The liability of a member shall create a specially accruing debt due from that member at the time when the member's liability commenced, but payable at the times when calls are made for enforcing the liability.</p> | <p>Nature of liability of member</p> |
| <p>54. (1) Where a member dies, whether before or after the member is placed on the list of persons liable to contribute to the assets of a company, that member's personal representative is liable in the due course of administration and, if that representative fails</p> | <p>Liability on death or bankruptcy of member</p> |

to pay any money ordered to be paid, proceedings may be taken for administering the estate of the deceased member and for compelling payment from the estate of the money due.

(2) If a member becomes bankrupt, before or after the member is placed on the list of persons liable to contribute to the assets of a company

(a) the member's trustee in bankruptcy shall represent that member for purposes of the winding-up and is liable to contribute accordingly; and

(b) there may be proved against the estate of the bankrupt the estimated value of the member's liability to future calls as well as to calls already made.

PART VI

WINDING-UP BY COURT

Jurisdiction
over winding
up
proceedings

55. The Court has jurisdiction to wind-up in accordance with this Act, a body corporate incorporated in

(a) Zambia; and

(b) a foreign country and

(i) registered as a foreign company in Zambia; or

(ii) having any business, undertaking or assets in Zambia.

Petition to
wind-up
company

56. (1) Subject to this section, a company may be wound-up by the Court on the petition of

(a) the company;

(b) a creditor, including a contingent or prospective creditor of the company;

(c) a member;

(d) a person who is the personal representative of a deceased member;

(e) the trustee in bankruptcy of a bankrupt member;

(f) a liquidator of the company appointed in a voluntary liquidation; or

(g) the Registrar or Official Receiver.

(2) In the case of a public company or a private company limited by shares, a member is not entitled to present a winding-up petition unless the member's shares, or some of them

(a) were originally allotted to the member;

(b) have been held by the member and registered in that member's name for at least six months; or

(c) have devolved on the member by operation of law.

(3) The Court shall not hear a winding-up petition presented by a contingent or prospective creditor until-

(a) the creditor gives security for costs as the Court considers reasonable; and

(b) a *prima facie* case for winding-up has been established to the satisfaction of the Court.

(4) Where a company is being wound-up voluntarily, the Court shall not make a winding-up order, if it determines that the voluntary winding-up cannot be continued with due respect to the interests of the creditors or members.

57. (1) The Court may order the winding-up of a company on the petition of a person other than the Official Receiver ifô

Circumstances
for winding-
up by Court

(a) the company has by special resolution resolved that it be wound-up by the Court ;

(b) the company is unable to pay its debts;

(c) the period, if any, fixed for the duration of the company by the articles expires, or an event occurs in respect of which the articles provide that the company is to be dissolved;

(d) the number of members is reduced below two;

(e) the company was formed for an unlawful purpose;

(f) the incorporation of the company was obtained fraudulently;
or

(g) in the opinion of the Court, it is just and equitable that the company should be wound-up.

(2) The Court may order the winding-up of a company on the petition of the Registrar or the Official Receiver on the grounds specified in subsection (1) (b), (d), (e) or (f) or on the ground that the company has persistently failed to comply with any of the provisions of this Act.

(3) For purposes of this section, a company is unable to pay its debts ifô

(a) there is due, from the company to any creditor, including a creditor by assignment, a prescribed fee, andô

(i) the creditor has, more than thirty days previously, served on the company a written demand requiring the company to pay the amount due;
and

(ii) the company has failed to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) the company is unable to pay its debts as they fall due.

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

Commencement
of winding-
up by Court

58. (1) Where, before the presentation of the petition for the winding-up of a company by the Court, a special resolution is passed by the company for voluntary winding-up, the winding-up of the company shall be considered to have commenced at the time of the passing of the resolution, and, unless the Court otherwise directs, all proceedings taken in the voluntary winding-up shall have been validly taken.

(2) In any other case, the winding-up of a company shall be considered to have commenced at the time of the presentation of the petition for the winding-up by the Court.

Payment of
preliminary
costs

59. (1) A person, other than the company or the liquidator on whose petition a winding-up order is made shall, at that person's own cost, prosecute all proceedings in the winding-up until a liquidator is appointed.

(2) A liquidator shall, unless the Court otherwise orders, reimburse the petitioner out of the assets of the company, and the taxed costs incurred by the petitioner in the proceedings referred to in subsection (1).

(3) Where a winding-up order is made on the petition of the company or the liquidator the costs incurred shall, subject to an order of the Court, be paid out of the assets of the company as if they were the costs of any other petitioner.

Powers of
Court on
hearing
petition

60. (1) The Court may, on hearing a winding-up petition

(a) grant the petition;

(b) dismiss it with or without costs;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order as it considers appropriate in the circumstances.

(2) The Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, the company

has no assets or, in the case of a petition by a member, there will be no assets available for distribution amongst the members.

(3) The Court may, on the hearing of a petition or at any time on the application of the petitioner, a company or person who has given notice of the intention to appear on the hearing of the petition

- (a) direct that any notice be given or steps taken before or after the hearing of the petition;
- (b) dispense with any notice being given or steps being taken which are required by or in accordance with this Act or by any prior order of the Court;
- (c) direct that oral evidence be taken on the petition or any matter relating to it;
- (d) direct a speedy hearing or trial of the petition or any issue or matter;
- (e) allow the petition to be amended or withdrawn; and
- (f) give such directions as to the proceedings as the Court considers appropriate in the case.

(4) Where a petition is presented by members on the ground that it is just and equitable that a company should be wound-up and the Court determines that the petitioners are entitled to relief by winding-up the company or by some other means, it shall make a winding-up order, unless some other remedy is available to the petitioners who are acting unreasonably in seeking to have the company wound-up instead of pursuing the other remedy.

61. A person referred to in section 56 (1) may, after the presentation of a winding-up petition of a company and before a winding-up order is made, where an action or proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings on such terms as it considers appropriate in the matter.

Power to stay or restrain proceedings against company

62. A disposition of the property of a company, including things in action, and any transfer of shares or alteration in the status of members of the company, made after the commencement of a winding-up by the Court, is void unless the Court otherwise orders.

Avoidance of dispositions

63. An attachment, sequestration, distress or execution put in force against the estate or assets of a company after the commencement of a winding-up by the Court is void.

Avoidance of attachments

64. (1) A petitioner shall, within fourteen days after the making of a winding-up order

Registration of copy of order

- (a) lodge a copy of the order with the Registrar;

(b) cause a copy of the order to be served on the secretary of the company or on such other person, in such manner as the Court directs;

(c) deliver a copy of the order to the Official Receiver, if the Official Receiver has not been appointed as liquidator or if no liquidator has been appointed; and

(d) deliver a copy to the liquidator, if any, with a statement that the requirements of this subsection have been complied with.

(2) The Registrar shall, on receipt of a copy of a winding-up order lodged in accordance with subsection (1), as soon as it is reasonably practicable, cause a notice of the order to be published in the *Gazette*.

(3) A petitioner who fails to comply with subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding three hundred and fifty penalty units for each day that the failure continues.

Provisional liquidator

65. (1) The Court may provisionally appoint the Official Receiver or any other person to be the liquidator after the presentation of a winding-up petition and before the making of a winding-up order.

(2) A provisional liquidator shall have and may exercise all the powers and perform the function of a liquidator subject to such limitations and restrictions as may be prescribed, or as the Court specifies in the appointing order.

(3) A provisional liquidator, except the Official Receiver, shall be a person accredited by the Registrar in accordance with this Act.

Stay of actions

66. Where a winding-up order is made or a provisional liquidator is appointed, an action or proceeding shall not be proceeded with, or commenced against, a company except by leave of the Court and subject to such terms and conditions as the Court may impose.

Appointment of liquidator by Court and performance of functions in absence of liquidator

67. (1) The Court may, in a winding-up order, appoint an individual who is accredited by the Registrar, in accordance with this Act, as liquidator or may give directions as to the appointment of a liquidator by the members or creditors of a company.

(2) Where a winding-up order makes no direction as to the appointment of a liquidator, the Official Receiver shall be the liquidator of the company.

(3) A provisional liquidator shall continue to exercise the powers and perform the functions of a liquidator until the appointment of a liquidator.

(4) Where a provisional liquidator is not appointed, the Official Receiver shall be the provisional liquidator until the appointment of a liquidator.

(5) The Official Receiver shall be the liquidator during any vacancy in the office of liquidator.

(6) A vacancy in the office of liquidator may be filled by the Court.

(7) A liquidator may resign or, on cause shown, be removed by the Court.

(8) A liquidator shall be described, except the Official Receiver, as the Liquidator and not by individual name.

(9) The Official Receiver when appointed liquidator may be described as the Official Receiver and Liquidator.

(10) Where more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Act required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(11) The Registrar shall cause the name, business address and details of the appointment or release of the liquidator to be notified in the *Gazette*.

68. (1) Where a person, other than the Official Receiver, is appointed liquidator by the Court, that person shall

(a) act as liquidator if the person lodges a notice of the appointment with the Official Receiver and gives security as may be directed by the Court or by Official Receiver; and

(b) give the Official Receiver information and access to facilities of the company for the inspection of the books and documents of the company, and generally give such aid as may be requisite to enable the Official Receiver to perform the functions specified in this Act.

69. (1) In a winding-up of a company by the Court, the Official Receiver shall inquire into the matter, and take such action as the Official Receiver considers appropriate

(a) if the liquidator is not faithfully performing the functions of liquidator; or

(b) where a complaint has been made to the Official Receiver by a creditor or member of the company relating to the winding-up.

(2) The Official Receiver may, require a liquidator appointed by the Court to answer any inquiry in relation to the winding-up

Lodging of notice of appointment with Official Receiver and access to company

Control of liquidators by Official Receiver

and may apply to the Court to examine the liquidator or any other person on oath concerning the winding-up.

(3) An Official Receiver may, for purposes of this section

- (a) direct an investigation to be made of the books and vouchers of a liquidator;
- (b) recommend the prosecution of a liquidator, where the Official Receiver reasonably believes that the liquidator has committed an offence under this Act; or
- (c) recommend the disqualification of the liquidator.

Remuneration
of
liquidators

70. (1) Subject to this Act, a liquidator, may receive such salary or remuneration by way of commission or otherwise as is determined

- (a) by agreement between the liquidator and the committee of inspection, if any;
- (b) by an extraordinary resolution passed at a meeting of creditors convened by the liquidator, by a notice to each creditor to which was attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought failing an agreement or where there is no committee of inspection; or
- (c) by the Court, failing a determination under paragraph (a) or (b).

(2) Where the salary or remuneration of a liquidator is determined, as specified in subsection (1) (a), the Court may, on the application of one or more members whose shareholdings represent, in total, not less than five percent of the issued capital of the company, or who, in the case of a company having no share capital, constitute not less than five percent of the members, confirm or vary the determination.

(3) Where the salary or remuneration of a liquidator is determined, as specified in subsection (1) (b), the Court may, on the application of the liquidator or one or more members, as provided in subsection (2), confirm or vary the determination.

(4) Subject to an order of the Court, the Official Receiver, when liquidator or provisional liquidator, may receive such remuneration by way of commission or otherwise as may be prescribed.

(5) Despite the generality of this section, the rate payable to the liquidator shall not exceed such amount as may be prescribed.

(6) A liquidator who knowingly collects remuneration in excess of the prescribed amount is personally liable to reimburse the amount of the excess remuneration so collected and commits an offence

and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to a term of imprisonment not exceeding three years, or both.

71. (1) Where a winding-up order is made or a provisional liquidator is appointed, the liquidator or provisional liquidator as the case may be, shall take into custody or under control the property and things in action to which the company is or appears to be entitled.

Custody and vesting of company's property

(2) The Court may by order, on the application of a liquidator or provisional liquidator, direct that all or any part of the property of whatsoever description belonging to the company or held by trustees, on behalf of the company, be vested in the liquidator or provisional liquidator, and the property to which the order relates shall vest accordingly.

