VIRGIN ISLANDS

INSOLVENCY RULES, 2005

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2005 NO. 45

INSOLVENCY ACT, 2003
(No. 5 of 2003)

Insolvency Rules, 2005

[Gazetted 30th June, 2005]

The Executive Council, in exercise of the powers conferred by section 498 of the Insolvency Act, 2003 (No. 5 of 2003), makes the following Rules:

PART I

PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) These Rules may be cited as the Insolvency Rules, 2005.

(2) The Rules come into operation on the dates specified below:

(a) rules **3** and **324** are deemed to have come into operation on the 16th day of August, 2004;

(b) Part V (Administration) shall come into operation on such date as may be appointed by the Executive Council by Notice published in the Gazette and any reference to "administration", "administration order" or "administrator" in any other Part of the Rules shall be construed accordingly; and

(c) all other provisions of the Rules come into operation on the date of publication of these Rules in the Gazette.

Interpretation. No 5 of 2003

2. (1) In these Rules,

"Act" means the Insolvency Act, 2003;

"contact details", in respect of a person, means

(a) a telephone number,

(b) a fax number,

(c) an e-mail address, or

(d) another method of communication, not being a physical address.

"CPR" means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 and "CPR" followed by a Part or rule by number means the Part or rule with that number in those Rules;

"insolvency proceeding" means any proceeding under the Act or the Rules, including a creditors' arrangement;

"practice direction" means a direction as to practice and procedure issued by the Court under rule **8**;

"Regulations" means the Regulations made under section 486;

"Rules" means these Rules;

"section" means a section of the Act.

(2) For the purposes of section 2(1) [definition of "preferential claims"], the claims set out in Schedule 2 are preferential claims.

(3) Unless otherwise provided, the words and expressions defined in the Act have the same meaning in the Rules.

Prescribed financial services licence.

3. For the purposes of section 2(1) (definition of "regulated person"), a prescribed financial services licence is a licence, authorisation, permission or recognition issued under one of the following Acts:

(a) Banks and Trust Companies Act, 1990; — No. 9 of 1990

(b) Insurance Act, 1994; — No. 15 of 1994

(c) Company Management Act, 1990; — No. 8 of 1990

(d) Mutual Funds Act, 1996. — No. 6 of 1996

PART II

COURT PROCEDURE AND PRACTICE

Division 1 – General

Application of CPR.

4. (1) Subject to paragraph (2), except so far as inconsistent with the Act or the Rules or a practice direction issued under rule **8**, the CPR, practice directions issued under CPR Part 4 and practice guidance issued under CPR 4.6 apply to insolvency proceedings, with any necessary modifications.

(2) The provisions of the CPR specified in Schedule 1 do not apply in insolvency proceedings.

Exercise of Court's powers.

5. Subject to any provision in the Act or the Rules to the contrary or to any practice direction, the functions of the Court under the Act or the Rules may be exercised by a master.

Filing of documents with the Court.

6. Every document filed with the Court shall have endorsed upon it the date and time at which it was filed and, if the Rules so provide, shall be sealed.

Filing of documents with the Registrar.

7. (1) Where a document is required or permitted under the Act or the Rules to be filed with the Registrar, the document is filed by delivering or posting it to the Registrar.

(2) A document is filed with the Registrar on the day when it is received at the Companies Registry or, where it is received at a time when the Companies Registry is closed, on the next day on which the Companies Registry is open.

Division 2 – Practice Directions and Guides

Issue of practice directions.

8. (1) The Chief Justice may issue a practice direction where required or permitted by the Act or the Rules.

(2) Where there is no express provision in the Act or the Rules for such a direction, the Chief Justice may issue directions as to the practice and procedure to be followed with regard to insolvency proceedings before the Court.

(3) In the case of any inconsistency between a practice direction issued under this rule and the CPR, or a practice direction or practice guide issued under the CPR, the practice direction issued under this Rule prevails.

9. (1) A practice direction issued under rule **8** shall be published in the Gazette. Practice directions to be published in Gazette.

(2) A practice direction issued under rule **8** comes into effect on its publication in the Gazette or on such later date as may be specified in the direction.

10. (1) In this rule, "relevant practice direction" means a practice direction made Compliance with practice directions.

(a) under rule **8**; or

(b) under CPR Part 4.

(2) Unless there are good reasons for not doing so, a party shall comply with any relevant practice directions.

(3) The Court may make an order under CPR Part 26 (Powers of Court) or CPR Part 64 (Costs – General) against a party who fails to comply with a relevant practice direction.

11. (1) In this rule, "relevant practice guide" means a practice guide made Practice guides.

(a) under this rule; or

(b) under CPR 4.6.

(2) The Court may issue practice guides to assist parties concerned with insolvency proceedings before the Court.

(3) Parties shall have regard to any relevant practice guide.

(4) The Court may take account of any failure of a party to comply with any relevant practice guide when deciding whether or not to make an order under CPR Part 26 (Powers of the Court) or CPR Part 64 (Costs – General).

Division 3 – Applications

12. (1) Except as otherwise provided in the Act or the Rules, this Division applies to every application made to the Court under the Act or the Rules. Scope of rules.

(2) Notwithstanding this Division, an application for an administration order, for the appointment of a liquidator and for a bankruptcy order shall also comply with the relevant provisions of the Act and the Rules.

Types of application.

13. (1) An application to the Court which is not an application made in insolvency proceedings already before the Court shall be made as an "originating application".

(2) An application to the Court made in insolvency proceedings already before the Court shall be made by way of an "ordinary application".

(3) For the purposes of applying the CPR, an application made in insolvency proceedings, whether originating or ordinary, shall be regarded as a fixed date claim.

Form and content of application.

14. (1) An application, whether originating or ordinary, shall be in writing and in the prescribed form, with such modifications as are appropriate.

(2) In particular, an application shall state

(a) the name of the applicant and the names of any respondents;

(b) the nature of the relief or the order applied for or the directions sought from the Court;

(c) the names and addresses of the persons, if any, on whom it is intended to serve the application or that no person is intended to be served;

(d) where the Act or the Rules require that notice of the application is to be given to specified persons, the names and addresses of those persons so far as known to the applicant;

(e) the applicant's name and his address for service within the Virgin Islands; and

(f) the applicant's contact details.

(3) Where an application is made on behalf of an applicant by a legal practitioner appointed by the applicant to act for him, the application shall state the full address of the legal practitioner, contact details for the legal practitioner and the name or reference of the individual dealing with the matter.

(4) An originating application shall set out the grounds on which the applicant claims to be entitled to the relief or order sought.

(5) The application shall be signed by the applicant if he is acting in person or, otherwise, by or on behalf of his legal practitioner.

(6) An application may, and where the Rules so provide shall, be supported by an affidavit.

(7) Where the address for service of an applicant changes, he shall immediately notify the Court and all other parties and any document sent to the original address before notice of the change is given is regarded as validly served.

Application for appointment of insolvency practitioner.

15. Any application that seeks the appointment of one or more insolvency practitioners in an insolvency proceeding shall have attached to it, a written statement signed by each of the proposed insolvency practitioners

(a) stating that the insolvency practitioner consents to accept the appointment;

(b) setting out details of any prior professional relationship that he has had with the company or individual concerned; and

(c) stating that he is eligible to act as insolvency practitioner in respect of the company or individual concerned.

Filing of applications.

16. (1) An application, with any supporting documents, shall be filed with the Court together with one copy for exhibiting to the affidavit of service, if required, and sufficient additional copies for service.

(2) Unless the Rules otherwise provide, or the Court otherwise orders, the Court shall

(a) fix a venue for the first hearing of the application;

(b) seal each application and each copy of the application filed;

(c) endorse on the application, and on each copy of the application filed, the date and time of filing and details of the venue fixed; and

(d) return the copies of the application to the applicant.

Service of applications.

17. (1) A copy of the application, endorsed in accordance with rule **16**(2), shall be served on

(a) the respondent or respondents named in the application; and

(b) any other person that the Court may direct.

(2) Subject to paragraph (3), notice of the application shall be given to any person specified in the Rules and to any other person that the Court may direct.

(3) Unless the Act or the Rules provide otherwise, the Court may, by order, give any of the following directions

(a) that the giving of notice of an application to any person be dispensed with; and

(b) that notice be given in some way other than that specified in the Act or the Rules.

(4) Unless the Act or the Rules provide otherwise, an application shall be served at least 14 days before the date fixed for the hearing.

Persons entitled to copy of certain applications.

18. (1) Each of the following persons may request the applicant to provide him with a copy of an application for an administration order or an application for the appointment of a liquidator:

(a) a director of the company against which the application is made;

(b) a member of the company; and

(c) a creditor of the company.

(2) On receipt of a request made under paragraph (1), the applicant, or where the applicant is represented by a legal practitioner, his legal practitioner, shall provide the person making the request with a copy of the application

Affidavit of service.

19. (1) Where required by the Act or the Rules, service of an application or other document shall be verified by an affidavit of service in the prescribed form sworn by the person who effected service specifying the date on which, and the manner in which, service was effected.

(2) A sealed copy of the application or other document served, together with any supporting documents served, shall be exhibited to the affidavit of service.

(3) The affidavit verifying service shall be filed in Court as soon as reasonably practicable after service but, in any event, not less than two days prior to the date fixed for the hearing of the application.

Hearing of applications.

20. (1) Unless otherwise provided by the Act or the Rules

(a) an application before the master shall be heard in chambers; and

(b) an application before the judge may be held in chambers or in Court.

(2) An ordinary application shall be made to the master unless

(a) the Act, the Rules or a practice direction issued under rule **8** provide otherwise; or

(b) the master does not have power to make the order sought.

(3) The master may refer to the judge any matter that he considers should properly be decided by the judge, and the judge may either dispose of the matter or refer it back to the master with such directions as he considers appropriate.

(4) The following originating applications shall be made and heard by the judge:

(a) an application for an administration order;

(b) an application to appoint a liquidator of a company or a foreign company; and

(c) an application for a bankruptcy order.

(5) Nothing in this rule precludes an application being made directly to the judge in a proper case.

(6) Unless the Act or the Rules provide otherwise, any person served with or given notice of an application is entitled to appear or be represented at the hearing of the application.

Ex parte hearings.

21. (1) Where the Act or the Rules do not require service of an application on, or notice of it to be given to, any person, the Court may hear the application ex parte.

(2) Where the application is made ex parte in the circumstances specified in paragraph (1), the Court may

(a) hear it forthwith, without fixing a venue as required by rule **16**(2); or

(b) fix a venue for the application to be heard, in which case rule **16**(2) applies.

Affidavits.

22. (1) Except as provided otherwise by the Act or the Rules, or as the Court otherwise orders, an affidavit in an insolvency proceeding may contain statements of information and belief.

(2) The deponent of an affidavit in an insolvency proceeding,

(a) shall state which of the statements in it are made from the deponent's own knowledge and which are matters of information and belief;

(b) shall specify the means of his knowledge or belief as to the matters sworn to; and

(c) if he is not an applicant, shall state the capacity in which and the authority by which he makes the affidavit.

(3) Subject to paragraphs (1) and (2) and except as provided otherwise by the Act or the Rules or as the Court otherwise orders, CPR Part 30 applies to an affidavit sworn under the Act or the Rules with such modifications as the circumstances require.

Division 4 – Service

Scope of rules concerning service.

23. (1) This Division applies where in an insolvency proceeding

(a) a document is required or permitted to be served, sent or delivered to any person; or

(b) notice of any matter is required or permitted to be given to any person.

(2) In this Division, "registered office" has the meaning set out in the International Business Companies Act, the Companies Act or the BVI Business Companies Act, as the case may be.

Application of CPR.

24. (1) Except as otherwise provided in the Act or the Rules

(a) CPR Parts 5 and 7 apply to the service of a document of a type specified in paragraph (2), as if the document was a claim form; and

(b) CPR Parts 6 and 7 apply to the service of an ordinary application, a judgment or order and any other document

required or permitted to be served, sent or delivered in an insolvency proceeding before the Court;

in each case with such modifications as are necessary.

(2) Paragraph (1)(a) applies to the documents of the following types

(a) an application for an administration order;

(b) an application for the appointment of a liquidator;

(c) an application for a bankruptcy order;

(d) an originating application;

(e) a statutory demand; and

(f) an order for the examination of a person under section 284.

(3) A document referred to in paragraph (2) shall be served in accordance with paragraph (1)(a) on every person whom the Act or the Rules require to be served with the document.

Responsibility for service.

25. (1) Unless the Act or the Rules provide otherwise, the service of documents in insolvency proceedings is the responsibility of the parties and will not be undertaken by the Court.

(2) Paragraph (1) applies notwithstanding that a rule in the CPR applicable in insolvency proceedings may state otherwise.

(3) As soon as reasonably practicable after making an order in an insolvency proceeding, the Court shall provide the applicant with, or send to the applicant, sealed copies of the order for service.

Service on company.

26. (1) Subject to paragraphs (2) and (3), service on a company may be effected by one of the methods of service specified in CPR 5.7 (Service on limited company).

(2) Service of a document of a type specified in Rule **24**(2)(a), (b), (d) and (e) shall be served on a company

(a) at its registered office

(i) by serving the application personally on a director, officer or employee of the company,

(ii) by serving the application personally on a person who acknowledges himself to be authorised to accept service of documents on behalf of the company, or

(iii) if service under sub-paragraphs (i) or (ii) is not possible, by leaving the application at the registered office in such a way that it is likely to come to the attention of a person coming to the office; or

(b) if, for any reason, service of a document at the registered office of a company under sub-paragraph (a) is not practicable, or the company has no registered office, the document may be served

(i) by leaving it at the company's last known principal place of business in the Virgin Islands in such a way that it is likely to come to the attention of a person coming to the office, or

(ii) by serving the document personally on any director, officer or manager of the company.

(3) CPR 5.13 and 5.16 do not apply to the service on a company of a statutory demand or an application for an administration order or for the appointment of a liquidator.

(4) Where the Act or the Rules require service of a document on the board of a company, service may be effected by service of a single copy of the document on the company at its registered office.

Service on partnership.

27. Service on a partnership may be effected by one of the methods of service specified in CPR 5.8 (Service on firm or partnership).

Service on foreign company.

28. (1) Service on a foreign company may be effected

(a) by one of the methods of service specified in CPR 5.9 (Service on body corporate); or

(b) by serving the claim form, in the Virgin Islands, personally on any person who acknowledges himself to be authorized to accept service of documents on behalf of the foreign company.

(2) If, for any reason, service of a document in a manner specified in paragraph (1) is not practicable, service may be effected by leaving the document at, or sending it by post to, any place of business established by the foreign company in the Virgin Islands.

Service on any other person.

29. (1) Service on any other person may be effected by one of the methods specified in the relevant Part of the CPR or by delivering the document to be served to his proper address.

(2) For the purposes of paragraph (1), a person's proper address is any address which he has previously notified as his address for service or, if he has not notified any such address, service may be effected by delivery of the document to his usual or last known address.

(3) Delivery of documents to any place or address may be made by leaving them there or by sending them by post.

Sending or delivering other documents.

30. (1) Paragraph (2) applies where, under the Act or the Rules

(a) a document, other than an application, is required or permitted to be sent or delivered to any person; or

(b) written notice of a meeting or any matter is required or permitted to be given to any person.

(2) A document may be sent or delivered and written notice may be given

(a) by any means of service specified in CPR Part 6; or

(b) by any other means, including a means of electronic communication, that may be agreed between the person sending the document or notice and the person receiving it.

Division 5 – General

Advertisements.

31. (1) Without limiting any specific requirement to advertise contained in the Act or the Rules, where a person is required by the Act or the Rules to advertise any application, order, notice or other document or matter, he shall, within the time specified in the Act or the Rules

(a) ensure that a copy of the application, order, notice or other document or matter concerned is delivered to the Gazette Office for advertisement; and

(b) advertise the application, order, notice or other document or matter concerned in such newspaper or newspapers that the person considers most appropriate for ensuring that the

application, order, notice or other document or matter comes to the attention of the creditors of the company or individual who is subject to the insolvency proceeding concerned.

(2) The first meeting of creditors in an administration or a liquidation and the notice specified in section 147(3) shall be advertised in the same newspaper as that in which, as the case may be, the notice of the administration order, the appointment of the liquidator or the appointment of the administrative receiver was advertised.

(3) Where paragraph (2) applies, the administrator, liquidator or administrative receiver may also advertise in such other newspaper as he thinks appropriate for ensuring that the notice comes to the attention of the creditors of the company.

Advertisement of liquidator's appointment.

32. (1) This rule applies to the advertisement by a liquidator of his appointment as required by section 178(1).

(2) A liquidator shall advertise his appointment

(a) as specified in rule **31**(1)(a);

(b) in a newspaper published and circulating in the Virgin Islands; and

(c) in such other newspaper or newspapers, if any, that he considers most appropriate for ensuring that the application, order, notice or other document or matter comes to the attention of the creditors of the company.

Advertisement of bankruptcy trustee's appointment.

33. (1) This rule applies to the advertisement by a bankruptcy trustee of his appointment as required by section 326(1).

(2) A bankruptcy trustee shall advertise his appointment

(a) as specified in rule **31**(1)(a); and

(b) in a newspaper published and circulating in the Virgin Islands.

Division 6 – Minors and Patients

Interpretation.

34. (1) In this Division

"minor" means a person who has not attained the age of eighteen years; and

"patient" means a person who is incapable of managing his assets and affairs

(a) by reason of his mental disorder as defined in section 2 of the Mental Health Ordinance, or Cap. 191

(b) due to physical affliction or disability.

(2) A person is eligible to be appointed as the next friend of a patient or a minor under rule **35** if

(a) he can fairly and competently appear for, represent or act for that patient or minor; and

(b) he has no interest adverse to that of the patient or minor.

Appointment of next friend.

35. (1) The Court may appoint an eligible person as the next friend to appear for, represent or act for a patient or a minor.

(2) The appointment of a next friend may be made either generally or for the purpose of any particular application or proceeding, or for the exercise of particular rights or powers which the patient or minor is entitled to exercise.

(3) The Court may make the appointment of a next friend either of its own motion or on application by

(a) a person who has been appointed by a court in a jurisdiction outside the Virgin Islands to manage the affairs of, or to represent, the patient or minor;

(b) a relative or friend of the patient or minor who appears to the Court to be a proper person to make the application;

(c) the Official Receiver;

(d) the person who, in relation to the proceedings, is the responsible insolvency practitioner; or

(e) in the case of a minor, the minor himself.

(4) Subject to paragraph (5), an application under paragraph (3) may be made ex parte.

(5) The Court may require such notice of the application as it considers appropriate to be given to the patient or minor, or to any other person that it considers appropriate, and may adjourn the hearing of the application to enable notice to be given.

(6) The Court may make an order appointing a next friend subject to such terms and conditions as it considers just, including a requirement that the next friend take legal or other professional advice or that he act by a legal practitioner, and may limit the next friend's authority to appear for, represent or act for the patient or minor.

Affidavit in support of application.

36. (1) An application under rule **35**(3) made in respect of a patient by a person other than the Official Receiver, shall be supported by an affidavit of a registered medical practitioner as to the mental or physical condition of the patient.

(2) An application under rule **35**(3) made in respect of a patient by the Official Receiver shall be supported by a report made by the Official Receiver.

Service of documents and giving of notice.

37. Any document or notice served on, or sent to, a person appointed as next friend under rule **35** has the same effect as if it had been served on, or given to, the patient or minor.

Termination of appointment of next friend and variation of conditions.

38. (1) The Court may on its own motion, or on the application of the person appointed as the next friend of a minor or patient or of a person specified in rule **35**(3)

(a) terminate the appointment of a person as next friend of the patient or minor;

(b) limit the next friend's authority to appear for, represent or act for the patient or minor;

(c) amend the terms and conditions upon which the person is appointed next friend; or

(d) appoint an eligible person as next friend of the patient or minor in substitution for an existing next friend.

(2) If an application under paragraph (1) is made by a person other than the next friend of the patient or minor, notice of the application shall be given to the person appointed as best friend.

(3) Subject to paragraph (2), rule **35** applies to an application made under paragraph (1) as if it was an application for the appointment of a best friend.

39. (1) The appointment of the next friend of a minor, who is not also a patient, terminates when the minor reaches the age of majority. Termination of appointment of next friend of minor on majority.

(2) Where the appointment of the next friend of a minor terminates under paragraph (1), the person whose appointment as best friend has been terminated, shall apply to the Court for directions.

(3) On an application under paragraph (2), the Court may make such directions, if any, as it considers necessary or just.

40. A person appointed as the next friend of a patient or minor may at any time apply to the Court for directions concerning his appointment and upon such application the Court make give such directions as it considers appropriate. Directions.

PART III

GENERAL PROVISIONS

Division 1 – Creditors' and Members' Meetings

Interpretation.

41. In this Division

"convener" means the person calling a creditors' or members' meeting;

"creditors' meeting" means a meeting of creditors required or permitted to be called under the Act or the Rules;

"members' meeting" means a meeting of members required or permitted to be called under the Act or the Rules;

"notice" means a notice calling a creditors' or members' meeting;

"office holder" means

(a) in the case of a company, a supervisor, interim supervisor, administrator, administrative receiver or liquidator; and

(b) in the case of an individual, a supervisor, interim supervisor or his bankruptcy trustee;

"relevant date" means

(a) in the case of a company creditors' arrangement, the date of the creditors' meeting or, if the company is in administration or in liquidation, the date that the administration or liquidation commenced;

(b) in the case of an individual creditors' arrangement, the date of the creditors' meeting;

(c) in the case of an administrative receivership, the date of his appointment; and

(d) in the case of administration, liquidation or bankruptcy proceedings, the date that the administration, liquidation or bankruptcy commenced.

42. Except to the extent that the Act or the Rules otherwise provide, Scope of this Division.

(a) rules **43** to **60** apply to all creditors' meetings; and

(b) rule **61** applies to all members' meetings.

Calling of Creditors' Meetings

43. (1) A creditors' meeting is called by the convener sending, or causing to be sent, to every creditor entitled to attend the meeting a notice complying with the Act and the Rules. Calling of creditors' meetings.

(2) Subject to any requirement of the Act or the Rules, or any direction of the Court, concerning the date or last date for which a creditors' meeting may be called, the venue of a creditors' meeting shall be fixed by the convener and stated in the notice.

(3) In fixing the venue of a creditors' meeting, the convener shall have regard primarily to the convenience of the creditors entitled to attend the meeting and creditors' meetings may be held in or outside the Virgin Islands.

(4) A notice sent to a creditor under paragraph (1) shall be sent in sufficient time for it to be received, or deemed to be received, by him at least 14 days before the date of the meeting.

(5) Unless exceptional circumstances justify otherwise, creditors' meetings shall be called for commencement between 10.00 and 16.00 on a business day.

44. (1) In addition to any other requirements of the Act or the Rules, a notice shall contain Form of notice calling creditors' meeting and accompanying documents.

(a) a statement as to the primary purpose of, or the main business to be conducted at, the meeting; and

(b) an explanation as to

(i) the majority required to pass a resolution at the meeting, and

(ii) the basis on which a person will be admitted to vote at the meeting.

(2) The convener shall send, or cause to be sent, together with every notice

(a) a proxy form; and

(b) any document required by the Act or the Rules to be sent with the notice.

(3) Where a copy of the notice, together with any other documentation, is required by the Act or the Rules to be sent to any person not entitled to vote at the meeting, the convener shall send, or cause to be sent, a copy of the notice together with any accompanying documentation in sufficient time for it to be received, or deemed to be received, by that person at least 14 days before the date of the meeting.

(4) Neither the proceedings at, nor any resolutions passed by, a creditors' meeting are invalid by reason only that one or more creditors have not received notice of the meeting.

Notice to be given to creditors.

45. (1) The convener of a creditors' meeting shall send a notice to every creditor

(a) specified in the statement of affairs or statement of assets and liabilities, if any; and

(b) of whom the convener is otherwise aware.

(2) The convener of a creditors' meeting is not in breach of any requirement of the Act or the Rules to give notice of the meeting to the creditors of a company by reason only of failing to send a notice to a person who was not known by the convener to be a creditor of the company.

Notice of meetings by advertisement.

46. (1) The Court may direct that notice of a creditors' meeting be given by public advertisement, and not, or not only, by individual notice to the persons concerned.