(3) A liquidator or provisional liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceedings which relate to any property vested in the liquidator or provisional liquidator or which it is necessary to bring or defend for effectively winding-up of the company and recovering its property.

(4) Where an order is made in accordance with this section, the liquidator or provisional liquidator shall, within fourteen days after the making of the order

(a) lodge a copy of the order with the Registrar and the Official Receiver; and

(b) in the case of property vested in the liquidator or provisional liquidator relating to the transfer of the property which by any other law requires to be registered, deliver a copy of the order to the appropriate authority for registration together with a written application.

(5) A liquidator or provisional liquidator who fails to comply with subsection (4) commits an offence and is liable, on conviction, to a fine not exceeding three hundred and fifty thousand penalty units for each day that the failure continues.

(6) A vesting order, referred to in this section, shall not have any effect or operation in transferring or otherwise vesting the property referred to in subsection (3) (b) until delivered to the Registrar and the Official Receiver.

72. (1) A company shall, within three months of the appointment of a liquidator, prepare and submit to the liquidator a statement on the affairs of the company as at the date of the winding-up order, unless the Court otherwise directs, showing

Statement on company's affairs

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by each of the creditors;
- (d) the dates when the securities were respectively given; and
- (e) such further information as may be prescribed or as the liquidator requires.

(2) The statement, referred to in subsection (1), shall be verified by a statutory declaration as at the date of the winding-up order, of at least one director and the secretary of the company.

(3) A liquidator may, subject to the direction of the Court, by notice in writing, require a person to verify, by statutory declaration, such parts of the statement as that person is in a position to verify, who

- (a) is, or was within two years before the date of the winding-up order, an officer of the company; or
- (b) took part in the formation of the company, if the company was formed less than two years before the date of the winding-up order.

(4) A liquidator may serve a notice on a person, specified in subsection (3), either personally or by sending it by post to the last known address of the person or through a daily newspaper of general circulation in Zambia or by other media.

(5) A person required to verify a statement on the affairs of a company shall, within twenty one days after receiving a notice, as specified in subsection (4), or within such extended time as the liquidator or the Court may specify, submit a statutory declaration verifying those matters in the statement which the person is in a position to verify and specifying any matters in the statement which are incorrect.

(6) A liquidator shall, within fourteen days after receiving the statement on the affairs of a company or any statutory declaration, as specified in subsection (3), cause copies of the statement to be

- (a) filed with the Court; and
- (b) delivered to the Registrar and the Official Receiver, if the Official Receiver is not the liquidator.

(7) A person required to verify a statement on the affairs of a company, as provided in this section, may be allowed, and be paid out of the assets of the company, such costs and expenses incurred in, and relating to, doing so, as the liquidator considers reasonable, subject to an appeal to the Court.

(8) A company which fails to comply with subsection (1), and an officer in default, commits an offence and is liable, on conviction, to a fine not exceeding fifteen thousand penalty units for each week that the failure continues.

(9) A person who fails to comply with subsection (5), commits an offence, and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(10) A statement on the affairs of a company, made in accordance with this section may be used as evidence in any proceedings against any person making it.

(11) A liquidator who fails to comply with subsection (6) commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred and fifty penalty units for each day that the failure continues.

73. (1) A liquidator shall, not later than three months or such longer period as the Court may allow after receipt of a statement on the affairs of a company, submit to the Court, Registrar, holder of a charge by virtue of which the liquidator was appointed and any trustee of the secured creditors of the company a report on the state of affairs relating to the property in liquidation, including

Report by
liquidator

- (a) the amount of capital issued, subscribed and paid up and the estimated amount of assets and liabilities;
- (b) the cause of the failure of the company, if the company has failed;
- (c) whether, in the opinion of the liquidator, further inquiry is desirable as to any matter relating to the promotion, formation or failure of the company or the conduct of its business;
- (d) particulars of assets comprising the property in liquidation;
- (e) particulars of the debts and liabilities to be satisfied from the property in liquidation;
- (f) the names and addresses of the creditors with an interest in the property in liquidation;
- (g) particulars of any encumbrance over the property in liquidation held by a creditor, including the date on which it was created;
- (h) particulars of any default by the grantor in making relevant information available;
- (i) the events leading up to the liquidator's appointment, so far as the liquidator is aware of them;

- (j) the disposal or proposed disposal, by the liquidator, of any property of the company and the carrying on or proposed carrying on, by the liquidator, of any business of the company;
 - (k) the amount of the principal and interest payable to preferential creditors;
 - (l) the amount, if any, likely to be available for the payment of other creditors; and
 - (m) such other information as may be prescribed by the Minister by statutory instrument.
- (2) A liquidator may make further reports stating
- (a) the manner in which the company was formed;
 - (b) whether any fraud has been committed or any material fact has been concealed by
 - (i) a person in its promotion or formation; or
 - (ii) an officer in relation to the company since its formation;
 - (c) whether an officer of the company has contravened or failed to comply with any of the provisions of this Act; and
 - (d) any other matter which, in the liquidator's opinion, is desirable to bring to the notice of the Court.
- (3) The Registrar may, where a liquidator
- (a) does not submit a report as specified in subsection (1), issue a reminder to the liquidator to submit the report within twenty one days of the receipt of the reminder; or
 - (b) does not comply with the notice issued in accordance with paragraph (a), remove the liquidator from the Register of Insolvency Practitioners, disqualify the person from being appointed as a liquidator and inform the Official Receiver of such removal and disqualification as prescribed.

Powers of
liquidator

74. (1) A liquidator may, during the four weeks following the date of a winding-up order, carry on the business of the company so far as is necessary for the satisfactory winding-up of the company.

(2) A liquidator may, with the authority of the Court or committee of inspection

- (a) pay any class of creditors in full, subject to this Act;

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- (b) make any compromise or arrangement with creditors, persons claiming to be creditors or persons having or alleging themselves to have a claim against the company, whether present or future, certain or contingent, ascertained or sounding only in damages or through which the company may be rendered liable;
 - (c) compromise any debts and liabilities capable of resulting in debts and any claims of any kind, whether present or future, certain or contingent, ascertained or sounding only in damages, that subsist or are supposed to subsist between the company on the one hand and a member, debtor or person apprehending liability on the other;
 - (d) make agreements on questions relating to or affecting the assets or winding-up of a company;
 - (e) dispose of assets by public tender or the most transparent manner under the circumstances and, not less than twenty-one days before such disposal, furnish the Registrar with a notice of intention to dispose of the asset; and
 - (f) take security for the discharge of a debt, liability or claim and give a complete discharge in respect of that debt.
- (3) A liquidator may, for the purpose of a winding-up and distributing the assets of the company
- (a) bring or defend an action or other legal proceeding in the name and on behalf of the company;
 - (b) compromise any debt due to the company, other than a debt due from a member, where the amount claimed by the company to be due to it does not exceed an amount prescribed by the Minister by statutory instrument;
 - (c) sell the real and personal property and things in action of the company by public auction, public tender or private contract;
 - (d) execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, use, where necessary, the company's seal;
 - (e) prove, rank and claim in the bankruptcy of any member or debtor for any balance against the member's estate and receive dividends in the bankruptcy in respect of the balance as a separate debt due from the bankrupt and rateable with other separate creditors;

- (f) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf 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 its business;
- (g) raise on the security of the assets of the company any money necessary;
- (h) take out letters of administration of the estate of any deceased member or debtor, and do any act necessary for obtaining payment of any money due from a member, debtor or the member's or debtor's estate which cannot be conveniently done in the name of the company, in which case, for the purposes of enabling the liquidator to take out the letters of administration or recover the money and money shall be due and payable to the liquidator;
- (i) appoint a legal practitioner to assist the liquidator;
- (j) appoint an agent to undertake any functions which the liquidator is unable to perform personally;
- (k) give notice of the winding-up to affected persons by notice published in a daily newspaper of general circulation in Zambia and in any jurisdiction where the company undertakes business; and
- (l) do such things as are necessary for the winding-up and distributing the assets of the company.

(4) The performance by the liquidator specified in this section shall be subject to the control of the Registrar, and any creditor or member may apply to the Court on the performance or proposed performance of any of the functions.

Exercise and
control of
liquidator's
powers

75. (1) Subject to this Act, a liquidator shall, in the administration of the assets of the company and in the distribution of the assets, among its creditors, have regard to directions given by resolution of the creditors or members at a general meeting or the committee of inspection; and directions given by the creditors or members shall, in case of conflict, override any direction given by the committee of inspection.

(2) A liquidator may summon meetings of creditors or members for various purposes related to the winding up or summon meetings at such times as the creditors or members by resolution direct or whenever requested in writing to do so by

- (a) members whose shareholding represent not less than one twentieth of the issued capital of the company, in the case of a company with share capital;
- (b) not less than one tenth of the members, in the case of a company limited by guarantee; or
- (c) creditors representing, in the aggregate, not less than five percent of the value of the creditors of the company.

(3) A liquidator may, under the winding-up, apply to the Court for directions on any matter.

(4) Subject to this Act, the liquidator shall use sound judgment in the management of the affairs and property of the company and the distribution of its assets.

76. (1) A liquidator may, and if requested by a creditor or member shall, summon separate meetings of the creditors and members for the purpose of

Committee
of inspection

- (a) determining whether or not the creditors or members require a committee of inspection to act with the liquidator; and
- (b) appointing members of the committee, if a committee is required.

(2) A committee of inspection shall be appointed by the meetings of creditors and members in such proportions as agreed, and if there is no agreement, as determined by the Court.

(3) If there is a difference between the determinations of the meetings of the creditors and members, the Court shall decide the matter and make such order as it considers appropriate in the matter.

77. (1) A committee of inspection shall consist of creditors and members of the company or persons holding

Constitution
and
proceedings
of committee
of inspection

- (a) general powers of attorney from creditors or members;
or
- (b) special authority from the creditors or members of the company.

(2) A committee of inspection shall meet at such times and places as the committee may determine.

(3) A liquidator or any member of a committee of inspection may call a meeting of the committee as the liquidator or member considers necessary.

(4) A committee of inspection may act by a majority of members present at a meeting, but shall not act unless a majority of the members of the committee are present.

(5) A member of the committee of inspection may resign by notice, in writing, signed by the member and delivered to the liquidator.

(6) The office of a member of a committee of inspection falls vacant if the member

- (a) dies
- (b) is subject to a legal disability;
- (c) becomes bankrupt;
- (d) assigns the member's estate for the benefit of the creditors or makes an arrangement with creditors in terms of any law relating to bankruptcy; or
- (e) is absent from three consecutive meetings of the committee of inspection without the prior leave or subsequent consent of a majority of those members who together with that member represent the creditors or members, as the case may be.

(7) A member of the committee of inspection may be removed by an ordinary resolution at a meeting of creditors, if the member represents creditors, or of members, if the member represents members, of which twenty one days' notice in writing has been given stating the object of the meeting.

(8) A vacancy in a committee of inspection may be filled by the appointment by the committee of the same or another creditor or member or person holding a general power or special authority, as referred to in subsection (1).

(9) A liquidator may, on the liquidator's own motion, and shall, within twenty one days after the request, in writing, of a creditor or member, summon a meeting of creditors or members, as the case requires, to consider any appointment made as specified in subsection (8), and the meeting may

- (a) confirm the appointment; or
- (b) revoke the appointment and make another appointment.

(10) The continuing members of a committee of inspection, if not less than two, may act despite any vacancy in the committee.

78. A liquidator may apply to the Court for an order of release and dissolution of the company, where the liquidator

- (a) has realised the property of the company or so much of the property as can be realised without needlessly protracting the liquidation, distributed a final dividend, if any, to the creditors, adjusted the rights of the members and made a final return, if any, to the members and creditors; or
- (b) resigns or has been removed from office.