(2) In considering whether to make a direction under this rule, the Court shall have regard to

(a) the cost of public advertisement;

(b) the assets available in the insolvency proceeding concerned; and

(c) the extent of the interest of creditors or any particular class of either.

47. Where a convener is required by the Act to file a notice of a creditors' meeting with the Registrar, the Commission or the Official Receiver, he shall file the notice, together with any accompanying documentation, at least 14 days before the date set for the meeting.

Notice to Registrar, Commission and Official Receiver.

48. (1) This rule applies where creditors are permitted by the Act to requisition a meeting.

Meetings requisitioned by creditors.

(2) A notice requisitioning a creditors' meeting shall be sent to the office holder concerned by a creditor accompanied by

(a) a list of creditors supporting the requisition, showing the amounts of their respective claims;

(b) the written confirmation of each creditor on the list that he supports the requisition; and

(c) a statement

(i) specifying the section of the Act under which the meeting is requisitioned,

(ii) that the creditors on the list comprise at least the minimum number of creditors specified by the relevant section, and

(iii) of the purpose of the meeting.

(3) Subject to paragraph (7), the costs of calling and holding a requisitioned creditors' meeting shall be paid by the creditor who sent the notice to the office holder in accordance with paragraph (2).

(4) If the office holder is satisfied that a requisition complies with the Act and the Rules, he shall, within five business days of receiving the notice under paragraph (2), provide the creditor who sent the notice with an estimate of the costs of calling and holding the meeting together with a request that the creditor deposit with the office holder sufficient security to cover those costs.

(5) If the office holder is not satisfied that a requisition complies with the Act and the Rules, he shall notify the creditor in writing stating the reasons for his conclusion.

(6) Upon receipt of the deposit referred to in paragraph (4), the office holder shall fix a venue for the meeting not more than 35 days from his receipt of the deposit and shall give not less than 21 days notice of the meeting to creditors.

(7) A meeting held under this rule may resolve that the expenses of calling and holding it are to be payable out of the assets of the company concerned.

(8) To the extent that any deposit paid to the office holder under this rule is not required for the payment of the expenses of calling and holding the meeting, it shall be repaid to the person who paid the deposit.

Conduct of Creditors' Meetings

Chairman.

49. (1) Subject to paragraphs (2) and (3), every creditors' meeting shall be chaired by the convener.

(2) Where the convener is an insolvency practitioner or the Official Receiver and he is unable to attend the meeting, he may, in writing, nominate as chairman

(a) in the case of an insolvency practitioner,

(i) another eligible insolvency practitioner, or

(ii) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters; or

(b) in the case of the Official Receiver, the Deputy Official Receiver or a member of his staff.

(3) Where a creditors' meeting convened by an insolvency practitioner or the Official Receiver is to be held outside the Virgin Islands and he will not be attending the meeting, he may nominate a suitably qualified and experienced individual to act as chairman.

Suspension.

50. Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare that the meeting is suspended for a period of no more than one hour.

Adjournment of meetings.

51. (1) If within 30 minutes of the time fixed for the commencement of a creditors' meeting there is no person present to act as chairman of the meeting, the meeting is adjourned to the same time and place in the following week or, if that is not a business day, to the same time on the next following business day.

(2) Subject to paragraph (3), unless those persons present, in person or by proxy, pass a resolution to the contrary, the chairman may adjourn a creditors' meeting.

(3) The chairman of a creditors' meeting may not adjourn or further adjourn a meeting under paragraph (2) to a date more than 14 days after the date fixed for the original meeting.

Chairman as proxy holder.

52. (1) The chairman shall not by virtue of any proxy he holds, vote on a resolution concerning the remuneration or expenses of the office holder unless the proxy specifically directs him to vote in that way.

(2) If the chairman uses a proxy contrary to paragraph (1), his vote with that proxy does not count towards any majority under this rule.

(3) Where the chairman holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution,

(a) he shall propose it himself, unless he considers that there is good reason for not doing so, and

(b) if he does not propose it, he shall forthwith after the meeting notify his principal of the reason why he did not propose it.

Quorum.

53. (1) The quorum for a meeting of creditors is at least one creditor entitled to vote.

(2) A creditor shall be counted towards the quorum for the purposes of paragraph (1) if he is present or represented by proxy by any person, including the chairman.

(3) Where at any meeting of creditors

(a) a quorum is present by the attendance of the chairman alone or by the chairman together with one additional creditor, and

(b) the chairman is aware, by virtue of claims and proxies received or otherwise, that one or more other persons would, if attending, be entitled to vote

the meeting shall not commence until at least 15 minutes after the time set for its commencement.

Voting Rights and Majorities

Resolutions.

54. (1) Unless the Act or the Rules provide otherwise, the majority required for the passing of a resolution at a creditors' meeting is in excess of 50 per cent in value of the creditors present in person or by proxy who vote on the resolution.

(2) A resolution passed at an adjourned creditors' meeting is treated for all purposes as having been passed on the date of the resolution and not as having been passed on an earlier date.

(3) Where a resolution is proposed which affects a person in respect of his remuneration or conduct as an office holder, or as a proposed or former office holder, the vote of that person and of any partner or employee of his, shall not be counted in the majority required for passing the resolution.

(4) Paragraph (3) applies with respect to a vote given by a person whether personally, on his behalf by a proxy-holder or as a proxy holder for a creditor.

Creditors' entitlement to vote.

55. (1) A creditor is entitled to vote at a creditors' meeting only if, no later than 12.00 noon on the business day before the day fixed for the meeting,

(a) he has given written notice of his claim to the office holder and the claim is admitted in accordance with rule **58**; and

(b) any proxy that he intends to be used on his behalf has been lodged with the office holder.

(2) The office holder may accept a proxy that has been sent to him by facsimile transmission as lodged for the purposes of paragraph (1)(b).

(3) The chairman of a creditors' meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph (1)(a), if he is satisfied that the failure was due to circumstances beyond the creditor's control.

(4) The votes of a creditor are calculated

(a) where the creditors' meeting is in respect of a company that is in liquidation, on the value of the creditor's claim made in accordance with the provisions of the Act and the rules that relate to a claim in a liquidation;

(b) where the creditors' meeting is in respect of a bankruptcy, on the value of the creditor's claim made in accordance with the provisions of the Act and the rules that relate to a claim in a bankruptcy;

(c) in any other case, according to the amount of the creditor's debt as at the relevant date, deducting any amounts paid in respect of the debt after that date.

(4) A creditor may not vote in respect of a claim for an unliquidated amount, or on any claim the value of which is not ascertained, except where the chairman agrees to put an estimated minimum value on the claim for the purpose of entitlement to vote and admits the claim for that purpose.

Secured creditors and holders of negotiable instruments.

56. (1) At a creditors' meeting, a secured creditor is entitled to vote only in respect of the balance, if any, of his debt after deducting the value of his security interest as estimated by him.

(2) A creditor may not vote in respect of a debt on, or secured by, a current bill of exchange or promissory note, unless he is willing

(a) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the debtor, and against whom a bankruptcy order has not been made, or in the case of a company, which has not gone into liquidation, as a security in his hands;

(b) to estimate the value of the security interest and, for the purposes of entitlement to vote only, to deduct it from his claim;

and the chairman decides to admit the reduced claim for voting purposes.

Hire purchase, conditional sale and chattel leasing agreements.

57. (1) This rule does not apply to a creditors' meeting held in respect of a company that is in liquidation or in respect of a bankruptcy.

(2) Subject to paragraph 3, an owner of goods under a hire purchase or chattel leasing agreement, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt owed by the debtor to him on the relevant date.

(3) In calculating the amount of a debt for the purposes of paragraph 1, no account is taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the relevant insolvency proceeding or any order made in, or matter arising in consequence of, the proceeding.

Admission and rejection of claims.

58. (1) Subject to paragraph (5), the chairman of a creditors' meeting shall determine the entitlement of persons wishing to vote and shall admit or reject their claims for voting purposes accordingly.

(2) The chairman may admit or reject a claim in whole or in part.

(3) The chairman of a creditors' meeting may require a creditor to produce any document or other evidence where he considers it necessary for the purpose of substantiating the whole or part of the creditor's claim.

(4) If the chairman of a creditors' meeting is in doubt as to whether a claim should be admitted or rejected, he shall mark the claim as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained.

(5) Where a creditor's claim in a liquidation or bankruptcy has been admitted by the liquidator or trustee, under section 209 or section 336, as the case may be, the Chairman shall admit the claim in the same amount for the purposes of voting.

Appeal.

59. (1) A creditor may appeal to the Court against any decision of an office holder, or the chairman of a creditors' meeting, under rules **55** or **58**.

(2) If on an appeal the Court reverses or varies the Chairman's decision, or the vote of a creditor is declared invalid, the Court may make such order as it considers just including, if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity, an order that another meeting be summoned.

(3) An appeal under this rule shall be made within a period of 28 days from the date of the decision in respect of which the appeal is made.

(4) Neither an office holder, nor any person nominated to chair a creditors' meeting on his behalf in accordance with rule **49**(2) is personally liable for the costs incurred by any person in respect of an appeal to the Court under this rule, unless the Court makes an order to that effect.

Minutes.

60. (1) The chairman of a creditors' meeting shall ensure that minutes of its proceedings are kept and that he signs the minutes.

(2) Minutes kept under paragraph (1) shall include a list of the creditors who attended the meeting, whether in person or by proxy, the resolutions passed at the meeting and, if a creditors' committee is established, the names and addresses of those persons elected to be members of the committee.

(3) Minutes kept in accordance with this Rule shall be retained as a record in the insolvency proceeding.

Members meetings.

61. (1) In fixing the venue of a members' meeting, the convener shall have regard primarily to the convenience of the members and members' meetings may be held in or outside the Virgin Islands.

(2) Rules **49**, **51**(1), **53**(2) and **53**(3) apply to members' meetings with necessary modifications.

(3) The quorum for a meeting of members is

(a) where the company or foreign company only has one member or only has one member entitled to vote, that member, or

(b) where the company or foreign company has more than one member entitled to vote, at least two members of those members.

(4) Subject to this Rule, a members' meeting shall be summoned and conducted as if it were a general meeting of the company summoned under the company's articles of association, and in accordance with the applicable provisions of the Companies Act, the International Business Companies Act or the BVI Business Companies Act.

(5) Where a company is in administration, the chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book.

Division 2 – Proxies and Company Representation

Interpretation.

62. (1) In this Division

"meeting" means a meeting of creditors or of members required or permitted to be held under the Act or the Rules;

"principal" means the person giving a proxy; and

"proxy-holder" means the person to whom the principal gives his proxy.

(2) For the purposes of the Act and the Rules, a proxy is an authority given by a principal to a proxy-holder to attend a meeting and to speak and vote as his representative.

General provisions concerning proxies.

63. (1) Subject to paragraph (2), a person who desires to be represented at a creditors' meeting may give one proxy to an individual aged 18 or over.

(2) Notwithstanding paragraph (1)

(a) a principal may specify one or more other individuals aged 18 or over to be proxy-holder in the alternative, in the order in which they are named in the proxy; and

(b) a proxy for a particular meeting may be given to the chairman of the meeting who cannot decline to act as proxy-holder in such circumstances.

(3) A proxy requires the holder, either as directed or in accordance with the holder's discretion

(a) to give the principal's vote on matters arising for determination at the meeting;

(b) to abstain; or

(c) to propose, in the principal's name, a resolution to be voted on by the meeting.

Issue and use of proxy forms.

64. (1) A proxy form sent with a notice of a meeting shall not have inserted in it the name or description of any person.

(2) A proxy form shall not be used at a meeting unless it is in the same, or a substantially similar, form as the proxy form sent out with the notice calling the meeting.

(3) A proxy form shall be signed by the principal, or by some person authorized by him, either generally or with reference to a particular meeting.

(4) Where a proxy form is signed by a person other than the principal, the nature of the person's authority shall be stated.

Use of proxies at meetings.

65. (1) A proxy given for a particular meeting may be used at any adjournment of that meeting.

(2) Where the Official Receiver holds proxies for use at a meeting, his deputy, or such other of his officers as he may authorize in writing, may act as proxy-holder in his place.

(3) Where an insolvency practitioner holds proxies to be used by him as chairman of a meeting, and some other person acts as chairman, the other person may use the insolvency practitioners proxies as if he were himself the proxy-holder.

(4) Where a proxy directs a proxy-holder to vote for or against a resolution for the nomination or appointment of a person as an officer holder, the

proxy-holder may, unless the proxy states otherwise, vote for or against, as he thinks fit, any resolution for the nomination or appointment of that person jointly with another or others.

(5) A proxy-holder may propose any resolution which, if proposed by another, would be a resolution in favour of which by virtue of the proxy he would be entitled to vote.

(6) Where a proxy gives specific directions as to voting, this does not, unless the proxy states otherwise, preclude the proxy-holder from voting at his discretion on resolutions put to the meeting which are not dealt with in the proxy.

Retention of proxies.

66. (1) Subject to paragraph (2), proxies used for voting at any meeting shall be retained by the chairman of the meeting.

(2) Where the chairman is not the responsible insolvency practitioner, he shall deliver the proxies, immediately after the meeting, to the responsible insolvency practitioner who shall retain them.

(3) Proxies shall be retained as records in the insolvency proceeding.

Right of inspection.

67. (1) The responsible insolvency practitioner shall allow proxies retained by him to be inspected, at all reasonable times on any business day, by

(a) any creditor, in the case of proxies used at a meeting of creditors; and

(b) a member, in the case of proxies used at a meeting of the company or of its members.

(2) Subject to paragraph (3), the reference in paragraph (1) to a creditor is

(a) in the case of a liquidation or a bankruptcy, a creditor who has submitted a claim under section 209 or section 336; and

(b) in any other case, a person who has submitted a claim, in writing, to be a creditor of the company or individual concerned.

(3) The reference in paragraph (1) to a creditor does not include a person whose claim has been wholly rejected for the purposes of voting, dividend or otherwise.

(4) The right of inspection given by this rule is also exercisable

(a) in the case of an insolvent company, by a director; and

(b) in the case of an insolvent individual, by him.

(5) Any person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents, including claims sent or given, in accordance with directions contained in any notice convening the meeting, to the chairman of that meeting or to any other person by a creditor or member for the purpose of that meeting.

Proxy-holder with financial interest.

68. (1) A proxy-holder shall not vote in favour of any resolution which would directly or indirectly place him, or any associate of his, in a position to receive any remuneration out of the insolvent estate, unless the proxy specifically directs him to vote in that way.

(2) Where a proxy-holder has signed the proxy as being authorized to do so by his principal and the proxy specifically directs him to vote in the way mentioned in paragraph (1), he shall nevertheless not vote in that way unless he produces to the chairman of the meeting written authorisation from his principal sufficient to show that the proxy-holder was entitled so to sign the proxy.

(3) This rule applies also to any person acting as chairman of a meeting and using proxies in that capacity under rule **65** and in its application to him, the proxy-holder is deemed an associate of his.

Company representation.

69. (1) Where a person is authorised under the Companies Act, the International Business Companies Act or the BVI Business Companies Act to represent a company at a meeting of creditors or of the company or its members, he shall produce to the chairman of the meeting a copy of the resolution from which he derives his authority.

(2) The copy resolution shall be under the seal of the company, or certified by the secretary or a director of the company to be a true copy.

(3) Nothing in this rule requires the authority of a person to sign a proxy on behalf of a principal, which is a company, to be in the form of a resolution of that company.

Division 3 – The Creditors' Committee

Interpretation for this Division.

70. (1) In this Division

"committee" means a creditors' committee established under section 421 of the Act; and

"meeting" means a meeting of the committee.

(2) Where the context permits, references in the Act or the Rules to a "member" shall include a member's representative.

Committee may establish own procedures.

71. (1) A committee may, by resolution, adopt rules governing its proceedings that are not inconsistent with the Act or this Division.

(2) Without limiting paragraph (1), the committee may agree procedures for

(a) the participation by members in meetings by telephone or other electronic means; and

(b) the passing of circular resolutions.

Meetings.

72. (1) Subject to paragraph (2), meetings

(a) may be held at such venues as the committee may resolve; and

(b) may be called by a member of the committee or by the office holder.

(2) If a meeting has not already been held, the office holder shall call a first meeting to be held not less than 28 days after the committee's establishment.

(3) The person convening a meeting shall give seven days written notice of the venue of the meeting to each member of the committee and to the office holder.

(4) Notwithstanding paragraph (3), a member of the committee may, before or at the meeting, waive his entitlement to notice under that paragraph.

Chairman of meetings.

73. (1) Subject to paragraph (2), every meeting of the creditors' committee shall be chaired by the relevant office holder.

(2) Where the office holder is unable to attend the meeting, he may nominate as chairman

(a) an eligible insolvency practitioner; or

(b) an employee of the insolvency practitioner, or of his firm, who is experienced in insolvency matters.

(3) Where a meeting of the creditors' committee is to be held outside the Virgin Islands and the insolvency practitioner will not be attending the meeting,

he may nominate a suitably qualified and experienced individual to act as chairman.

(4) Where a meeting of the creditors' committee is held pursuant to a notice issued by the committee under section 422(2), the members of the creditors' committee may elect one of the members of the committee to be chairman of the meeting in place of the office holder or his nominee.

Quorum and resolutions.

74. (1) A meeting is quorate if notice of the meeting has been given to all members and a majority of its members are present at the meeting.

(2) At a meeting of the committee, each member has one vote and a resolution is passed by a simple majority of those members who are present and vote.

(3) A resolution shall be recorded in writing, signed by the chairman and retained as a record in the insolvency proceeding.

Committee members' representatives.

75. (1) A member of the creditors' committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

(2) A person acting as a committee-member's representative shall hold a letter of authority entitling him so to act (either generally or specially) and signed by or on behalf of the committee member.

(3) The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

(4) No committee member may be represented by a body corporate, a person who is an undischarged bankrupt, a person who is a disqualified person within the meaning of section 260(4) or a person who is a restricted person within the meaning of section 409.

(5) No person shall, on the same committee, act at one and the same time as representative of more than one committee member.

(6) Where a member's representative signs any document on the member's behalf, the fact that he so signs shall be stated below his signature.

Written resolutions.

76. (1) The office holder may seek to obtain the agreement of members of the creditors' committee to a resolution by sending written notice of the resolution to each member by such method as may be agreed between the office holder and the committee member.

(2) A notice sent to a member under paragraph 1 shall be set out so as to enable the committee member to signify his dissent or agreement to each separate resolution on which the office holder seeks agreement.

(3) Any member of the committee may, within seven days of a notice being sent out under paragraph (1), require the office holder to call a meeting of the creditors' committee to consider the matters raised by the resolution.

(4) If no member requires a meeting to be called, the resolution is deemed to have been passed when the office holder is notified in writing by a majority of the committee members that they agree with it.

(5) A resolution passed under this rule shall be treated as a resolution passed at a meeting of the creditors' committee.

(7) Without limiting paragraph 1, written notice may be given by post, fax or e-mail.

Cooperation by office holder with committee.

77. Without limiting section 422(2)(b), a requirement of the committee under that section to provide it with reports or information is not reasonable if the office holder considers that

(a) the requirement is frivolous or unreasonable;

(b) the cost of complying with the requirement would be excessive having regard to the relative importance of the report or information;

(c) the company or bankrupt does not have sufficient funds to enable him to comply with the requirement.

Termination of insolvency proceeding.

78. (1) Subject to paragraph (2), the creditors' committee ceases to exist on the termination of the insolvency proceeding in which it was appointed.

(2) Where, on discharging an administration order, the Court makes an order for the appointment of a liquidator under section 111(1)(a), unless the Court otherwise orders, any creditors' committee appointed in the administration continues as if appointed in the liquidation.

Division 4 – Written Resolutions

Written resolutions.

79. (1) The office holder may seek to obtain the passing of a resolution of creditors or members by sending a notice to every creditor or member who is entitled to be notified of a creditors' or members' meeting together with a blank statement of entitlement to vote.

(2) A notice under paragraph (1) shall specify the time and date by which votes on the resolution shall be received by him and a vote shall be counted if

(a) the vote is received by the office holder by the time and date specified in the notice; and

(b) the vote is accompanied by a completed statement of entitlement to vote.

(3) If any votes are received without the statement as to entitlement to vote, or the office holder decides that the creditor or member is not entitled to vote, then that creditor's or member's vote shall be disregarded.

(4) The closing date for receipt of votes shall be set at the discretion of the office holder but shall not be set less than 14 days from the date of issue of the notice under paragraph (1).

(5) Where an office holder sends out a notice under paragraph (1), a meeting to consider the resolution specified in the notice may be requisitioned in accordance with paragraph (6) by

(a) in the case of a notice sent to creditors, by any single creditor, or a group of creditors, whose debts amount to at least 10% of the total debts of the company or debtor; or

(b) in the case of a notice sent to members of a company, by any single member, or a group of members, holding at least 25% of the voting rights in respect of the company.

(6) A meeting is requisitioned under paragraph (5) by sending a notice to the office holder within 7 days after the date that the notices under paragraph (1) are sent out.

(7) If the resolution proposed in the notice is rejected by the creditors or members, the office holder may call a meeting of creditors or members, as the case may be.

(8) A reference in the Act or the Rules to anything done, or required to be done, at, or in connection with, or in consequence of, a creditors' or members' meeting, includes a reference to anything done in the course of correspondence in accordance with this Rule.

PART IV

CREDITORS' ARRANGEMENTS

Division 1 – General

Scope of and interpretation for this Part.

80. (1) This Part applies where a debtor makes or intends to make a proposal under Part II of the Act and in respect of any arrangement that may be approved.

(2) In this Part, "creditors' meeting" means a creditors' meeting held under Part II of the Act.

Additional matters that may be included in an arrangement.

81. Subject to section 15(4), and without limiting section 15(1), an arrangement may

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

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

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

(d) in the case of a company

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

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

Chairman of creditors' meeting.

82. Subject to rule **49**(2) and (3), the interim supervisor or the supervisor shall be the chairman of every creditors' meeting.

Voting at creditors' meeting.

83. (1) The majority required for the passing of a resolution at a creditors' meeting is

(a) for the approval of an arrangement or of a modification of an arrangement, 75 per cent or more in value of the creditors present in person or by proxy who vote on the resolution; and

(b) in respect of any other matter, in excess of 50 per cent in value of the creditors present in person or by proxy who vote on the resolution.

(2) A creditor is entitled to vote at a creditors' meeting if written notice of his claim is given to the interim supervisor, or supervisor, or the chairman of the meeting either at the meeting or before it.

(3) It is for the chairman to decide whether a creditor is entitled to vote in accordance with paragraph (2).

(4) At any creditors' meeting held under Part II of the Act, a creditor may vote in respect of a claim for an unliquidated amount or on any claim the value of which is not ascertained and for the purposes of voting, but not otherwise, his claim shall be valued at $1.00 unless the chairman agrees to put a higher value on it.

(5) Rules **54** and **55** are modified to the extent provided in this Rule in respect of a creditors' meeting held under Part II of the Act.

Appointment of joint supervisors.

84. Where joint supervisors of an arrangement are appointed, they may act jointly or severally unless the arrangement provides otherwise.

Division 2 – Company Creditors' Arrangement

Scope of this Division.

85. This Division applies where, under Part II, Division 2 of the Act, a company makes or intends to make a proposal and in respect of any arrangement that may be approved.

Proposal

Form and contents of proposal.