Application
for order of
release of
liquidator
and
dissolution
of company

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79. (1) In deciding whether to grant an application, made in accordance with section 78, the Court
- Order for release and dissolution
- (a) may cause a report on the accounts of a liquidator, to be prepared by the Official Receiver or an auditor appointed by the Court; and
- (b) shall take into consideration
- (i) the report;
- (ii) any objection which is made against the release of the liquidator by the Official Receiver, auditor, any creditor or member or other interested person; and
- (iii) whether the liquidator has complied with the requirements of the Court relating to the winding-up.
- (2) Where the Court is satisfied that all necessary requirements relating to the winding-up and the accounts and report are made in accordance with subsection (1), the Court may by order, release the liquidator and dissolve the company.
- (3) The Court may, where it does not grant the release of a liquidator as applied for in accordance with section 78, on the application of any creditor or member or other interested person, if the Court considers it just and equitable, make an order that the liquidator be liable to the person concerned for damages for an act or omission by the liquidator which is contrary to the functions of a liquidator under this Act or any other law.
- (4) An order of the Court releasing a liquidator shall discharge the liquidator from liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company or otherwise in relation to the conduct of the person as liquidator, but the order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (5) Where a liquidator has not previously resigned or been removed, the liquidator's release shall operate as a removal from office.
- (6) Where the Court makes
- (a) an order that the liquidator be released; or
- (b) an order that the liquidator be released and that the company be dissolved;
- a copy of the order shall, within twenty-one days after the making of it, be lodged by the liquidator with the Registrar and the Official Receiver.

(7) A liquidator who fails to comply with subsection (6) commits an offence and is liable, on conviction, to a fine not exceeding three thousand penalty units for each day that the failure continues.

(8) Where the Court makes an order that a company be dissolved, the Registrar shall, on lodgment of a copy of the order, strike the name of the company off the register and put a notification of the striking out in the *Gazette*, and the company shall be dissolved as at the date of the Court Order.

Power to
stay
winding-up

80. (1) The Court may, after an order for winding-up is made, on the application of the liquidator, a creditor or member, make an order staying the proceedings, on such terms and conditions as the Court considers appropriate in the matter.

(2) The Court may, before making an order as specified in this section, order the liquidator to furnish a report with respect to any relevant facts or matters.

(3) A copy of an order, made under this section, shall be lodged by the person receiving the order with the Registrar and Official Receiver within twenty-one days after the making of the order and the Registrar shall cause the order to be published, within fourteen days, in a daily newspaper of general circulation in Zambia and other media.

(4) A person, referred to in subsection (3), who fails to comply with that subsection commits an offence and is liable, on conviction, to a fine not exceeding three hundred and fifty penalty units for each day that the failure continues.

Appointment
of special
manager

81. (1) A Court may, on application by a liquidator, appoint a special manager to act during such time as the Court directs, with such powers, including any of the powers of a receiver as the Court may vest in the manager.

(2) A special manager appointed under subsection (1)ô

(a) shall give such security as the Court may direct;

(b) shall receive such remuneration as approved by the Court;

(c) may resign after giving not less than one monthø notice in writing to the liquidator; and

(d) may be removed by the Court.

Claims of
creditors and
distribution
of assets

82. (1) The Court may fix a date on or before which creditors are to prove their debts or claims and after which they will be excluded from the benefit of any distribution made.

(2) The Court may adjust the rights of the members among themselves and distribute any surplus among the persons entitled.

(3) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the Court thinks fit.

83. The Court may, after making a winding-up order, make any order for inspection of the records of the company by creditors and members that the Court considers necessary in the circumstances of the matter, and any records in the possession of the company may be inspected by creditors or members in accordance with the order.

Inspection
of books by
creditors and
members

84. (1) The Court may cause appearance by summons, of an officer of a company or person known or suspected to be in possession of any property of the company, or indebted to the company or of any other person whom the Court considers capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

Power to
summon
persons
connected
with
company

(2) The Court may examine an officer of a company or other person, on oath, concerning the matters referred to in subsection (1), orally or by written interrogatories, and may reduce the oral answers in writing and require the officer or other person to sign them and which may be used in evidence in any legal proceedings against the officer or person.

(3) The Court may require an officer of a company or other person to produce any books and papers in the officer's or person's custody or power relating to the company, except that where the officer or other person claims a lien on any book or paper, the production shall be without prejudice to the lien, and the Court shall have jurisdiction to determine questions relating to the lien.

(4) An examination made in accordance with this section may, if the Court so directs, be held before the Registrar of the High Court.

(5) A person summoned for examination in accordance with this section may, at that person's own cost, engage a legal practitioner.

(6) Where a person who is summoned as provided in this section and after being provided with a reasonable sum for that person's expenses, refuses to appear before the Court at the time appointed, not having a lawful excuse made known to the Court at the time of the sitting as approved by the Court, the Court may cause that person to be apprehended and brought before the Court for examination.

Power to
order public
examination

- 85.** (1) Where a liquidator makes a report stating that—
- (a) a fraud has been committed in the company;
 - (b) any material fact has been suppressed or concealed by any person in the promotion or formation of the company or by any officer in relation to the company;
 - (c) any officer of the company has acted dishonestly or has been guilty of any impropriety or recklessness in relation to the affairs of the company;

the Court may, after considering the report, direct that—

- (i) the person or officer of the company;
- (ii) any other person who was previously an officer of the company, is known or suspected to be in possession of any property of the company, or is or is supposed to be indebted to the company; or
- (iii) any person whom the Court considers capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company;

attend before the Court on a day appointed and be examined and, in the case of an officer or former officer of the company, as to that officer's conduct and dealings related or relating to the company.

(2) A liquidator, creditor or member may take part in the examination, specified in this section, personally or represented by a legal practitioner.

(3) The Court may put or allow to be put such questions to the person examined as the Court considers appropriate in the matter.

(4) A person examined, in accordance with this section, shall be examined on oath and shall answer questions put by the Court or otherwise put to the person during the proceedings.

(5) Where a person is ordered to attend before the Court, as provided in this section, applies to the Court from any charge made or suggested against that person to be dropped, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matter which appears to the liquidator to be relevant, and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application, the Court may allow the applicant such costs as it considers appropriate in the case.

(6) A person ordered to be examined, as specified in this section—

(a) shall, before the examination, be furnished with a copy of the liquidator's report; and

(b) may, at that person's own cost, engage a legal practitioner.

(7) An examination undertaken in accordance with this section

(a) shall be recorded and reduced in writing;

(b) shall be read over to and signed by the person being examined; and

(c) may be used in evidence in any legal proceedings relating to the winding-up or against the person.

(8) The written transcript of the examination, undertaken in accordance with this section, shall at all reasonable times, be open to inspection by a creditor or member.

(9) An examination, undertaken in accordance with this section, may, if the Court so directs, be held before the Registrar of the High Court.

(10) For purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

86. (1) The Court may, before or after the making of a winding-up order, order the arrest and detention of the member, officer, former member or officer until such time as the Court orders that any book, paper or movable or personal property be seized on proof of probable cause for believing that a member or officer or former member or officer of the company is about to -

(a) leave Zambia;

(b) abscond from Zambia; or

(c) remove or conceal any property for the purpose of evading payment of any money due to the company or avoiding examination in respect of the affairs of the company.

(2) For purposes of this section, "officer" includes a banker, legal practitioner or auditor of the company.

87. Any power conferred on the Court, by this Act shall be in addition to, and not in derogation of, any power of instituting proceedings against any member or debtor of a company or estate of a member or debtor for the recovery of any debt or other sum.

Power to
arrest
absconding
member or
officer

Cumulative
powers of
court

PART VII

VOLUNTARY WINDING-UP

- 88.** (1) Subject to subsection (2), a company may be wound-up voluntarily by special resolution of the members or creditors.
- (2) Where the period fixed by the articles of association for the duration of the company has expired, or an event for the dissolution of the company has occurred, the company shall stand dissolved.
- (3) Where a special resolution for a voluntary winding-up has been passed in accordance with subsection (1), the company shall, within fourteen days after the passing of the resolution lodge a copy of the resolution with the Registrar and the Registrar shall, within seven days after the lodgment, cause notice of the resolution to be published in the *Gazette*.
- (4) If a company fails to comply with subsection (3), the company, and each officer in default, commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred penalty units for each day that the failure continues.
- 89.** For the purposes of this Act, a voluntary winding-up commences at the time of the passing of the special resolution for voluntary winding-up, made in accordance with section 88.
- 90.** (1) A company shall from the commencement of winding-up, as provided in section 89, cease to carry on its business, except as the liquidator considers necessary for the effective and efficient winding-up of the company.
- (2) After the commencement of the winding-up, the shares of members shall not be transferred or altered without the approval of the liquidator.
- (3) A transfer or alteration of shares in contravention of subsection (3) is void.
- 91.** (1) The directors may declare in writing that a full inquiry has been made into the affairs of the company and that they are satisfied that the company meets the solvency test before issuing a notice for a meeting to wind up the company voluntarily as provided in section 88.
- (2) The directors shall attach to a declaration made in accordance with subsection (1), a statement relating to the affairs of the company showing the
- (a) assets of the company and the total amount expected to be realised from the assets, therefrom;
 - (b) liabilities of the company; and

(c) the estimated expenses of winding-up, as of the date before the making of the declaration.

(3) A declaration, made in accordance with subsection (1), shall only have effect for the purposes of this Act if it isô

(a) made at a meeting of directors referred to in subsection (1);

(b) made at least thirty days before the passing of the resolution for voluntary winding-up, as specified in subsection (1); and

(c) lodged with the Registrar on or before the date on which the notice, referred to in subsection (1), is issued.

(4) A director who makes a written declaration, in accordance with this section, knowing that the company does not satisfy the solvency test commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

92. (1) After the commencement of the winding-up of the company, the company shall, by special resolution, appoint one or more liquidators and fix the remuneration to be paid to the liquidator.

Appointment
and
remuneration
of liquidator

(2) Where a liquidator has been appointed, the powers of the directors shall cease, unless the liquidator, or the members, by ordinary resolution, with the consent of the liquidator, appropriate continued exercise of the powers in specified circumstances approved by the liquidator.

(3) The company shall, within fourteen days of appointing the liquidator, lodge a certified copy of the ordinary resolution with the Registrar upon payment of the prescribed fee and the Registrar shall cause a notice to be published in a daily newspaper of general circulation in Zambia.

(4) The company may, by special resolution, of which the requisite notice has been given to the members, creditors and liquidators, remove the liquidator, subject to any direction of the Court on the application of a member, creditor or liquidator.

(5) Where a liquidator dies, resigns, is removed from office or otherwise vacates the office, the company may, by ordinary resolution, passed at a general meeting, fill the vacancy.

(6) The company shall, within fourteen days of filling the vacancy specified in subsection (4), lodge a certified copy of the ordinary resolution with the Registrar upon payment of the prescribed fee, and the Registrar shall cause a notice to be published in a daily newspaper of general circulation in Zambia.

Duty of liquidator to call creditors

93. (1) If a liquidator is satisfied that the company is not able to pay or provide for the payment of its debts in full within the period stated in the declaration of solvency, the liquidator shall immediately convene a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company.

(2) Within twenty-one days after a meeting has been held, in accordance with subsection (1), the liquidator shall lodge with the Registrar and the Official Receiver a statement that the meeting was held in accordance with subsection (1) and stating the decisions, if any, taken at the meeting.

(3) Where a meeting was held in accordance with subsection (1), the winding-up shall proceed as if it was a creditors voluntary winding-up, except that the liquidator shall not summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting was held less than three months before the end of that year.

(4) The creditors may, at a meeting convened in accordance with subsection (1) and where the winding-up becomes a creditors voluntary winding-up, appoint another liquidator in place of the liquidator appointed by the company.

(5) A liquidator who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding seven hundred penalty units for each day that the failure continues.

Staying of members voluntary winding-up

94. (1) The company may, during the course of a voluntary winding-up prior to the dissolution of the company, by special resolution, resolve that the winding-up proceedings be stayed.

(2) After the passing of the special resolution specified in subsection (1), the liquidator or any member of the company may make an application to the Court for an order that the winding-up be stayed, that the liquidator be discharged and that the directors resume the management of the company.