86. (1) A proposal under section 20(1)(b)(ii) shall be in writing and shall include

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

(b) a summary of the proposed arrangement with a brief explanation as to its main features and as to why the

arrangement is desirable and why the board expects the creditors to agree to it;

(c) to the best of the knowledge and belief of the board, particulars of the assets of the company specifying

(i) the value of each asset or class of assets,

(ii) the extent, if any, to which the assets are charged in favour of creditors, and

(iii) the extent, if any, to which particular assets are to be excluded from the arrangement;

(d) particulars of any assets, other than those of the company, which it is proposed will be included in the arrangement, specifying

(i) the source of the assets, and

(ii) the terms upon which they are to be made available to creditors under the arrangement;

(e) to the best of the knowledge and belief of the board, particulars of the nature and amount of the company's liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular

(i) how it is proposed that creditors who are or who claim to be secured creditors will be dealt with, detailing the amount of any secured liabilities,

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected with the company will be dealt with,

(iii) whether there are, to the knowledge of the board, any circumstances giving rise to the possibility, in the event that the company should go into liquidation, of claims for a voidable transaction under Part VIII of the Act and, if so, whether and how it is proposed to make provision for wholly or partly indemnifying the company in respect of such claims,

(iv) whether there are any persons with non-admissible or postponed claims against the company and how it is proposed that they will be dealt with, if at all,

(v) any creditors who, for the purposes of section 15(4) of the Act, are or are expected to be or claim to be preferential, detailing the amount and nature of each such claim and how it is proposed that the claims will be dealt with;

(f) how it is proposed that the claims of any creditor who did not participate in the approval of the arrangement, as provided by paragraph (2), will be dealt with;

(g) particulars of any security interest, liens, rights of set-off held by creditors and as to any guarantees of the company's debts given by third parties, specifying which of the sureties, if any, are persons connected with the company;

(h) details of the proposed duration of the arrangement;

(i) the proposed dates of distributions of assets to creditors of the company, with estimates of their amounts;

(j) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(k) details of any benefits, including guarantees, assets and any security interests that are to be offered by any director or other third party for the purposes of the arrangement;

(l) details of any further loans or credit facilities which it is intended to arrange for the company, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(m) details of the business that will be conducted by the company during the course of the arrangement and the manner in which funds payable to the company will be dealt with during the period before the arrangement is approved and during the course of the arrangement, if approved;

(n) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(o) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(p) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved; and

(q) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he is, eligible to act in relation to the company.

(2) For the purposes of paragraph (1)(f), a creditor does not participate in the approval of the arrangement if, for whatever reason

(a) he was not given notice of the creditors' meeting called under section 27; and

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

(3) Paragraphs (1) and (2) apply to a proposal prepared by the liquidator or administrator of a company under section 22 or 23, with such modifications as are appropriate.

Statement of affairs.

87. The statement of affairs provided to the nominated insolvency practitioner under section 21(1)(c) shall be verified by at least one director of the company.

Amendment or withdrawal of proposal before appointment of interim supervisor.

88. (1) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may before the nominated insolvency practitioner has accepted appointment as interim supervisor

(a) amend a proposal by providing a copy of the amended proposal to the nominated insolvency practitioner; or

(b) withdraw the proposal by providing a notice of withdrawal to the nominated insolvency practitioner.

(2) In the case of a company that is not in administration or liquidation, the nominated insolvency practitioner shall also be provided with a copy of the resolution of the board approving the amendment or withdrawal.

(3) The withdrawal of a proposal under section 26(1)(a) takes effect from the time that the notice of withdrawal is received by the nominated insolvency practitioner.

(4) The nominated insolvency practitioner shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

Amendment or withdrawal of proposal after appointment of interim supervisor.

89. (1) This rule applies if the board of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the appointment of an interim supervisor but before a creditors' meeting is called under section 27.

(2) A proposal is deemed to be amended under this rule if

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the board's resolution before the interim supervisor calls a creditors' meeting under section 27; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to prepare a report on the amended proposal before giving notice of the creditors' meeting under section 27.

(4) A proposal may be withdrawn under section 26(1)(b) by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the board's resolution, before the interim supervisor calls a creditors' meeting under section 27.

(5) On receipt of a notice of withdrawal in accordance with paragraph (4), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

(6) The withdrawal of a proposal under section 26(1)(b), and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(7) If the interim supervisor has filed a notice of his appointment under section 24 with the Registrar and, if appropriate, the Commission, he shall, with two business days of receiving the withdrawal notice, file a copy of the notice with the Registrar and, if appropriate, the Commission.

(8) Where a proposal is withdrawn under this Rule, the company is liable to the former interim supervisor in respect of any remuneration payable to him, including the costs of complying with paragraph (7).

Amendment or withdrawal of proposal before creditors' meeting.

90. (1) This rule applies if the board of a company or, in the case of a company in administration or liquidation, its administrator or liquidator, wishes to amend or withdraw a proposal after the calling of a creditors' meeting under section 27 but before the meeting is held.

(2) A proposal is deemed to be amended under this rule if

(a) the amendment is provided to the interim supervisor in writing together with, if appropriate, a copy of the board's resolution at least seven days prior to the date fixed in the notice calling the meeting under section 27; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Where a proposal is amended under this Rule, the interim supervisor shall give at least two business days notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 27.

(4) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to comply with paragraph (3).

(5) A proposal may be withdrawn under section 26(1)(c) by providing the interim supervisor with a notice of withdrawal together with, if appropriate, a copy of the board's resolution, at least five business days prior to the date fixed for the creditors' meeting called under section 27.

(6) On receipt of a notice of withdrawal in accordance with paragraph (5), the interim supervisor shall endorse the notice of withdrawal with the time and date that it was received and return a copy to the board, administrator or liquidator, as the case may be.

(7) The withdrawal of a proposal under section 26(1)(c), and the termination of the interim supervisor's appointment, takes effect from the time that he receives the notice of withdrawal.

(8) Forthwith on receiving a notice of withdrawal under paragraph (5), the former interim supervisor shall

(a) send a notice cancelling the creditors' meeting to every creditor, member and director of the company and to the company itself; and

(b) file a copy of the notice of withdrawal with the Registrar and, if the company is a regulated person, with the Commission.

(9) Where a proposal is withdrawn under section 26(1)(c), the company is liable to the former interim supervisor in respect of any remuneration payable to him, including the costs of complying with paragraph (8).

Effect of amendment or withdrawal of proposal.

91. Where a proposal is amended under rules **88**, **89** or **90**, Part II, Division 2 of the Act applies to the amended proposal as if it was the original proposal.

Appointment of Interim Supervisor

Appointment of interim supervisor by board.

92. If the insolvency practitioner nominated by the board of a company agrees to act as interim supervisor, he shall

(a) cause a copy of the notice of intention to appoint him as interim supervisor to be endorsed with

(i) an acknowledgement that he has received a copy of the resolution of the board together with a copy of the proposal approved by the board and a copy of the company's statement of affairs,

(ii) the date upon which he received the notice of intention to appoint him interim supervisor and copies of the resolution, the proposal and the statement of affairs,

(iii) the date or dates upon which he received an amended proposal from the board or confirmation that the proposal has not been amended,

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the company, and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed notice to the board at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

Appointment by administrator or liquidator of another insolvency practitioner as interim supervisor.

93. (1) Where the administrator or liquidator of a company intends to appoint another insolvency practitioner as interim supervisor, the notice of intention to appoint shall be in the form for an appointment made by the board of a company, with suitable modifications.

(2) If the insolvency practitioner who the administrator or liquidator of a company intends to appoint as interim supervisor agrees to act, he shall

(a) cause a copy of the notice of intention to appoint him as interim supervisor to be endorsed with

(i) an acknowledgement that he has received a copy of the proposal,

(ii) the date upon which he received the proposal,

(iii) the date or dates upon which he received an amended proposal from the administrator or liquidator or confirmation that the proposal has not been amended,

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the company, and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed notice to the administrator or liquidator at the address specified in the notice; and

(c) retain a copy of the endorsed notice.

Reports to Creditors

Report to creditors on proposal.

94. The report that the interim supervisor is required to make to the creditors' meeting called to consider the board's proposal, shall include

(a) in the case of an interim supervisor appointed by the board of a company, a summary of the affairs of the company and the conduct of its business during the proposal period;

(b) in the case of a company that is not in liquidation or administration, his opinion as to whether the company is insolvent or likely to become insolvent;

(c) his opinion as to whether the arrangement which is being proposed has a reasonable prospect of being implemented;

(d) the costs to the company of his acting as interim supervisor;

(e) any other matters that he considers should be brought to the attention of the creditors.

Report on modification of arrangement.

95. The supervisor's written report to creditors on a proposed modification to an arrangement shall include

(a) details of the proposed modification together with an explanation as to why the supervisor considers that the modification is necessary or desirable;

(b) a brief summary of the implementation of the arrangement to the date of the report, including details of any material differences between the implementation and the proposal approved by creditors; and

(c) any other information that the supervisor considers would assist the creditors in deciding whether to approve the modification.

Withdrawal of Proposal at Creditors' Meeting

Withdrawal of proposal.

96. (1) A proposal may be withdrawn at the creditors' meeting under section 31(4) by providing to the chairman of the meeting at any time before the proposal has been accepted by the creditors a notice of withdrawal and, if appropriate, a copy of the board's resolution.

(2) Where a proposal is withdrawn under section 31(4), the chairman's report under section 32 shall state that fact.

(3) The interim supervisor's appointment is terminated with effect from the conclusion of the creditors' meeting at which the proposal was withdrawn.

(4) Where a proposal is withdrawn under section 31(4), the company is liable to the former interim supervisor in respect of any remuneration payable to him, including the costs of complying with section 32.

Termination of Arrangement

Termination of arrangement.

97. Where an arrangement terminates prior to its completion, the supervisor shall, in the report prepared under section 37(2)(c) explain the reason why the arrangement has terminated.

Applications to Court

Application for appointment of supervisor or interim supervisor.

98. (1) A person, other than the supervisor or interim supervisor, who makes an application to the Court under section 41 shall serve a sealed copy of the application on the supervisor or interim supervisor at least seven days before the date fixed for the hearing.

(2) Where the Court makes an order under section 41 on the application of a person other than the supervisor or interim supervisor, the person who applied for the order shall serve a sealed copy of the order on the supervisor or interim supervisor.

Application where arrangement approved or modified.

99. (1) A person, other than the supervisor, who makes an application to the Court under section 42 shall serve a sealed copy of the application on the supervisor at least seven days before the date fixed for the hearing.

(2) Where the Court makes an order under section 42 on the application of a person other than the supervisor or interim supervisor, the person who applied for the order shall serve a sealed copy of the order on the supervisor or interim supervisor.

Application on grounds of unfair prejudice.

100. (1) In considering whether to make an order under section 43, the Court may take into account the time that has elapsed between the applicant first becoming aware of the circumstances which he claims ground a claim under the section and the date of his application.

(2) Where the Court makes an order of revocation or suspension under section 43, the person who applied for the order shall serve sealed copies of the order

(a) on the supervisor; and

(b) on the board of the company or the administrator or liquidator, depending upon who made the proposal for the arrangement.

(3) If the order includes a direction by the Court under section 43 for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(4) The board or the administrator or liquidator, as the case may be, shall

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the arrangement or who, not having been sent that notice, appear to be affected by the order;

(b) within seven days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether it is intended to make a revised proposal to the company and its creditors, or to invite re-consideration of the original proposal.

(5) The person on whose application the order of revocation or suspension was made shall, within seven days after the making of the order, deliver a copy of the order with the Registrar.

Division 3 – Individual Creditors' Arrangement

Scope of this Part.

101. This Division applies where, under Part II, Division 3 of the Act an individual debtor makes or intends to make a proposal and in respect of any arrangement that may be approved.

Proposal

Contents of proposal.

102. A proposal shall be in writing and shall include

(a) a summary of the proposed arrangement with a brief explanation as to its main features and as to why the arrangement is desirable and why the debtor expects the creditors to agree to it;

(b) to the best of the debtor's knowledge and belief, particulars of his assets specifying

(i) the value of each asset or class of assets,

(ii) the extent, if any, to which the assets are charged in favour of creditors, and

(iii) the extent, if any, to which particular assets are to be excluded from the arrangement;

(c) particulars of any assets, other than those of the debtor himself, which it is proposed will be included in the arrangement, specifying

(i) the source of the assets, and

(ii) the terms upon which they are to be made available to creditors under the arrangement;

(d) to the best of the debtor's knowledge and belief, particulars of the nature and amount of his liabilities, including any disputed claims and any joint obligations, and the manner in which they will be met, modified or postponed or otherwise dealt with under the arrangement, specifying in particular

(i) how it is proposed that creditors who are or who claim to be preferential or secured creditors will be dealt with,

(ii) how it is proposed that any creditors or joint, or joint and several, debtors who are connected with the debtor will be dealt with,

(iii) whether there are, to the knowledge of the debtor, any circumstances giving rise to the possibility, in the event that a bankruptcy order should be made against the debtor, of claims for a voidable transaction under Part XIV of the Act and, if so, whether and how it is proposed to make provision for wholly or partly making the value of such claims available to the creditors under the arrangement, and

(iv) whether there any persons with non-admissible or postponed claims against the debtor and how it is proposed that they will be dealt with, if at all;

(e) particulars of any security interests, liens, rights of set-off held by creditors and as to any guarantees of the debtor's debts given by third parties, specifying which of the sureties, if any, are connected with the debtor;

(f) details of the proposed duration of the arrangement;

(g) the proposed dates of distributions of assets to creditors of the debtor, with estimates of their amounts;

(h) particulars of the remuneration proposed to be paid to the interim supervisor and to the supervisor and how the remuneration and the other costs of the interim supervisor and the supervisor are to be met;

(i) details of any benefits, including guarantees, assets and any security interests that are to be offered by any person other than the debtor for the purposes of the arrangement;

(j) details of any further loans or credit facilities which it is intended to arrange for the debtor, specifying on what terms and how it is proposed that the additional liabilities, including interest, are to be repaid;

(k) details of any business that will be conducted by the debtor during the course of the arrangement and the manner in which funds payable to him will be dealt with during the period before the arrangement is approved and during the course of the arrangement, if approved;

(l) the manner in which funds or other assets held for the purpose of the arrangement are to be banked, invested or otherwise dealt with pending distribution to the creditors;

(m) the manner in which funds or other assets held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(n) the functions to be undertaken by the interim supervisor and by the supervisor if the arrangement is approved; and

(o) the name and address of the persons proposed as the supervisor and interim supervisor, who may be the same person, and confirmation that they are, or he is, eligible to act in respect of the debtor.

Amendment of proposal before appointment of interim supervisor.

103. (1) A debtor may amend a proposal by providing a copy of the amended proposal to the nominated insolvency practitioner before he has accepted appointment as interim supervisor.

(2) Where a proposal is amended under paragraph (1), Part 2, Division 3 of the Act applies to the amended proposal as if it was the original proposal.

104. (1) This rule applies if a debtor wishes to amend a proposal after the appointment of an interim supervisor but before a meeting of creditors is called under section 58. Amendment of proposal after appointment of interim supervisor.

(2) A proposal is deemed to be amended under this rule if

(a) the amendment is provided to the interim supervisor in writing before the interim supervisor calls a meeting of creditors under section 58; and

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him.

(3) Without limiting paragraph (2)(b), the interim supervisor may refuse to consent to the amendment if he considers that he does not have sufficient time to amend the proposal and prepare a report on the amended proposal before giving notice of the creditors' meeting under section 58.

105. (1) This rule applies if a debtor wishes to amend a proposal after the calling of a meeting of creditors under section 58 but before the meeting of creditors is held. Amendment of proposal before creditors' meeting.

(2) A proposal is deemed to be amended under this rule if

(a) the amendment is provided to the interim supervisor in writing at least four business days prior to the date fixed in the notice calling the meeting under section 58;

(b) the interim supervisor consents to the proposal being amended in the terms of the amendment provided to him; and

(c) the interim supervisor gives at least two business days notice of the amendment, together with a brief report on the effect of the amendment, to every person who received the notice calling the meeting under section 58.

Appointment of Interim Supervisor

106. If the insolvency practitioner nominated by a debtor agrees to act as interim supervisor, he shall Appointment of interim supervisor.

(a) cause a copy of the instrument of appointment to be endorsed with

(i) an acknowledgement that he has received a copy of the proposal together with the debtor's statement of affairs,

(ii) the date upon which he received the instrument of appointment together with a copy of the proposal,

(iii) the date or dates upon which he received an amended proposal from the debtor or confirmation that the proposal has not been amended,

(iv) confirmation that, to the best of his knowledge, he is eligible to act as an insolvency practitioner in respect of the debtor, and

(v) his agreement to act as interim supervisor;

(b) deliver the endorsed instrument of appointment to the debtor at the address specified in the instrument of appointment; and.

(c) retain a copy of the endorsed notice in his records.

Moratorium

Application for moratorium order.

107. (1) The affidavit supporting an application for a moratorium order shall

(a) set out the reasons justifying the application;

(b) set out particulars of any execution or other legal process which, to the debtor's knowledge, has been commenced against him;

(c) confirm that, in accordance with section 295, the Court could make a bankruptcy order against the debtor on his application;

(d) confirm that no previous application for a moratorium order has been made by the debtor in the period of 12 months immediately preceding the date of the application; and

(e) confirm that an eligible insolvency practitioner has accepted appointment as interim supervisor.

(2) On receipt of the application and affidavit, the Court shall fix a venue, date and time for the hearing of the application.

Interim Supervisor's Report on Proposal

108. (1) The report submitted by the interim supervisor to the Court under section 56 shall include Report to Court.

(a) a summary of the affairs of the debtor and, if relevant, the conduct of his business during the proposal period;

(b) his opinion as to whether the debtor is insolvent;

(c) his opinion as to whether the arrangement which the debtor is proposing has a reasonable chance of being approved and implemented;

(d) his opinion as to whether a meeting of the debtor's creditors should be called to consider the proposal;

(e) if, in his opinion, such a meeting should be called, the venue he proposes for the meeting;

(f) the costs of his acting as interim supervisor; and

(g) any other matters that he considers should be brought to the attention of the Court.

(2) The date proposed by the interim supervisor for a creditors' meeting under paragraph (1)(e) shall be at least 21 days but no more than 35 days from the date that his report is filed with the Court.

109. (1) The notice of arrangement required to be filed with the Official Receiver shall contain the following details Notice of arrangement.

(a) the name and address of the debtor;

(b) the date on which the arrangement was approved by the creditors; and

(c) the name and address of the supervisor.

(2) A person who is appointed supervisor of an arrangement, whether as the first supervisor, an additional supervisor or a replacement supervisor, shall file a notice of his appointment with the Official Receiver.

(3) A person vacating office as supervisor shall file a notice of vacation of office with the Official Receiver.

Applications to Court

Application concerning supervisor or interim supervisor.

110. (1) Where a person intends to apply to the Court under section 69 for the appointment or removal of a supervisor or an interim supervisor, he shall give every supervisor or interim supervisor seven days' notice of his application.

(2) The supervisor, or interim supervisor, is entitled to appear and be represented at the hearing of an application referred to in paragraph (1).

Revocation or suspension of arrangement.

111. (1) This rule applies where the Court makes an order of revocation or suspension under section 70.

(2) The person who applied for the order shall serve sealed copies of the order on the supervisor and on the debtor.

(3) If the order includes a direction by the Court for any further creditors' meetings to be summoned, notice shall also be given, by the person who applied for the order, to whoever is, in accordance with the direction, required to summon the meetings.

(5) The debtor shall

(a) immediately after receiving a copy of the Court's order, give notice of it to all persons who were sent notice of the creditors' meeting that approved the arrangement or who, not having been sent that notice, appear to be affected by the order;

(b) within seven days of their receiving a copy of the order, or within such longer period as the Court may allow, give notice to the Court whether he intends to make a revised proposal to his creditors, or to invite re-consideration of the original proposal.

(6) The person on whose application the order of revocation or suspension was made shall, within seven days after the making of the order, file a copy of the order with the Official Receiver.

Service of orders.

112. Where a moratorium order is made or any order is made on the consideration of the interim supervisor's report, at least two sealed copies of the order shall be sent by the Court forthwith to the debtor and the debtor shall serve a copy of the order on

(a) the interim supervisor; and

(b) any creditor who, to his knowledge has applied for a bankruptcy order against him.

PART V

ADMINISTRATION

Preliminary

Interpretation and scope of this Part.

113. (1) In this Part, unless otherwise stated "statutory purpose" means a purpose specified in section 76(1).

(2) This Part applies to

(a) an application for the appointment of an administrator; and

(b) administration proceedings;

under Part III of the Act.

Obtaining an Administration Order

Application.

114. Application for an administration order is made by filing at Court

(a) an application complying with rule **115**; and

(b) an affidavit in support of the application complying with rule **116**.

Form of application.

115. (1) An application for an administration order shall

(a) specify which of the statutory purposes is sought to be achieved by the making of the administration order;

(b) state the applicant's belief that the company is or is likely to become insolvent;

(c) specify the name and address of the insolvency practitioner the applicant proposes for appointment as administrator; and

(d) state the applicant's address for service which, in the case of an application made by the company itself, shall, in the absence of special reasons to the contrary, be the registered office of the company.

(2) An application for an administration order made by two or more creditors shall name all the creditors as applicants but, from the filing of the

application, it is to be treated as the application of the first named creditor applying on behalf of himself and other creditors.

(3) An application for an administration order made by the directors of a company shall, from the filing of the application, be treated as the application of the company.

(4) The address for service stated on an application filed under paragraph (2) shall be that of the first named creditor.

(5) An application for an administration order shall have attached to it a written statement signed by the insolvency practitioner whom the applicant proposes for appointment as administrator that, in his opinion, there is a reasonable prospect that the making of the administration order will achieve the statutory purposes specified in the application.

Affidavit in support.

116. (1) The affidavit in support of an application for an administration order shall

(a) state the deponent's belief that the company is or is likely to become insolvent; and

(b) to the best of the deponent's knowledge and belief

(i) provide details of the financial position of the company, specifying its assets and liabilities,

(ii) provide details of any security interest held by creditors of the company, specifying whether the holder of any security interest has the power to appoint a receiver and, if so, whether a receiver has been appointed and stating whether the receiver that may be or has been appointed is an administrative receiver;

(iii) provide details of any insolvency proceedings that have commenced in relation to the company and whether an application has been made for the appointment of a liquidator; and

(iv) set out any other facts or matters that will or may assist the Court in deciding whether to make an administration order in respect of the company.

(2) Where an application for an administration order is made by the liquidator of a company under section 80, the affidavit is support of the application shall also contain

(a) the date upon which the liquidation commenced and whether it was commenced on an appointment by the Court or by the members;

(b) the reasons why the liquidator considers that an administration order should be made; and

(c) all other matters that the liquidator considers would assist the Court in determining the application and in making provision for the matters specified in section 80(2)(a)(ii) to (iv).

(3) An affidavit under paragraph (1) shall be sworn

(a) in the case of an application made by a company, by a director or the secretary of the company;

(b) in the case of an application made by a creditor, by the creditor or a person authorized by the creditor;

(c) in the case of an application made by the supervisor of an arrangement, by the supervisor or a person authorized by him;

(d) in the case of an application made by the liquidator, by the liquidator or a person authorized by him; and

(e) in the case of an application made by the Commission, by an authorized officer of the Commission.

Subsequent application for appointment of liquidator.

117. If, after the filing of an application in respect of a company, the applicant becomes aware that an application for the appointment of a liquidator of the company has been made, he shall notify the Court in writing.

Service of application.

118. (1) Service shall be effected on each person specified in section 77(3) by serving him with a sealed copy of the application for an administration order, the statement of the insolvency practitioner proposed for appointment as administrator attached to the application and the affidavit in support of the application, including the documents exhibited to the affidavit.

(2) For the purposes of section 77(3)(h), the following persons shall also be served with a copy of an application for an administration order

(a) the insolvency practitioner proposed as administrator; and

(b) if a supervisor of an arrangement has been appointed under Part II, Division 2 of the Act, on the supervisor.

119. A sealed copy of the application for an administration order shall be sent to Copies of application to be sent to other persons.

(a) any person who, to the applicant's knowledge, is charged with an execution or other legal process against the company or its assets; and

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets.

120. The following are entitled to appear or be represented at the hearing of an application for an administration order Hearing of application.

(a) the applicant;

(b) a person entitled under the Act or the Rules to be served with a copy of the application;

(c) the person proposed to be appointed administrator; and

(d) with the leave of the Court, any other person who appears to the Court to have an interest in the application.

Administration Order

121. (1) An administration order shall be in the prescribed form. Order.

(2) Where the Court makes an administration order, the costs of the applicant and of any person whose costs are allowed by the Court, are payable as an expense of the administration.

(3) Where the Court makes an administration order on the application of the liquidator of a company under section 80, it shall

(a) provide for the payment of the expenses of the liquidator;

(b) make provisions regarding any indemnity given to the liquidator;

(c) make provision regarding the handling or realization of any of the company's assets in the hands of or under the control of the liquidator; and

(d) treat the application for the administration order as an application by the liquidator for his release and make any order that it could make under section 235;

and the Court may make such other order as it considers appropriate.