(3) The applicant shall give not less than twenty-eight days written notice of the hearing of the application to the Official Receiver, Registrar, every director of the company, and to the liquidator of the company and the Official Receiver shall cause a copy of the notice to be published in the *Gazette* not later than seven days after receipt of the notice.

(4) A director, liquidator, creditor or member may appear on the hearing of the application made in accordance with subsection (2) and to call witnesses and give evidence.

(5) A company shall within twenty-one days of the Court making an order pursuant to an application made in accordance with subsection (2), lodge a copy of the order, with the Registrar, who shall cause a copy of the order to be published in the *Gazette*.

(6) On the publication of the order, the winding-up shall cease and the company shall resume operations as a going-concern subject to terms and conditions stated in the order.

(7) If a company fails to comply with subsection (5), the company, and each officer in default, commits an offence, and shall be liable, on conviction, to a fine not exceeding five hundred penalty units for each day that the failure continues.

95. (1) Where a resolution for the voluntary winding-up of a company has been proposed, and no declaration of solvency was made, the company shall convene a meeting of the creditors at which the resolution for a creditors' voluntary winding-up shall be put, and passed by the creditors.

Creditors'
voluntary
winding-up

(2) A company shall issue a notice of a meeting convened in accordance with subsection (1) to each creditor not less than seven days before the date set for the meeting.

(3) A notice referred to in subsection (2) shall be accompanied by a statement showing the names of all creditors and the amounts of their claims.

(4) A company shall publish, in the *Gazette* and in any newspaper of general circulation in Zambia, a notice issued in accordance with subsection (2), at least twenty-one days before the date of the meeting.

(5) A company shall

(a) at a meeting convened in accordance with subsection (1), produce a full statement of the company's affairs showing the method and manner in which valuation of the company's assets was arrived at, a list of the creditors and the estimated amount of their claims; and

(b) appoint a director.

(6) A director appointed, as specified in subsection (5) (b), and the secretary shall attend the meeting and disclose to the meeting the company's affairs and the circumstances leading to the proposed winding-up.

(7) The creditors at a meeting held in accordance with this section, may appoint one of their number or the director appointed under subsection (5) to preside at the meeting.

(8) The company shall nominate a liquidator for the winding-up.

(9) The creditors may by resolution at a meeting convened in accordance with subsection (1) appoint a liquidator nominated by the company in accordance with subsection (8) or another person as liquidator.

(10) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator.

(12) If no liquidator is nominated by the creditors, the company shall proceed to appoint the liquidator.

(13) If a liquidator resigns or otherwise vacates office, the creditors may fill the vacancy and shall, within 7 days of filling the vacancy, notify the Registrar in the prescribed manner and form.

(14) If a company fails to comply with subsection (1), (2), (3), (4) or (5), the company, and each officer in default, commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units.

(15) A director appointed to attend a meeting as specified in subsection (5) (a), or the secretary of the company who fails to comply with subsection (6), commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units.

Appointment of committee of inspection

96. The creditors shall, by resolution, appoint a committee of inspection for the winding-up of a company and appoint such number of creditors and members of the company or other persons in accordance with section 77, to be members of the committee.

Fixing of liquidators' remuneration and vesting of directors' powers in liquidator

97. (1) A committee of inspection, appointed as specified in section 96, shall fix the remuneration to be paid to the liquidator in an amount not exceeding the amounts prescribed by regulations by the Minister.

(2) On the appointment of a liquidator, the powers of the directors shall vest in the liquidator, and the powers and authority of every director shall cease, except so far as the committee of inspection shall authorise.

Stay of proceedings after commencement of creditors' voluntary winding up

98. (1) Any attachment, sequestration, distress or execution in force before the commencement of a creditors' voluntary winding-up against the estate of a member or assets of a company shall be stayed.

(2) After the commencement of a winding-up, no action or proceeding shall be proceeded with or commenced against the company, except by leave of the Court and subject to such terms and conditions as the Court directs.

PART VIII

MISCELLANEOUS PROVISIONS ON WINDING-UP

- 99.** Subject to this Act and any other law relating to preferential payments, the assets of a company shall, on its voluntary winding-up, be distributed in equal priority in satisfaction of the Company's liabilities, and shall be distributed among the members according to their rights and interests in the company as specified in the articles. Distribution of assets of company
- 100.** (1) If for any reason, there is no liquidator in a voluntary winding-up, the Court may appoint a liquidator. Court appointed liquidator
- (2) The Court may, on cause shown, during a voluntary winding-up, remove a liquidator and appoint another liquidator.
- 101.** A member, creditor or liquidator may, during a voluntary winding-up, apply to the Court to review the remuneration of the liquidator. Reviewing remuneration during voluntary winding-up
- 102.** (1) A liquidator may, during a voluntary winding-up
- (a) in the case of a members' voluntary winding-up approved by a resolution of the company exercise the liquidator's powers under this Act in a winding-up by the Court;
 - (b) in the case of a creditors' voluntary winding-up, by leave of the Court or approval of the committee of inspection exercise the powers given by this Act to a liquidator in a winding-up by the Court; and
 - (c) convene meetings of the company for the purpose of obtaining the sanction of the company in respect of any matter or for any other purpose the liquidator considers necessary.
- (2) When several liquidators are appointed during a voluntary winding-up, a power given by this Act may be exercised by one or more of the liquidators as determined at the time of appointment, or in default of such determination, by any number of liquidators being not less than two.
- 103.** (1) Where a liquidator determines that the whole or part of the business or property of a company be transferred or sold to another corporate, the liquidator may with the
- (a) special resolution of the company, in the case of a members' voluntary winding-up;
 - (b) leave of the Court; or
 - (c) approval of the committee of inspection, in the case of a creditors' voluntary winding-up;
- Liquidator to accept shares, etc., as consideration for sale of property of company

transfer or sell the business or property of a company and, in compensation or part compensation for the transfer or sale of the business or property of the company

- (i) receive fully paid shares, cash, debentures or other like interests in the corporate for distribution among the members; or
- (ii) in lieu of shares, cash, debentures or other like interests, enter into any other arrangement where the members may participate in the profits of, or receive any other benefit from, the corporate.

(2) If, within one year of the commencement of a voluntary winding-up, the winding-up becomes a winding-up by the Court, the transfer or sale of the business or property of a company shall not be valid unless approved by the Court.

(3) A transfer or sale of the business or property of a company, as specified in this section, is binding on the company and the members and each member shall be considered to have agreed with the other corporate to accept the fully-paid shares, debentures or other like interests to which the member is entitled.

(4) A special resolution, passed in accordance with this section, is not valid unless it is passed before or concurrently with a resolution for voluntary winding-up.

(5) Nothing in this section shall authorise a variation or abrogation of the rights of a creditor or member.

Annual
meeting of
members and
creditors

104. (1) Where a voluntary winding-up continues for more than one year, the liquidator shall

- (a) in the case of a members' voluntary winding-up convene a general meeting of the company; and
- (b) in the case of a creditors' voluntary winding-up, convene separate meetings of the creditors and the company;

within fifteen months after the commencement of the winding-up and in each succeeding year, and shall lay before every such meeting an account of the liquidator's acts, dealings and conduct of the winding-up during the preceding year.

(2) In the case of a creditors' voluntary winding-up, the meeting of the company shall be held within one month after the meeting of creditors.

(3) A liquidator who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred penalty units for each day that the failure continues.

105. (1) As soon as the affairs of a company are fully wound-up, the liquidator shall make up a report showing how the voluntary winding-up was conducted and the assets of the company disposed of for the purpose of laying before the meeting the report and giving any explanation of the report and thereupon shall ô

Final
meeting and
dissolution
of company

(a) in the case of a membersøvoluntary winding-up, convene a general meeting of the company; and

(b) in the case of a creditorsøvoluntary winding-up, convene a meeting of the creditors of the company.

(2) In the case of a creditorsøvoluntary winding-up, the meeting of the company shall be held within one month after the meeting of creditors.

(3) A notice of the meetings, required to be convened in this section, shall be published at least one month before each meeting, in the *Gazette* and in a newspaper of general circulation in Zambia or other media, which notice shall specify the time, place and object of each meeting.

(4) The quorum at a meeting of a company for both members and creditors shall be one half of the members or creditors, as the case maybe.

(5) If a quorum is not formed at a meeting, convened in accordance with this section, the liquidator shall lodge with the Registrar and the Official Receiver a return stating that the meeting was duly summoned and that a quorum was not formed at the meeting.

(6) The liquidator shall, within twenty-one days after a meeting convened in accordance with this section, lodge with the Registrar and Official Receiver a return, in the prescribed form, of the holding of the meeting and the date of the meeting attaching a copy of the report of the meeting.

(7) The Registrar shall, on the lodgement of a return in accordance with subsection (6), strike the name of the company off the register and cause a notice of the fact to be published in the *Gazette*, and the company shall stand dissolved on the date of the publication of the notification.

(8) A liquidator who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred penalty units for each day that the failure continues.

106. (1) Any arrangement entered into between a company about to be or in the course of being wound-up voluntarily and its creditors shall, subject to the right of appeal, as specified in this section, be binding on the company and the creditors, if approved by respective resolutions.

Arrangement
entered
before or
during
voluntary
winding up
binding

(2) A dispute on the value of a security or lien or the amount of a debt or set-off, that is the subject of an arrangement, may be settled by the Court on the application of the company, liquidator or creditor.

(3) A creditor or member of the company may, within twenty-one days after the completion of an arrangement, appeal to the Court against the arrangement, and the Court may amend, vary or confirm the arrangement as it considers appropriate.

Applications to determine questions or exercise of powers

107. (1) A liquidator, member or creditor may apply to the Court

(a) to determine any question arising in the voluntary winding-up of a company; or

(b) to exercise all or any of the powers which the Court may exercise if the company were being wound-up by the Court.

(2) The Court may, if satisfied that the determination of a question or the exercise of power may be just or beneficial to the winding-up, accede wholly or partially to an application made in accordance with sub section (1), on such terms and conditions as the Court may consider appropriate or may make such other order as it considers just.

Costs

108. The costs, charges and expenses of, and incidental to, the voluntary winding-up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Limitation on the right to voluntary wind-up

109. Where a petition has been presented to the Court for the voluntary winding-up of a company on the ground that it has failed to satisfy the solvency test, the company shall not resolve that the company be wound-up voluntarily without the leave of the Court.

Meetings of creditors

110. The Court may, during the course of a winding-up, direct a meeting of creditors of any class to be convened and conducted in such manner as the Court considers appropriate for an effective and efficient winding-up.

Conduct of meetings of creditors

111. (1) A person shall be considered a creditor for purposes of a meeting of creditors, as provided in this Part if, on an account fairly stated, after allowing the value of security or liens held by the person and the amount of any debt or set-off owing to the company, there appears to be a balance due to that person.

(2) At a meeting of creditors, unless the Court otherwise orders

(a) each creditor shall have votes in proportion to the amount of the balance owed to the creditor by the company, on an account fairly stated, after allowing the value of security or liens held by the creditor and the amount of any debt or set-off owing by the creditor to the company; and

(b) the provisions of the Companies Act, 2017 relating to meetings of a company shall apply to the meeting of creditors, with the necessary modifications.

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2017

(3) Subject to this Part and to any order given by the Court, the company shall within fourteen days of the Order give notice, either personally or in a newspaper of general circulation in Zambia, before the convening of a meeting of creditors.

112. (1) An individual shall be eligible for appointment as a liquidator if that person qualifies to be appointed as a receiver.

Eligibility for
appointment
as liquidator

(2) A person shall not be eligible for appointment or competent to act or to continue to act as liquidator of a company if that person

(a) is a body corporate;

(b) has a mental or physical disability that would make the person incapable of performing the functions;

(c) is prohibited or disqualified from so acting by any order of a court;

(d) is an undischarged bankrupt;

(e) is a director or secretary of the company or any related company, or any person who has been such a director or secretary within the two years before the commencement of the winding-up, save with the leave of the Court;

(f) has at any time been convicted of an offence involving fraud or dishonesty; or

(g) has at any time been removed from an office of trust by order of a Court.