Notice of administration order.

122. (1) Where an administration order is made, the Court shall, as soon as reasonably practicable, send two sealed copies of the order to the applicant.

(2) The applicant shall, as soon as reasonably practicable, send a sealed copy of the administration order to the person appointed as administrator.

(3) For the purposes of section 82(1)(a)(iv), the following persons shall be given notice of the appointment of an administrator

(a) any person who, to the administrator's knowledge, is charged with an execution or other legal process against the company or its assets;

(b) any person who, to the applicant's knowledge, has distrained against the company or its assets;

(c) if a supervisor of an arrangement has been appointed under Part II, Division 2 of the Act, on the supervisor; and

(d) if the company is or has been a regulated person, the Commission.

Proposal and statement of affairs

Matters to be set out in report on proposals.

123. (1) The report of the administrator on his proposals prepared under section 100(1)(a) shall include the following

(a) details of the name, registered office, registered number, date of incorporation and any trading names of the company;

(b) details relating to his appointment as administrator, the purposes for which an administration order was applied for and made, and any subsequent variation of those purposes;

(c) the names of the directors and any secretary of the company and details of any shareholdings they may have;

(d) an account of the circumstances giving rise to the application for an administration order;

(e) if a statement of affairs has been submitted, a copy or summary of it, with the administrator's comments, if any;

(f) if an order of limited disclosure has been made under section 280, a statement of that fact, as well as

(i) details of the relevant person who provided the statement of affairs,

(ii) the date of the order of limited disclosure, and

(iii) the details or a summary of the details that are not subject to that order;

(g) if a full statement of affairs is not provided, the names, addresses and debts of the creditors of the company, including details of any security held;

(h) if no statement of affairs has been submitted, to the best of his knowledge and belief

(i) details of the financial position of the company at the latest practicable date, which shall, unless the Court otherwise orders, be a date not earlier than that of the administration order,

(ii) a list of the company's creditors, including any security held, and

(iii) an explanation as to why no statement of affairs has been submitted.

(i) the manner in which the affairs and business of the company

(i) have, since the date of the administrator's appointment, been managed and financed, including where any assets have been disposed of, the reasons for such disposals and the terms upon which such disposals were made, and

(ii) will, if the administrator's proposals are approved, continue to be managed and financed; and

(j) such other information, if any, that the administrator considers necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) The proposals of an administrator, including the proposals as amended or modified, shall not, except with the written agreement of the secured creditor or the preferential creditor concerned

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

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

(3) Where the administrator intends to apply to the Court under section 110 for the administration order to be discharged before he has sent a report to creditors under section 100(1), he shall, at least ten days before the hearing of such an application, send to all creditors of the company a report containing the information required by paragraph (1)(a) to (i) of this rule.

(4) The Court shall not discharge an administration order under section 110 unless it is satisfied that the administrator has sent a report to creditors under section 100(1) or under paragraph (3).

Advertisement of availability of proposal for members.

124. (1) The administrator, instead of sending a copy of a notice calling a meeting of creditors and a copy of his report to members under sections 100(1)(d) and 104(1)(d), may advertise a notice

(a) specifying the date and venue of the creditors' meeting; and

(b) undertaking to provide a copy of the statement of proposals free of charge to any member of the company who applies in writing to a specified address.

(2) Rule **31**(1) applies to an advertisement under paragraph (1) with the substitution in rule **31**(1)(b) of "members" for "creditors".

(3) A notice under paragraph (1) shall be advertised no later than 14 days prior to the date set for the meeting of creditors.

Statement of affairs.

125. If the administrator receives a statement of affairs after he has sent the report on his proposals to creditors, he shall, as soon as reasonably practicable after receiving the statement of affairs, send a copy of the statement of affairs, or a summary thereof, to the creditors.

Minutes of creditors' meeting.

126. In administration proceedings, the minutes required to be kept under Rule **60** shall be entered in the company's minute book.

127. (1) A request to the administrator of a company to requisition a meeting under section 100(4) shall be delivered to the administrator within 14 days of the date when the administrator sent his report to the creditors under section 100(1)(c). Requisition of meeting by creditors under section 100(4).

(2) Subject to paragraph (1), Rule **48** applies to the requisition of a creditors' meeting under section 100(4).

128. (1) The report of the administrator on his proposed modifications to approved proposals prepared under section 104(1)(a) shall include the following Modification of proposals.

(a) the matters specified in Rule **123**(1), subparagraphs (a), (b) and (c);

(b) a summary of the initial proposals and the reasons for proposing a modification;

(c) details of the proposed modification including details of the administrator's assessment of the likely impact of the proposed modification upon creditors generally or upon each class of creditors;

(d) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the proposed modification.

129. (1) When there is any change in the membership of a creditors' committee appointed in an administration, the administrator shall file with the Registrar a copy of the notice filed with the Court under section 425(3)(a). Creditors' committee.

(2) In the case of a company in administration, a record of each resolution of the creditors' committee shall be entered into the company's minute book.

130. The final report prepared by an administrator under section 107(2)(c) shall include a summary of Final report.

(a) the administrator's proposals;

(b) any modifications to those proposals;

(c) the steps taken during the administration; and

(d) the outcome of the administration.

Administrator

Resignation of administrator.

131. (1) The grounds upon which an administrator may resign are

(a) his ill health;

(b) because he intends ceasing to practice as an insolvency practitioner; or

(c) because there is some conflict of interest, or change of personal circumstances, which precludes or makes impracticable the further discharge by him of the duties of administrator.

(2) The administrator shall give 7 days notice of his intention to resign or of an application to the Court under section 94(2)(a) for leave to resign

(a) if there is a continuing administrator of the company, to him;

(b) if there is no continuing administrator, to the creditors' committee, if any; or

(c) if there is no administrator or creditors' committee, to the company and its creditors.

(3) An administrator who resigns shall, within 5 days of his resignation under section 94(2)(a), file a notice of his resignation with the Court and the Registrar and send a copy of the notice to each person to whom a notice of his intention to resign was given under paragraph (2).

(4) Where an administrator resigns under section 94(2)(b) (ceasing to be an eligible insolvency practitioner), he shall

(a) forthwith file a notice of his resignation, specifying the reason for his resignation, with the Court and the Registrar; and

(b) within 5 days of his resignation, send a copy of the notice filed with the Court to the persons specified in paragraph (2).

Death of administrator.

132. (1) Where the administrator dies, his personal representative shall give notice of his death to the Court and the Registrar, specifying the date of his death, unless notice has already been given to the Court and the Registrar under paragraphs (2) or (3).

(2) If an administrator who dies was a partner in a firm, notice of his death may be given to the Court and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of an administrator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

Application by creditor to remove administrator.

133. (1) An application by a creditor of a company to remove an administrator from office shall state the grounds on which it is requested that the administrator should be removed from office.

(2) Notice of the application shall be served on the administrator, the person who applied for the administration order, the creditors' committee (if any), any joint administrator and, where there is neither a creditors' committee or a joint administrator, to the company and each of the creditors of the company not less than 5 business days before the date fixed for the application to be heard.

(3) Where a Court makes an order removing the administrator it shall give a copy of the order to the applicant who as soon as reasonably practicable shall send a copy to the administrator.

(4) The applicant shall, within 5 business days of the order being made, send a copy of the order to the Registrar and to each person to whom notice of the application was sent.

Application to replace administrator.

134. (1) An application to the Court under section 95 to appoint a replacement administrator

(a) shall specify the grounds of the application; and

(b) shall be served on the person who applied for the administration order and on any person who was entitled to be served with notice of the application for the administration order.

(2) An application under section 95 shall be supported by an affidavit deposing as to the matters set out in the application and as to any other matters that may assist the Court in determining the application.

Application to appoint joint administrator.

135. (1) Application may be made to the Court to appoint a joint administrator.

(2) An application under paragraph (1) and any order made by the Court shall, for the purposes of form of application, notice, hearing and advertisement be treated as an application under section 95.

Administrator's duties on vacating office.

136. Where a person, for whatever reason, ceases to hold office as administrator, he shall as soon as reasonably practicable deliver up to the person succeeding him as administrator

(a) the assets of the company, after deduction of any expenses properly incurred;

(b) the records of, and relating to, the administration; and

(c) the company's books, papers and other records.

Discharge of administration order.

137. (1) Together with an application for an order varying or discharging the administration order under section 110(2)(a), the administrator shall file with the Court a report

(a) indicating the reasons why the administrator considers that the administration order should be varied or discharged;

(b) if the application is for the discharge of the order, setting out his opinion, with reasons, as to whether the Court should make an order under section 111(1)(a) or (b) or, if not, his opinion as to the future prospects for the company; and

(c) if he is of the opinion that the Court should make an order under section 111(1)(a), whether he seeks appointment, or would consent to being appointed, as liquidator.

(2) The administrator shall send the company and each creditor of the company a copy of an application under section 110(2)(a) together with his report at least 7 days before the date fixed for hearing of the application.

(3) Together with an application for an order varying or discharging the administration order under section 110(2)(b), the administrator shall file with the Court a report

(a) indicating, with reasons, whether he agrees with the creditors' requirement that he make the application;

(b) indicating, with reasons, whether or not he considers that the administration order should be varied or discharged;

(c) if he considers that the administration order should be discharged, setting out his opinion, with reasons, as to whether the Court should make an order under section 111(1)(a) or (b) or, if not, his opinion as to the future prospects for the company;

(d) if he is of the opinion that the Court should make an order under section 111(1)(a), whether he seeks appointment, or would consent to being appointed, as liquidator; and

(e) if he has indicated that he would seeks appointment, or would consent to being appointed, as liquidator, the date upon which he so notified creditors, either in writing or at a meeting of creditors and advised them .

(4) A report filed under paragraphs (1) or (3) shall have the most recent accounts and report prepared by the administrator under section 107 annexed to it and a report filed under paragraph (3) shall also have annexed to it the resolution of the creditors requiring him to make the application.

(5) Where, in a report filed under paragraph (1) or (3), the administrator indicates that he seeks appointment, or would consent to being appointed, as liquidator, he shall, at least seven days prior to the date fixed for the hearing of the application to discharge the administration order, notify the creditors of this and that they may send him written notice of their support or objection to his appointment as liquidator which he will bring to the attention of the Court.

(6) The administrator may comply with paragraph (5)

(a) by including the notification in his report prepared under paragraph (1);

(b) by notifying creditors at a meeting of creditors; or

(c) by separate written notice.

(7) Where an administration order is discharged or varied, the administrator or where the order is discharged the person who, immediately before the discharge, was the administrator of the company, shall within 21 days of the date of the order send a notice of the order to the company and to each creditor of the company.

Expenses of administration.

138. (1) Subject to paragraph (2), the expenses of an administration are payable in the following order of priority

(a) expenses properly incurred by the administrator in performing his functions;

(b) the cost of any security provided by the administrator in accordance with the Act or the Rules;

(c) the costs of the applicant for the administration order and any person appearing on the hearing of the application whose costs are allowed by the Court;

(d) any amount payable to a person employed or authorized to assist in the preparation of a statement of affairs or statement of concurrence;

(e) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a statement of affairs or statement of concurrence;

(f) any necessary disbursements by the administrator in the course of the administration (including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator under the Rules;

(g) the remuneration or emoluments of any person who has been employed by the administrator to perform any services for the company, as required or authorised under the Act or the Rules;

(h) the remuneration of the administrator.

(2) Where the assets of a company are insufficient to satisfy the liabilities specified in paragraph (1), the Court may make an order as to the payment out of the assets of the expenses incurred in the administration in such order of priority as it considers appropriate.

PART VI

RECEIVERSHIP

General

Scope of this Part.

139. The rules in this Part apply where Part IV of the Act applies to a receiver of a company or to the appointment of a receiver of a company.

Persons not eligible to be appointed or act as receiver.

140. For the purposes of section 116(1)(f), the following persons are not eligible to be appointed or to act as a receiver

(a) a person who has not attained the age of eighteen years;

(b) a person who is certified to be insane or otherwise adjudged to be of unsound mind under any law in force in any country.

Notices and Advertisement

Notice and advertisement of appointment.