(3) A person who acts or continues to act as liquidator of a company in contravention of this section shall be guilty of an offence, and is liable on conviction to a fine not exceeding fifty thousand penalty units or to a term of imprisonment not exceeding six months, or to both.

Acts of
liquidator
valid

113. (1) Subject to this Act, the acts of a liquidator shall be valid notwithstanding any defect in the appointment or qualification of the liquidator.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property, made by a liquidator, shall, despite a defect or irregularity affecting the validity of the winding-up or appointment of the liquidator be valid.

(3) A person making or permitting a disposition of property to a liquidator shall be protected and indemnified in so doing, despite a defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator that is unknown by that person.

(4) For the purposes of this section, a disposition of property includes a payment of money.

General
provisions
on
liquidators

114. (1) A liquidator shall keep proper records at the liquidator's office in which the liquidator shall cause to be made entries or minutes of proceedings of meetings and such other matters, if any, as may be prescribed.

(2) A creditor or member of the company may, personally or by an agent, inspect the liquidator's records kept in accordance with subsection (1).

(3) The Court shall take cognisance of the conduct of liquidators, and if a liquidator does not faithfully perform the functions of a liquidator, observe prescribed requirements or the requirements of the Court, or if a complaint is made to the Court by a creditor or member of the company or by the Official Receiver, the Court shall inquire into the matter and take such action as it considers appropriate.

(4) The Registrar or Official Receiver may report to the Court any matter which is a misfeasance, constitutes neglect or an omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the company has sustained and make such other order as it may consider appropriate.

(5) The Court may require a liquidator to answer any inquiry in relation to the winding-up and may examine the liquidator or any other person on oath and direct an investigation to be made of the records of the liquidator.

(6) The Court may require a member, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator, immediately or within such time as the Court orders, any money, property or records which the company is, on the face of it entitled to.

(7) Subject to this Act, a liquidator shall act in good faith, not make a secret profit and avoid any conflict of interest in the performance of the functions of liquidator.

115. A liquidator shall

- (a) dispose of the assets of the company by public tender or the most transparent manner in the circumstances; and
- (b) not less than seven days before the disposal, furnish the Registrar with a notice, in the prescribed manner and form, upon payment of a prescribed fee, of the intention to dispose of an asset.

Disposal of company's assets by liquidator

116. (1) Where a person, other than the Official Receiver, is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Act authorised or required to be done or given by a committee of inspection.

Powers of Official Receiver where no committee of inspection

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, do any act or thing which is by this Act required to be done by, or subject to, any direction or permission given by the committee.

117. A person aggrieved by an act or a decision of the liquidator may apply to the Court, which may confirm, reverse, or modify the act or decision complained of and make such order as it considers just.

Appeal against decision of liquidator

118. (1) A liquidator shall, within twenty-one days after being appointed, lodge with the Registrar and the Official Receiver a notice of the appointment and the location of the liquidator's office and postal address and if the location and postal address changes within twenty-one days, lodge a notification with the Registrar and the Official Receiver.

Service of document on liquidator

(2) It shall be good service on the liquidator and company if service is made by leaving a document at the office of the liquidator or by sending it in a properly addressed and prepaid registered letter to the postal address stated in a notice, lodged and specified in subsection (1).

(3) A liquidator who fails to comply with this section, commits an offence and is liable, on conviction, to a fine not exceeding three hundred units for each day that the failure continues.

119. (1) A liquidator shall, within thirty days after

- (a) the end of the period of six months from the date of being appointed;

Liquidator's accounts

- (b) the end of every subsequent period of six months; and
- (c) ceasing to be liquidator or obtaining an order of release;

lodge with the Registrar and, if the liquidator is not the Official Receiver, with the Official Receiver, accounts of the liquidator's receipts and payments, or a statement of the company's position at the winding-up, verified by a statutory declaration.

(2) The Official Receiver may cause the accounts of a liquidation to be audited by an auditor approved by the Official Receiver, and for the purpose of the audit, the liquidator shall furnish the auditor with such vouchers and information as the auditor requires, and the auditor may require the production of and inspection of any books or accounts kept by the liquidator.

(3) A copy of the accounts whether audited or not shall be kept by the liquidator at the liquidator's office and shall be open for inspection by a member of the company, creditor or any other interested person.

(4) The liquidator shall, when forwarding accounts of liquidator's receipts and payments or a statement, made in accordance with subsection (1), to the creditors and members of the company

- (a) give notice to every member and creditor stating that the accounts have been prepared; and
- (b) inform members and creditors that the accounts may be inspected at the liquidator's office and stating the times during which inspections may be made.

(5) The cost of an audit undertaking, as required in this section, shall be fixed by the Official Receiver and be part of the expenses of winding-up.

(6) A liquidator, other than the Official Receiver, who fails to lodge with the Registrar receipts, payments and a statement of the position of the winding-up, verified by a statutory declaration commits an offence and is liable to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

Notification
of company
in liquidation

120. (1) After the commencement of the winding-up of a company every document issued from the company on which the name of the company appears, shall have the words, "in liquidation" added after the name of the company.

(2) If a company fails to comply with subsection (1), the company, and each officer in default, commits an offence, and is liable, on conviction, to a fine not exceeding three hundred penalty units in respect of each document.

121. (1) Subject to this section and any other law, when a company has been dissolved, the liquidator shall keep the records of the company for a period of ten years from the date of dissolution of the company unless the Court on application by the liquidator, orders otherwise.

Records of
company

(2) A liquidator who fails to comply with subsection (1) commits an offence, and is liable on conviction to a fine not exceeding five hundred penalty units.

122. (1) Where a committee of inspection is satisfied that a company in liquidation has surplus funds, the committee of inspection may direct the liquidator to pay the members, unless the Court on application by a creditor, orders otherwise.

Payment of
surplus
funds to
members

(2) Where the liquidator is satisfied that a company in liquidation has surplus funds and the company does not have a committee of inspection, the liquidator may pay the members, unless the Court on application of a creditor orders otherwise.

123. (1) Where a company is in liquidation, the liquidator shall deposit in the Company's Liquidation Account any

Unclaimed
assets

(a) funds or dividends that have not been claimed for more than six months from the date that funds or dividends became payable;

(b) funds arising from the sale of property of the company that have not been claimed or distributed.

(2) The Court may at any time

(a) on the application of the Official Receiver, order a liquidator to submit an account, verified by an affidavit, of any funds or dividends in the Liquidator's hands or under the Liquidator's control, that have not been claimed or distributed.

(b) direct an audit of the accounts; and

(c) direct the liquidator to deposit the funds in the Company's Liquidation Account.

(3) This section does not deprive a person of a right or remedy to which that person is entitled against the liquidator or company.

(4) If a claimant demands for any funds or dividends deposited in the Company's Liquidation Account, the Official Receiver shall, on being satisfied that the claimant is entitled to the money, authorise payment to be made to the claimant.

(5) A person dissatisfied with the decision of the Official Receiver in respect of a claim made in accordance with subsection (4), may appeal to the Court, which may confirm, refuse or vary the decision of the Official Receiver.

(6) Where another person makes a claim to money paid to a claimant in accordance with subsection (4), such other person shall not be entitled to a payment out of the Company's Liquidation Account, but may have recourse against the claimant to whom the unclaimed moneys have been paid.

(7) The unclaimed monies in the Company's Liquidation Account, shall, on the expiration of six years from the date of the payment of the monies to the credit of the account, be paid to the former members *pro rata*.

Expenses of winding-up where assets insufficient

124. (1) A liquidator shall not incur any expense in relation to a winding-up except with express direction from the Official Receiver as specified in subsection (2), and unless there are sufficient available assets.

(2) On the application of any creditor or member, the Official Receiver may direct a liquidator to incur a particular expense on condition that the creditor or member indemnify the liquidator in respect of the recovery of the amount expended and, give security to secure the amount of the indemnity as prescribed.

Meetings to ascertain wishes of members or creditors

125. (1) The Court may, with regards to matters relating to the winding-up of a company, consider the reliefs sought by the members or creditors, and may, order the members or creditors to convene a meeting to be held and conducted in a manner as the Court determines, and the Court shall appoint a person to act as chairperson who shall report the result of the meeting to the Court.

(2) With regards to creditors seeking relief from the Court under subsection (1), the Court shall take into consideration, the value of each creditor's debt.

(3) With regards to members seeking relief from the Court under subsection (1), the Court shall take into consideration the number of votes held by each member.

Proof of debts

126. (1) In every winding-up, debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible as proof against the company and where a debt or claim does not have a certain value, a just estimate of the value shall be made by the liquidator.

(2) Subject to this Act, subsection (1) shall apply in the winding-up of an insolvent company with regard to the

(a) respective rights of secured and unsecured creditors and debts provable; and

(b) the valuation of annuities, future and contingent liabilities.

-
127. (1) In a winding-up, the following shall be paid in priority to all other unsecured debts^o Preferential debts
- (a) costs and expenses of a winding-up including the payable taxed costs of a petitioner, the remuneration of the liquidator, and the costs of an audit carried out;
 - (b) amounts due, including^o
 - (i) wages or salary accruing to every employee within the period of three months before the commencement of the winding-up;
 - (ii) leave accruing to every employee within the period of two years before the commencement of the winding-up;
 - (iii) paid absence, not being leave, accruing to every employee within the period of three months before the commencement of the winding-up;
 - (iv) recruitment or other expenses or other amounts repayable under a contract of employment;
 - (c) severance pay to each employee, equal to three months' wages or salary;
 - (d) all amounts due in respect of workers' compensation which accrued before the commencement of the winding-up;
 - (e) any tax, duty or rate payable by the company for any period prior to the commencement of the winding-up;
 - (f) Government rents less than five years in arrears at the commencement of the winding-up;
 - (g) rates payable to a local authority that were due and payable within three years before the date of commencement of the winding-up; and
 - (h) any other creditors.
- (2) Debts referred to in subsection (1) shall rank as follows -
- (a) firstly, debts referred to in subsection (1) (a);
 - (b) secondly, debts referred to in subsection (1) (e), (f) and (g);
 - (c) thirdly, debts referred to in subsection (1) (b), (c) and (d); and
 - (d) fourthly, debts referred to in subsection (1) (h).
- (3) Debts with the same priority shall rank equally between themselves, and shall be paid in full.
- (4) Where the property and assets of a company are insufficient to meet the debts specified in subsection (3), the debts shall abate in equal proportions between themselves.

(5) Where a person lends money to an employee of the company, the lender shall, in a winding-up, have a right of priority in respect of the money lent, up to the amount the employee would have been entitled to, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(6) Where the available assets of a company are insufficient to meet any preferential debts specified in subsection (1), and any amount payable in priority as specified in subsection (3), the debenture holders under any floating charge created by the company, shall have priority over creditors, and shall be paid in accordance with the priority ranking specified in the Moveable Property (Security Interest) Act, 2016.

Act No. 3
of 2016

(7) Where a company entered into a contract of insurance against liability to third parties, before the commencement of a winding-up, and liability is incurred by the company, either before or after commencement of the winding-up, and an amount in respect of that liability has been received by the liquidator from the insurer, the amount shall be paid by the liquidator to the third party to the extent necessary to discharge that liability, in priority to all payments in respect of the debts referred to in subsection (1).

(8) Subsections (5) and (6) shall have effect despite any agreement to the contrary, entered into after the commencement of this Act.

(9) Despite the provisions of subsection (1)ô

(a) paragraph (d) of subsection (1) shall not apply in relation to a winding-up in whichô

(i) a company entered into a contract with an insurer in respect of liability in accordance with a law relating to workmen's compensation;

(ii) a company is being wound-up voluntarily for the purpose of reconstruction or amalgamation with another company;

(iii) a right to compensation has, on a reconstruction or amalgamation, been preserved for the person entitled to the right; and

(b) where a company has given security for the payment or repayment of an amount to which paragraph (e), (f) or (g) of subsection (1) relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting from the net amount realised from the security.

(10) Where, in a winding-up

- (a) assets have been recovered under an indemnity for costs of litigation given by certain creditors;
- (b) assets have been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or
- (c) expenses in relation to which a creditor had indemnified a liquidator have been recovered;

the Court may make an order for the distribution of assets and expenses recovered for purposes of giving the creditors, specified in paragraphs (a), (b) and (c), an advantage over other creditors in consideration of the risk run by them.

128. (1) Where a company has been wound up, any act relating to the property of a company, done by or against a company, which, had it been done by or against an individual, would be void or voidable in bankruptcy law, shall, if the company is wound-up, be void or voidable in the same way.

Voidance of certain acts

(2) A transfer or assignment by a company of all its property to trustees done with the intention to defraud the company's creditors is void.

129. A floating charge on property of a company, created within one year before the commencement of the winding-up, is void, unless it is proved that the company, immediately after the creation of the charge, was solvent.

Voidance of floating charge

130. (1) Where the acquisition of property or an undertaking by a company, within the period of two years before the commencement of the winding-up, from

- (a) a person who, at the time of the acquisition was a director of the company; or
- (b) another company which, at the time of the acquisition, had a director who was also a director of the first company;

Liquidator's right to recover in respect of certain sales to or by company

and a valuation report shows that the consideration given in respect of the acquisition exceeded the value of the property, the liquidator shall recover the difference from the director or company.

(2) The value of the property, business or undertaking stated in subsection (1) includes the value of goodwill or profits that have been made by the business or undertaking, and any similar consideration.

131. (1) Where the property of a company consists of

- (a) an estate or interest in land which is encumbered with onerous covenants;

Disclaimer of onerous property

(b) shares in a corporate that are subject to restrictions on transfer;

(c) unprofitable contracts; or

(d) property that cannot be sold, or is not readily saleable, by reason of binding the possessor to the performance of an onerous act, or to the payment of a sum of money;

the liquidator may with the leave of the Court or the consent of committee of inspection in writing, disclaim the property at any time within twelve months after the

(i) commencement of the winding-up; or

(ii) property in question came to the knowledge of the liquidator, if not within one month after the commencement of the winding-up; or within such extended period as allowed by the Court.

(2) From the date of disclaimer, the disclaimer shall operate to determine, the rights, interests and liabilities of the company, in respect of the property disclaimed, but shall not, except so far as is necessary for releasing the company and the property of the company from liability, alter the rights or liabilities of any interested person.

(3) The Court or committee of inspection, may before, or on granting leave or consent to disclaim as specified in subsection (1), require notices to be given to persons interested in the property of a company, and impose terms as a condition for granting leave or consent, and may make other orders as the Court or committee considers it necessary.

(4) The liquidator shall not disclaim property where

(a) an application in writing, has been made to the liquidator by a person interested in the property, requiring the liquidator to decide whether or not property will be disclaimed; and

(b) the liquidator has not, within twenty-eight days after the receipt of the application, informed the applicant that the liquidator intends to apply to the Court or the committee for leave or consent to disclaim.

(5) If the liquidator does not disclaim the contract, after an application referred to in subsection (4), within twenty-eight days of the application, the liquidator shall be deemed to have adopted the contract.

(6) On the application of a person who is entitled to the benefit or subject to a burden of a contract made in accordance with

subsection (5), the Court may make an order rescinding the contract on such terms as to payment of damages for the non-performance of the contract, and any damages payable in accordance with the order may be proved as a debt in the winding-up.

(7) On the application of a person who claims an interest in a disclaimed property, or, is under a liability not discharged in respect of a disclaimed property, the Court may, on such terms as the Court considers necessary, make an order for the vesting of the property in

- (a) a person entitled to the property;
- (b) a person entitled to compensation for a liability in accordance with this section; or
- (c) a trustee for such a person.

(8) A copy of an order made in accordance with subsection (7), shall be lodged with the

- (a) Registrar;
- (b) Official Receiver; and
- (c) Registrar of Lands and Deeds, if the order relates to land.

(9) Where the property disclaimed is held under a lease, the Court shall not make a vesting order in favour of a person claiming from the company, whether as sub-lessee or as mortgagee, except where the Court, makes the mortgagee or sub-lessee, subject to the same liabilities and obligations as those to which the company was subject under the lease at the commencement of the winding-up.

(10) A mortgagee or sub-lessee who declines a vesting order on the terms and obligations referred to in subsection (9), shall be excluded from the interests in, and security on the property.

(11) Where a person making a claim in accordance with subsection (9) is not willing to accept a vesting order on the condition stated in the order, the Court may vest the estate and interest of the company in the property, in the liquidator, to perform the lessee's covenants in the lease.

(12) A person injured by the operation of a disclaimer under this section is deemed to be a creditor of the company to the amount of the injury, and may prove the amount as a debt in the winding-up.

132. (1) Where the Court has issued execution against the assets of a company, or has attached any debt due to the company, and the company is subsequently wound-up, the creditor shall not be entitled to retain the benefit of the execution or attachment

Restriction of rights of creditor on execution or attachment

against the liquidator, unless the creditors has completed the execution or attachment before

(a) the date on which the creditor had notice of a meeting at which a resolution for voluntary winding-up was proposed; or

(b) the creditor received from the company, notice of the date of commencement of the winding-up.

(2) A person who in good faith purchases assets of a company on sale by the sheriff, on which execution has been levied, acquires good title to them.

(3) The Court may set aside the rights conferred by subsection (1), on the liquidator, in favour of a creditor, to such extent and subject to such terms as the Court considers necessary.

Duties of
sheriff for
goods in
execution

133. (1) Subject to subsection (3), where assets of a company are taken in execution and, before the sale or completion of the execution, by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a

(a) provisional liquidator has been appointed;

(b) winding-up order has been made; or

(c) resolution for voluntary winding-up has been passed;

the sheriff shall, on receiving the notice, deliver to the liquidator the assets and money seized or received in part satisfaction of the execution.

(2) The costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient portion of them, for the purpose of satisfying that charge.

(3) Where on execution in respect of a judgment for a sum exceeding fifteen thousand penalty units, the goods of a company are sold or money is paid in order to avoid sale of the goods, the sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid, and shall retain the balance for fourteen days.

(4) If, within the period of fourteen days specified in subsection (3), notice is served on the sheriff, of an application for the winding-up of the company having been presented, or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up, the sheriff shall, pay the balance specified in subsection (3) to the liquidator, who shall be entitled to retain it as against the execution creditor.

(5) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court considers appropriate in the case.

134. (1) Where an officer of a company is a party to the contracting of a debt by a company and has, at the time the debt is contracted, no reasonable ground for believing that the company shall be able to pay the debt, the officer commits an offence, and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Liability for
contracting
debt

(2) Where a person has been convicted of an offence specified in subsection (1), on the application of the liquidator, creditor or member of the company, the Court may make an order that the person shall be personally responsible, without any limitation of liability, for the debts or other liabilities of the company, or as the Court orders.

(3) An order of the Court made in accordance with subsection (2) may state that the liabilities shall be a charge on any debt or obligation due from the company to the person liable, or on any interest in the company of which the person has a benefit, directly or indirectly.

135. (1) Where, in the course of a winding-up, it appears that a promoter, liquidator or officer of a company may have

(a) misapplied, retained, become liable or accountable for any money or property of the company; or

(b) committed a misfeasance or breach of trust or duty in relation to the company;

Power of
Court to
assess
damage
against
delinquent
officers

the Court may, on the application of a liquidator, creditor or member, inquire into the conduct of that liquidator, officer or promoter.

(2) The Court may order a person to repay or restore money or property or to compensate the company, to the extent that the person was unjustly enriched, where the Court is, after conducting an inquiry specified in subsection (1), satisfied that a liquidator or officer had

(a) misapplied, retained, become liable or accountable for any money or property of the company, or

(b) committed a misfeasance or breach of trust or duty in relation to the company.

(3) This section shall apply to matters specified in subsection (1) that occurred during the two years preceding the commencement of a winding-up.

Prosecution
of delinquent
officer and
members

136. (1) If in the course of either a winding-up by the Court or a voluntary winding-up, it appears to the liquidator that any past or present officer, or any member, of the company has committed an offence, the liquidator or member shall report the matter to the Director of Public Prosecutions and the appropriate investigative wing.

(2) In the case of a winding-up by the Court, where the Director of Public Prosecutions receives a report in accordance with subsection (1), the Director of Public Prosecutions may refer the matter to the Registrar for further inquiry, and the Registrar shall investigate the matter.

(3) The Registrar may in accordance with subsection (2), apply to Court for an order conferring on any person designated by the Court, all such powers of investigating the affairs of the company, in accordance with the Act.

(4) If the Director of Public Prosecutions institutes proceedings in a matter reported, in accordance with subsection (1), the liquidator and every officer and agent of the company, past and present, other than the defendant in the proceedings, shall give the Director of Public Prosecutions the assistance required in the prosecution of the matter.

Fraud by
officers of
companies in
liquidation

137. Where an officer of a company being wound-up

(a) induces a person to give credit to the company by false pretences or by fraudulent means;

(b) makes a gift, transfers property or induces the levying of a fictitious execution against, the property of the company with intent to defraud creditors of the company; or

(c) conceals or removes any part of the property of a company within two months before the date of any unsatisfied judgment or order for payment of money obtained against the company with intent to defraud creditors of the company;

the officer, commits an offence, and is liable on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Winding-up
of other
bodies
corporate

138. (1) Subject to this section, this Part shall apply, with necessary modifications, to any body corporate incorporated in Zambia, not being a company.

(2) This section shall not apply to a body corporate incorporated by or under any law of Zambia if the law makes specific provisions for the winding-up of bodies corporate formed by or under it.

(3) A winding-up by the Court under this section may be made only on the petition of the body corporate specified in subsection (1).

139. (1) Subject to this section, this Part applies with the necessary modifications to the operations, business and assets in Zambia of a foreign company, as if the foreign company was incorporated in Zambia, carrying on the operations or business of a foreign company in Zambia, whose only assets are the assets of the foreign company in Zambia.

Winding-up
of other
foreign
bodies
corporate

(2) A foreign company may be wound-up under this section whether or not it has been dissolved or has ceased to exist according to the law of the country of its incorporation.

(3) A foreign company may be wound-up on the following grounds, in addition to the grounds for winding up in accordance with this Act

- (a) if the company is in the course of being wound-up, voluntarily or otherwise, in the country of its incorporation;
- (b) if the company is dissolved in the country of its incorporation or has ceased to carry on business in Zambia, or is carrying on business for the purposes only of winding-up its affairs; or
- (c) if the Court is satisfied that the company is being operated in Zambia for any unlawful purposes.

(4) The Court may, in a winding-up order or on subsequent application by a liquidator, order that all transactions in Zambia by, or with a foreign company, be deemed to be valid, despite the transactions executed after the dissolution of the foreign company.

PART IX

INSOLVENCY PRACTITIONERS

140. (1) An insolvency practitioner may be appointed

- (a) for purposes of, and in accordance with, this Act; or
- (b) as a supervisor of a voluntary winding up approved by a company in accordance with this Act.

Insolvency
practitioners

(2) A company or body corporate is not qualified to be appointed or accredited as an insolvency practitioner.

(3) A person qualifies to be accredited as an insolvency practitioner if that person qualifies to be appointed as a receiver.

(4) A person who carries out the functions of an insolvency practitioner when that person is not qualified to do so, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(5) This section does not apply to the Official Receiver.

Qualifications
for
appointment
as
insolvency
practitioners

141. A person shall not be appointed, act or continue to act as an insolvency practitioner if the person

- (a) has a mental or physical disability that would make the person incapable of performing the functions;
- (b) is prohibited or disqualified from so acting by an order of a Court of competent jurisdiction;
- (c) is a body corporate or firm;
- (d) is not resident in Zambia;
- (e) is not qualified to be appointed as a director of a company;
- (f) is a mortgagee or chargee of the company under receivership or an employee or officer of a mortgagee or chargee;
- (g) has an association with a company that could lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of the person is compromised by the association;
- (h) is related to a person who has an association with the company;
- (i) is an un-discharged bankrupt or has one's estate sequestrated;
- (j) is, or has been within the previous two years, a director or officer of the company or any related body corporate, except with the leave of Court;
- (k) is a trustee under a trust deed for the benefit of debenture holders of the company, except with the leave of Court;
- (l) has been convicted, within the previous five years, of an offence involving fraud or dishonesty;
- (m) has been removed, within the previous five years, from an office of trust by order of a Court of competent jurisdiction;
- (n) has contravened a provision of this Act in a manner which has or may materially affect creditors or contributors or persons dealing in good faith with the company;

- (o) is no longer in good standing with that person's recognised professional body, as a result of professional misconduct by that person;
- (p) has, within the period of two years immediately preceding the commencement of the receivership, had an interest, direct or indirect, in a share issued by the charger; or
- (q) is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.

142. (1) A person who wishes to be an insolvency practitioner shall apply for accreditation to the Registrar in the prescribed manner and form accompanied by the prescribed fee.

Accreditation
of
insolvency
practitioner

(2) An application, made in accordance with subsection (1), may be withdrawn at any time before the application is granted or refused.

(3) The Registrar shall accredit an applicant as an insolvency practitioner if the applicant meets the qualifications specified in this Act.

(4) Accreditation as an insolvency practitioner is valid for a period of one year from the date of accreditation and shall be subject to renewal.

(5) Accreditation as an insolvency practitioner may be renewed annually in the prescribed manner and form upon payment of the prescribed fee.

(6) The Registrar shall withdraw the accreditation granted, in accordance with this section, if the insolvency practitioner

- (a) is no longer a member of, or has been suspended by, the accounting or legal professional body;
- (b) fails to comply with any provision of this Act; or
- (c) furnishes the Registrar or Official Receiver, as the case may be, with false, inaccurate or misleading information.

(7) The Minister may, by statutory instrument, prescribe

- (a) the criteria and procedure for the variation and revocation of an accreditation granted in accordance with this section; and
- (b) the terms and conditions attaching to the grant, refusal, transfer or revocation of an accreditation;
- (c) the renewal period of an accreditation certificate; and
- (d) the publication of names of insolvency practitioners.

Register of
Insolvency
Practitioners

143. (1) The Registrar shall

- (a) cause to be kept a Register of Insolvency Practitioners; and
- (b) notify the recognised professional body of any misconduct of an insolvency practitioner or any removal of an insolvency practitioner from the Register of Insolvency Practitioners.

(2) The Registrar may, on the application of an affected person, or on the Registrar's own motion, remove a person from the Register of Insolvency Practitioners for a period not exceeding five years on any of the following grounds:

- (a) incompetence, incapacity or failure to perform the functions and duties of an insolvency practitioner;
- (b) failure to exercise the proper degree of care in the performance of an insolvency practitioner's functions;
- (c) the insolvency practitioner has engaged in illegal acts or conduct;
- (d) the insolvency practitioner no longer satisfies the requirements set out in this section; or
- (e) conflict of interest or lack of independence.

(3) An insolvency practitioner appointed by the Court may be removed only by the Court on the application of an affected person on the grounds set out in this Act.

(4) The Registrar shall, within fourteen days, cause a notice to be published, in the *Gazette* or other media, of the removal of a person from the Register of Insolvency Practitioners and the period that the person shall not be appointed as an insolvency practitioner.

(5) A person who, in contravention of this section continues as a insolvency practitioner commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Insolvency
practitioner
acting in
foreign State

144. An insolvency practitioner may be appointed to undertake, or participate in, an insolvency proceeding in a foreign State as provided in this Act and as permitted by the applicable foreign law.

Eligibility
for
accreditation

143. A person is eligible for accreditation as an insolvency practitioner if that person is a chartered accountant or a legal practitioner, as defined in the Accountants Act, 2008 or Legal Practitioners Act, respectively.

Act No. 13
of 2008
Cap. 30

PART X

CROSS BORDER INSOLVENCY

- 146.** (1) This Part applies whereô
- Application
- (a) a foreign court or representative requests for assistance in the prescribed manner and form in connection with a foreign proceeding;
- (b) a foreign State requests for assistance in the prescribed manner and form, in connection with an insolvency proceeding being undertaken in Zambia;
- (c) a foreign proceeding and an insolvency proceeding being undertaken in Zambia are taking place concurrently with respect to the same debtor; or
- (d) creditors or other interested persons in a foreign State have an interest in the commencement of, or participation in, an insolvency proceeding being undertaken in Zambia.
- (2) This Part shall not apply to a bank or financial institution, registered in accordance with the Banking and Financial Services Act, 2017.
- Act No. 7 of 2017
- 147.** The functions referred to in this Part relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the Court, or by such other persons as the Court may direct.
- Court to have jurisdiction
- 148.** (1) Nothing in this Part shall prevent the Court from refusing to act or participate in a matter governed by this Part if the action is contrary to the public policy of Zambia.
- Public policy exceptions
- (2) Before the Court refuses to act or participate, as provided in subsection (1), the Court shall make an order on whether it is necessary for the Attorney-General to appear and be heard on the question of the public policy of Zambia.
- 149.** Nothing in this Part limits the power of the Court or an insolvency practitioner from providing assistance to a foreign representative in accordance with other laws of Zambia.
- Additional assistance under other laws
- 150.** A foreign representative or the foreign assets and affairs of a debtor shall not be subject to the jurisdiction of the Court for any purpose other than an application commenced in accordance with this Part.
- Limited jurisdiction
- 151.** (1) In an insolvency proceeding undertaken in accordance with this Part, a creditor or foreign representative shall not have direct access to, or commence or participate in proceedings before, the Court.
- Access of foreign representative to Court

	<p>(2) For purposes of subsection (1), a creditor or foreign representative shall appoint an insolvency practitioner for purposes of such proceedings.</p> <p>(3) A creditor or foreign representative shall only participate in an insolvency proceeding with leave of the Court.</p> <p>(4) Subsection (2) shall not affect the ranking of claims in a proceeding undertaken in accordance with this Act or any other law, or the exclusion of foreign tax and social security claims.</p>
Application for recognition of foreign proceedings	<p>152. (1) An insolvency practitioner may apply to the Court, in the prescribed manner, for an order for recognition of a foreign proceeding.</p> <p>(2) An application for an order for recognition of a foreign proceeding shall be accompanied by an order of the foreign Court confirming the</p> <ul style="list-style-type: none"> (a) existence of the foreign proceeding before the foreign court; and (b) appointment of the foreign representative. <p>(3) An application for recognition, as specified in this section, shall be accompanied by a statement, made in the prescribed manner, of all foreign proceedings in respect of a debtor that are known to the foreign representative.</p> <p>(4) All documents produced in support of an application for recognition shall be in English, and if not in English, shall be translated and certified as an accurate translation.</p>
Recognition of foreign proceeding by Court	<p>153. A foreign proceeding shall be recognised by the Court as a</p> <ul style="list-style-type: none"> (a) foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or (b) foreign non-main proceeding if the debtor is incorporated and registered in accordance with the laws of another State.
Subsequent information	<p>154 An insolvency practitioner appointed for purposes of this Part shall, within seven days of the appointment, inform the Court of any</p> <ul style="list-style-type: none"> (a) substantial change in the status of a foreign proceeding or appointment of a foreign representative; and (b) other foreign proceedings regarding the debtor; <p>that becomes known to the insolvency practitioner.</p>
Interim relief during proceedings for recognition	<p>155. (1) Where relief is urgently needed to protect the assets of a debtor or the interests of creditors, the Court may, on the application of an insolvency practitioner, appointed for purposes of this Part, grant any interim relief the Court considers just, including, an order</p>

- (a) staying the execution of a debtor's assets;
- (b) entrusting to the liquidator or insolvency practitioner, the administration or realisation of all or part of the debtor's assets located in Zambia; or
- (c) for the protection and preservation of assets that are perishable, susceptible to devaluation or in jeopardy.

(2) The Court may refuse to grant the relief specified in subsection (1), if such relief would interfere with the administration of a foreign main proceeding.

156. (1) Where the Court makes an order of recognition of a foreign proceeding in accordance with this Part, an insolvency practitioner, appointed for purposes of this Part, may apply to the Court for an order

Relief granted upon recognition of foreign proceeding

- (a) staying an individual action or proceeding concerning the assets, rights, obligations or liabilities of a debtor;
- (b) staying execution against a debtor's assets;
- (c) suspending a right to transfer, encumber, or dispose of any assets of a debtor;
- (d) providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning a debtor's assets, affairs, rights, obligations or liabilities outside Zambia;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Zambia to an insolvency practitioner appointed for purposes of this Part; or
- (f) entrusting the distribution of all or part of the debtor's assets, located in Zambia, to the insolvency practitioner, provided that the Court is satisfied that the interests of creditors in Zambia are adequately protected.

(2) In granting relief in accordance with subsection (1), the Court shall be satisfied that the relief relates to assets that, in accordance with the Laws of Zambia, shall be administered in the foreign non-main proceeding or concerns information required in that proceeding.

(3) The Court may, on the application of an insolvency practitioner, debtor or other interested person, make an order, subject to such conditions as the Court considers appropriate in the matter, that the stay or suspension, granted in accordance with subsection (1), shall not apply to a particular action or proceeding, execution or disposal of assets.

(4) Subsection (1) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(5) Subsection (1) shall not affect a right to apply for leave to commence insolvency proceedings under this Act or the right to file claims in those proceedings.

(6) In granting, denying, modifying or terminating relief, made in accordance with this Part, the Court shall be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(7) The Court may, on an application made by an insolvency practitioner or a person affected by the relief, granted in accordance with this Part, modify or terminate the relief granted ifô

- (a) an application for recognition has been made in respect of a debtor that is a bank; or
- (b) the debtor is placed in statutory management after the relief has been granted.

Co-operation and communication between insolvency administrator and foreign representatives

157. (1) In proceedings commenced in accordance with this Part, the Court shall co-operate and communicate with a foreign court or foreign representative, either directly or through an insolvency practitioner or foreign representative.

(2) The insolvency practitioner is entitled, subject to the supervision of the Court, to cooperate or communicate directly with a foreign court or foreign representative.

Forms of co-operation

158. Cooperation and communication, made in accordance with this Part may be implemented by appropriate means, including by theô

- (a) appointment of a person or body to act, at the direction of the Court;
- (b) transmission and receipt of information;
- (c) coordination of the administration and supervision of assets or property of a debtor; and
- (d) coordination of concurrent proceedings relating to a debtor.

Communication of proceedings in Zambia after recognition of foreign main proceeding

159. (1) After recognition by the Court of a foreign main proceeding, an insolvency proceeding may be commenced only if the debtor has assets in Zambia.

(2) The effects of an insolvency proceeding commenced in accordance with subsection (1), shall be restricted to the assets of a debtor that are located in Zambia and to other assets of the debtor that, under any other law, should be administered in that proceeding.

160. Where a foreign proceeding and an insolvency proceeding, undertaken in accordance with this Act, are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination in accordance with this Part, and the following shall apply:

Co-ordination in concurrent proceedings

- (a) when an insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is lodged, any relief granted in accordance with this Part, shall be consistent with the insolvency proceedings; and
- (b) when an insolvency proceeding is commenced after recognition or after the filing of the application for recognition of the foreign proceeding
 - (i) any relief granted by the Court in accordance with this Part, shall be reviewed by the Court and shall be modified or terminated if inconsistent with the insolvency proceedings; and
 - (ii) if the foreign proceeding is a foreign main proceeding, a stay or suspension, made in accordance with this Part, shall be modified or terminated, if inconsistent with the insolvency proceedings; and
- (c) in granting, extending, or modifying relief granted in accordance with this Part, the Court shall be satisfied that the relief relates to assets that, under any other law, should be administered in the foreign proceedings or concerns information required in the proceeding.

161. A creditor who has received part payment in respect of its claim in a foreign proceeding, may not receive payment for the same claim in an insolvency proceeding undertaken in accordance with this Act regarding the same debtor, unless the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

Payment in concurrent proceedings

162. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Part.

Regulations on cross-border insolvency

(2) Without limiting the generality of subsection (1), regulations made in accordance with this section may provide for

- (a) notification to foreign creditors of proceedings relating to insolvency;
- (b) requirements for applications for recognition of foreign proceedings;
- (c) requirements for recognition and notifications of foreign proceedings;

- (d) cooperation between the Court and other competent authorities in Zambia and foreign states involved in cases of cross-border insolvency;
- (e) greater legal certainty for trade and investment;
- (f) fair and efficient administration of cross-border insolvencies and acts that protect the interests of creditors and other interested persons, including debtors;
- (g) protection and maximisation of the value of the debtor's assets;
- (h) procedures for intervention by foreign representatives in proceedings in Zambia;
- (i) cooperation and direct communication between the insolvency practitioner and foreign representative;
- (j) coordination of more than one foreign proceeding; and
- (k) facilitation of the business rescue proceedings, for purposes of this Part, to protect investment and preserve employment.

PART XI

MISCELLANEOUS PROVISIONS

Electronic transactions and processes

163. (1) A document authorised or required to be lodged with, or delivered to, the Registrar as specified in this Act, may be lodged or delivered by electronic means.

(2) Electronic means may be used for the compliance of a process or transaction.

(3) An electronic register of shares and debentures may be established and ownership of shares and debentures which are registered electronically shall be recognised for all purposes relating to such matters.

(4) A document or certificate required to be signed, granted, issued or kept by the Registrar, may be signed, granted, issued or kept in electronic form.

Netting off

164. An unperformed obligation arising out of an agreement in respect of an asset which has been transferred for purposes of collateral security shall, on sequestrations of the estate, of either party to such agreement, terminate automatically at the date of sequestration and the value of the obligations shall be calculated at market value as at that date and shall be netted off and the net amount shall be paid.

Exercise of discretionary power

165. Subject to this Act, where any discretionary or other power is given to the Registrar, the Registrar shall not exercise

that power adversely or arbitrarily and a person challenging a decision of the Registrar shall have the right to apply to the Court.

166. Subject to this Act, the Registrar shall, on the request of any person and on payment of the prescribed fee, or furnish a certificate in respect of the document or copies of any document, which is open to public inspection and which is lodged in the Register or any other register, maintained in accordance with this Act.

Request for information

167. (1) Where this Act requires a document or particulars to be lodged with the Registrar, the Registrar shall register them in the form and manner prescribed or, if no manner is prescribed for the document or particulars, the Registrar shall determine the manner and form of lodgement.

Registration of documents

(2) For purposes of this Act, a document or particulars shall be taken not to have been lodged with the Registrar until a fee, prescribed in accordance with this Act, has been paid to the Registrar.

(3) Subject to this Act, where this Act requires a document or particulars to be lodged, a company shall lodge a separate document or set of particulars.

(4) Where the Registrar considers that a document or particulars lodged with the Registrar

- (a) contain matter which is contrary to any written law;
- (b) by reason of an error, omission or misdescription, have not been duly completed;
- (c) are insufficiently legible;
- (d) are written on material insufficiently durable; or
- (e) otherwise do not comply with the requirements of this Act;

the Registrar may refuse to register the document or particulars in that state and direct that they be amended or completed in a specified manner and re-submitted.

(7) Where the Registrar gives a direction, as specified in subsection (4), the document or particulars shall be considered not to have been lodged.

(8) The Registrar may require a document or a fact stated in a document, lodged with the Registrar, to be verified by statutory declaration.

(9) Where the Registrar is required or permitted by this Act to cause a copy or particulars of a document lodged, with the Registrar, to be published in the Gazette or in a daily newspaper of general circulation in Zambia, the Registrar may require the lodgement, with the Registrar, of any such document in duplicate or the provision

of any such particulars, and may withhold registration of the document until the requirement has been complied with.

(10) Where this Act provides that a document to be lodged shall be in the prescribed form, the Registrar shall accept for lodgement and registration a document that contains all the information required and varies from the prescribed form in essential respects only.

Extension of time

168. (1) The Registrar may, before the end of the period fixed for lodgement of a document or particulars, at the request of the person concerned, extend the period for lodgement by such period, and on such terms as the Registrar considers reasonable in the circumstances.

(2) Subject to this section, where a document or particulars are lodged with the Registrar, after the end of the period fixed for their lodgement, the Registrar shall accept the document or particulars for registration on payment of such additional fee as may be prescribed.

(3) The Registrar may reduce or waive an additional fee imposed, in terms of subsection (2), if the Registrar is satisfied that the failure to lodge the document or particulars was caused or continued solely through administrative oversight and that no person is likely to have suffered damage or to have been prejudiced as a result of the failure.

Documents to be in official language

169. (1) Subject to this Act, where this Act requires a document or register to be prepared, kept, maintained or lodged, the document shall be in English.

(2) Where the Registrar approves the lodgement of a document which, or part of which, is in a language other than English, the Registrar may require a certified translation into English to be annexed to it.

Administrative penalties

170. (1) The Registrar may impose an administrative penalty on a person for any failure to comply with this Act.

(2) An administrative penalty, referred to in subsection (1), shall not exceed the amount prescribed by the Minister for each day during which such failure continues.

(3) An administrative penalty, imposed in accordance with subsection (1), shall be paid to the Agency within the period specified by the Registrar.

(4) If any person fails to pay an administrative penalty, within the period specified in subsection (2), the Registrar may, by way of civil action in a competent court, recover the amount of the administrative penalty from such person as an amount due and owing to the Agency.

- 171.** (1) A past or present officer of a company who
- (a) fails to disclose to an insolvency practitioner when, how, to whom and for what consideration the company disposed of any movable or immovable property, except such part as has been disposed of in the ordinary course of the business of the company;
- (b) on the direction of an insolvency practitioner does not deliver up
- (i) movable and immovable property; or
- (ii) records;
- belonging to the company and in the officer's custody, or under the officer's control, which the officer is required by law to deliver up;
- (c) within twelve months before the commencement of winding up or other proceedings, undertaken in accordance with this Act, or any time thereafter
- (i) conceals property of the company, or conceals a debt due to or from the company;
- (ii) fraudulently removes property of the company;
- (iii) conceals, destroys, mutilates, falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any records relating to the property or affairs of the company;
- (iv) makes or is privy to the making of any false entry in any record relating to the property or affairs of the company;
- (v) fraudulently parts with, alters or makes an omission in, or is privy to fraudulent parting with, altering or making of an omission in any document relating to the property or affairs of the company;
- (vi) procures or obtains, by fraud or by falsely representing that the company is a going concern, property for or on behalf of the company on credit; or
- (vii) pawns, pledges or disposes of any property of the company which has been procured or obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of business of the company;
- Offences by officers of companies relating to winding up or other proceedings

- (d) makes a material omission in a statement relating to the affairs of the company;
- (e) knowing that a false debt has been proved by any person, fails for a period of one month, to inform the insolvency practitioner of it;
- (f) prevents the production of any record relating to the property or affairs of the company;
- (g) has accounted for the property of the company stating fictitious losses or expenses; or
- (h) has made a false or fraudulent representation in respect of the affairs of the company or winding up and other proceedings, for purposes of obtaining the consent of the creditors or a party to an agreement;

commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(2) A person that pawns, pledges or disposes of property or participates in a pawn, pledge or receives the property knowing it to be pawned, pledged or disposed of in circumstances which amount to an offence as specified in subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units, or to imprisonment for a period not exceeding two years, or to both.

Inducement relating to insolvency practitioner Act No. 3 of 2012

172. Without prejudice to the Anti-Corruption Act 2012, a person who gives to, or participates in the giving of, consideration for securing or preventing a person's appointment or nomination as an insolvency practitioner commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

Destruction, alteration, mutilation or falsifying of book, etc

173. An officer or member who, with intent to defraud

- (a) receives property of a corporate other than in payment of a just debt or demand;
- (b) fails to make a full and true entry in the books and accounts of the corporate or fails to cause or direct such an entry to be made;
- (c) destroys, alters, mutilates or falsifies any entry in a book, document, security or account or is privy to any such act; or
- (d) makes, or is privy to the making of, a false entry in a book, document or account;

commits an offence and is liable, on conviction to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both.

174. (1) If, on an investigation undertaken in accordance with this Act or where a corporate is wound up, is in receivership or under business rescue proceedings, it is shown that proper books of account were not kept by the company in the period of two years immediately preceding the commencement of the investigation or any such proceedings, every officer in default commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Liability
where
proper
accounts not
kept

(2) For purposes of this section, proper books of account shall be considered not to have been kept properly, if not kept in a manner that enables the books of account to be conveniently and properly audited, whether or not the company has appointed an auditor.

(3) If, during the course of proceedings specified in subsection (1), or in any other proceedings against a company, it is shown that an officer of the company who participated in the contracting of a debt had, at the time the debt was contracted, no reasonable ground for believing that the company was able to meet its liabilities at the time, commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding six months, or to both.

175. (1) If, in the course of the winding up, receivership or business rescue proceedings or in any other proceedings against a company, it is shown that business of a company has been carried on for fraudulent purposes, or with intent to defraud creditors, the Court shall, on the application of an insolvency practitioner or creditor, order that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for the debts or liabilities of the company as the Court orders.

Responsibility
for
fraudulent
trading

(2) Where the Court makes an order, in accordance with subsection (1), it may give such further directions as it considers appropriate in the matter for purposes of giving effect to the order and, in particular, make the liability a charge on

- (a) a debt or obligation due from the company to that person;
- (b) an interest in any charge on any assets of the company held by or vested in that person or corporate on the person's behalf; or
- (c) any person claiming as trustee;

and may make such further order as is necessary for the purpose of enforcing a charge imposed as specified in this subsection.

(3) If it appears to the Court, in the course of a voluntary winding up, receivership or business rescue proceedings that any past or present officer or member of the company has committed an offence as specified in this section and that a report with respect to the matter has not been made by the insolvency practitioner, on the application of any person interested in the proceedings, or of the Court its own motion, the Court may order the insolvency practitioner to make the report.

(4) Any charges on the assets and debts of the company to which priority is given by this Act and all costs and expenses incidental to the proceedings, specified in this section, shall be payable out of the assets of the company.

Offence by
body
corporate and
principal
officer or
shareholders
of body
corporate or
unincorporated
body

176. Where an offence under this Act is committed by a body corporate or unincorporated body, and the director, manager or shareholder of that body is suspected to have committed the offence and is charged of that offence, that director, manager or shareholder of the body corporate or unincorporated body is liable, upon conviction, to the penalty specified for the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

General
penalty

177. A person who is convicted of an offence as specified in this Act for which no penalty is provided is liable to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Rules by
Chief Justice

178. The Chief Justice may, by statutory instrument, make rules regulating appeals provided for in this Act.

Regulations

179. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations made in accordance with subsection (1) may

- (a) prescribe fees or charges payable in respect of any matter arising under, provided for, or authorised by this Act;
- (b) prescribe the forms for applications, licences, approvals, registers, notices, orders and other documents required for the purposes of this Act;

- (d) prescribe the information to be given in returns and other documents delivered or made for the purposes of this Act;
- (e) provide the procedure for the service of notices, orders and documents as specified in this Act and the times at which they shall be taken to have been served;
- (f) prescribe the rate of remuneration for liquidators and other insolvency practitioners; and
- (g) prescribe the procedure for objections, reviews and public inquiries for purposes of this Act, and the making, consideration, hearing and determination of objections, reviews and public inquiries.

180. A person who was a receiver or liquidator of a company at the coming into operation of this Act shall continue as a receiver or liquidator as if accredited in accordance with this Act.

Transitional
Provisions