141. (1) Subject to paragraph (2), the notice of appointment referred to in section 118(1) shall

(a) state the receiver's name and address, and the date of his appointment;

(b) state the name of the person by whom the appointment was made;

(c) if the receiver is appointed to act jointly with an existing receiver or in place of a receiver who has vacated office, that state that fact;

(d) state the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;

(e) state a brief description of the assets of the company in respect of which the receiver has been appointed.

(2) The notice of appointment of an administrative receiver required to be sent to the company under section 118(1)(a) and to the creditors under section 118(2)(b) shall, in addition to the matters specified in paragraph (1), state

(a) any name with which the company has been registered in the 12 months preceding the date of his appointment; and

(c) any name under which the company has traded at any time in those 12 months, if substantially different from its registered name.

(3) The advertisement by an administrative receiver of his appointment shall state the matters set out in subparagraphs (a) to (c) of paragraph (1).

Notice of vacation of office.

142. An administrative receiver who, under section 120(3), is required to give notice of his resignation or vacation of office shall, if there is no creditors' committee, also give notice to the creditors of the company.

Report and meeting of unsecured creditors.

143. (1) If, when he sends his report to the Registrar under section 147(1), the administrative receiver has not received a statement of affairs, he shall in his report state that fact and state, to the best of his knowledge and belief, the reasons therefore.

(2) The notice calling a meeting of unsecured creditors under section 147(3)(c) shall state that creditors whose claims are wholly secured are not entitled to attend or be represented at the meeting.

Miscellaneous Provisions

Application to dispose of charged assets.

144. (1) This rule applies where the administrative receiver of a company applies to the Court under section 145 for authority to dispose of assets of the company subject to a security interest.

(2) The administrative receiver shall forthwith give notice of the hearing of an application under section 145 to the person who is the holder of the security interest.

(3) If an order is made under section 145, the administrative receiver shall forthwith serve a sealed copy of the order on the holder of the security interest.

Death of administrative receiver.

145. If an administrative receiver dies, the person who appointed him shall, forthwith on his becoming aware of the death, give notice of it to

(a) the Registrar;

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

(c) in any case, to the members of the creditors' committee, if any.

PART VII

PROVISIONS APPLICABLE TO THE LIQUIDATION OF COMPANIES

AND TO THE BANKRUPTCY OF INDIVIDUALS

Division 1 – Quantification of Claims

Claim in currency other than dollars.

146. The rate of exchange used for the purposes of converting a liability into dollars in accordance with section 154 is the closing mid-point rate published in the Financial Times (US Edition) for the relevant date.

Discounts.

147. Any trade and other discounts which would have been available to the debtor but for the insolvency proceeding, except any discount for immediate, early or cash settlement, shall be deducted from a creditor's claim.

Discount for debt payable after commencement date.

148. (1) This rule provides for the discount to be applied to a claim based on a liability that, at the commencement of the insolvency proceeding, was not payable by the company until after the commencement of the insolvency proceeding.

(2) The claim shall be reduced by a percentage calculated as follows

$$\frac{I \times M}{12}$$

where

(a) I = 5%; and

(b) M is the number of months, expressed if need be as, or as including, fractions of a month, between the commencement of the liquidation and the date when the liability would otherwise have been due for payment.

Division 2 – Statutory Demand

Statutory demand.

149. (1) The minimum sum for which a statutory demand may be issued is $2,000.00.

(2) Where the amount claimed in a statutory demand made against a person includes

(a) a charge by way of interest not previously notified to the person as included in his liability; or

(b) any other charge accruing from time to time;

the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(3) Where paragraph (2) applies, the amount claimed shall be limited to that amount that has accrued due at the date of the demand.

(4) A statutory demand shall include the name, address and the contact details, if any, of an individual or individuals with whom the debtor may communicate with a view to securing or compounding for the debt to the satisfaction of the creditor.

Service on individual.

150. (1) A creditor shall make all reasonable attempts to effect personal service of a statutory demand on an individual.

(2) Where a creditor is not able to effect personal service, a statutory demand may be served on an individual by leaving the demand addressed to the individual at such of the places specified in paragraph (3) as would be most likely to bring the demand to his notice.

(3) The places referred to in paragraph (2) are his last known place of residence, place of business or place of employment.

(4) Where the creditor has no knowledge of the last known place of residence, place of business or place of employment of the individual, he may serve the statutory demand by advertisement in one or more local newspapers.

(5) Where service is effect in accordance with paragraph (4), the period of time specified in section 155(2)(d) for compliance with the demand shall run from the date of publication of the advertisement.

Service out of jurisdiction.

151. Where the Court permits a statutory demand is to be served outside the Virgin Islands in accordance with CPR Part 7, the period of time specified in section 155(2)(d) for compliance with the demand shall be increased to 28 days or such longer period of time as the Court may order.

Setting aside of statutory demand.

152. (1) An application to set aside a statutory demand shall be supported by an affidavit

(a) specifying the date upon which the debtor was served with the statutory demand; and

(b) stating the grounds upon which he claims that the statutory demand should be set aside.

(2) A copy of the statutory demand shall be exhibited to the affidavit in support.

PART VIII

LIQUIDATION

Preliminary

Scope of this Part.

153. (1) Subject to rule **168**, the rules in this Part apply to

(a) an application to the Court to appoint a liquidator of a company;

(b) the appointment of a liquidator, whether by the members or the Court; and

(c) the liquidation of a company and, where appropriate, a foreign company;

under Part VI of the Act.

(2) Unless otherwise stated or unless the context otherwise requires, the rules in this Part apply to a foreign company.

(3) Where a liquidator is appointed in respect of a regulated person, the liquidator shall send to the Commission a copy of every notice or other document

(a) required to be sent to creditors of the regulated person; or

(b) filed with the Court.

Division 1 – Appointment of Liquidator

Appointment of liquidator by members.

154. (1) The chairman of a meeting of members that, by a qualifying resolution, appoints a liquidator under section 159(2) shall, as soon as practicable, provide the liquidator with

(a) a copy of the resolution by which he was appointed; and

(b) a certificate of his appointment, signed by the chairman.

(2) The provision to the liquidator of the documents specified in paragraph (1) is deemed notice to the liquidator for the purposes of section 161(2).

(3) This rule does not apply to a foreign company.

Application.

155. (1) Application for the appointment of a liquidator is made by filing at Court an application complying with paragraph (2) together with an affidavit in support of the application complying with rule **156**.

(2) An application under paragraph (1) shall state

(a) the grounds upon which the appointment is sought; and

(b) whether the applicant proposes an eligible insolvency practitioner as liquidator and, if he does, it shall

(i) specify the name and address of the person proposed; and

(ii) state that, to the best of the applicant's knowledge and belief, the person specified is eligible to act as an insolvency practitioner in relation to the company.

(3) No application for the appointment of a liquidator of a company may be made to the Court where the company is in liquidation, whether the liquidator was appointed by the members or by the Court.

Affidavit in support.

156. (1) An application for the appointment of a liquidator shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made

(a) by the applicant;

(b) if the applicant is a corporate body, by an officer who has been concerned with the matters stated in the application;

(c) by the legal practitioner acting for the applicant; or

(d) by a responsible person who is authorized to make the affidavit and who has the requisite knowledge of the matters sworn in the affidavit.

(4) A supporting affidavit is prima facie evidence of the statements in the application to which it relates.

(5) Where an applicant is making applications to appoint a liquidator for more than one company, a separate affidavit shall be filed in respect of each application.

(6) If the applicant proposes an eligible insolvency practitioner as liquidator of the company, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application shall be exhibited to the affidavit in support of an application for the appointment of a liquidator.

Service of application on company.

157. (1) Unless the company is the applicant, a sealed copy of the application for the appointment of a liquidator, together with the supporting affidavit, shall be served on the company not more than 14 days after the application has been filed.

(2) Service of the application on the company shall be verified by an affidavit of service complying with rule **19**.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

Copies of application to be sent to other persons.

158. (1) A sealed copy of an application for the appointment of a liquidator of a company shall be sent

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

(b) if an administrative receiver has been appointed in respect of the assets of the company, to him;

(c) if a creditors' arrangement has been proposed or accepted, to the interim supervisor or supervisor appointed in respect of the arrangement or the proposed arrangement, as the case may be;

(d) if the company is, or at any time in the previous two years has been, a regulated person, to the Commission, unless the Commission is the applicant;

within the time limits specified in paragraph (2).

(2) Documents referred to in paragraph (1) shall be sent

(a) to the persons specified in paragraph (1)(a) to (c)

(i) no earlier than the day after service of the application on the company, and

(ii) no later than four days after service of the application on the company; and

(b) to the Commission under sub-paragraph (d), as soon as reasonably practicable after the application has been filed but, in any event, no later than 10am on the day immediately after the date on which the application was filed.

Application seeking appointment of supervisor as liquidator.

159. (1) This rule applies where, in an application for the appointment of a liquidator, the applicant proposes as liquidator the supervisor of an arrangement in place in respect of the company.

(2) Within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the company

(a) stating that an application has been made for the appointment of a liquidator of the company and that it is proposed that he be appointed liquidator; and

(b) advising the creditor

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Persons entitled to a copy of the application.

160. An applicant for the appointment of a liquidator of a company shall, on receiving

(a) a request from any director, member or creditor of the company for a copy of the application; and

(b) payment of the prescribed fee;

provide that person with a copy of the application as soon as is reasonably practicable to do so.

Advertisement of application.

161. The advertisement of an application to appoint a liquidator shall state

(a) the name of the company in respect of which the appointment is sought and the address of its registered office or, in the case of a foreign company, the address at which the application was served;

(b) the name and address of the applicant;

(c) the date on which the application was filed;

(d) the venue fixed for the hearing of the application;

(e) the name and address of the legal practitioner acting for the applicant; and

(f) that any person intending to appear at the hearing of the application, whether to support or oppose the application, shall give notice of his intention in accordance with rule **162**.

Notice of intention to appear.

162. (1) A person who intends to appear on the hearing of an application to appoint a liquidator of a company, other than the company itself, shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify

(a) the name and address of the person giving notice and his contact details, if any;

(b) whether it is his intention to support or oppose the application; and

(c) if he is a creditor, the amount of his debt or if he is not a creditor the grounds upon which he supports or opposes the application;

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16.00 hours on the business day before the date fixed for the hearing of the application, or where the hearing has been adjourned, the adjourned hearing.

(4) A person who fails to comply with this rule may appear on the hearing of the application only with the leave of the Court.

List of appearances.

163. (1) An applicant for the appointment of a liquidator shall prepare a list of the persons, if any, who have sent him a notice of intention to appear in accordance with rule **162**, specifying, in respect of each person

(a) his name and address;

(b) his legal practitioner, if known; and

(c) whether he intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule **162**, the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

Affidavit in opposition.

164. If a company intends to oppose an application for the appointment of a liquidator it shall, not less than 7 days before the date fixed for the hearing of the application, file with the Court and serve on the applicant

(a) a notice setting out the grounds on which it opposes the application; and

(b) an affidavit verifying the matters stated in the notice.

Leave to withdraw application.

165. (1) The Court may, on the application of the person applying for the appointment of a liquidator in respect of a company, grant that person leave to withdraw the application in accordance with section 164 if it is satisfied that

(a) the application has not been advertised;

(b) no notices of intention to appear have been received by the applicant under rule **162**; and

(c) the company consents to the application being withdrawn.

(2) An application under paragraph (1) shall be made ex parte at least 5 days before the date fixed for the hearing of the application.

Appointment of Official Receiver as liquidator.

166. The Court may appoint the Official Receiver as liquidator of a company notwithstanding that

(a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as liquidator under section 162(7);

(b) the Official Receiver has not consented to act as liquidator; and

(c) the Official Receiver has not been given notice of the application.

Notice of order.

167. The Court shall, forthwith on making an order appointing a liquidator, give notice to the liquidator of his appointment and send a sealed copy of the order to him as soon as is practicable.

Application by member of company.

168. (1) Except as provided in this Rule or by the Court, this Division does not apply to an application for the appointment of a liquidator made by a member of the company ("a member's application").

(2) A member's application shall by made in accordance with rule **155** and shall be supported by an affidavit complying with rule **156**.

(3) A sealed copy of the application and the affidavit in support shall be served on the company not less than 14 days before the date fixed for the hearing of the application.

(4) A member's application shall not, except as directed by the Court, be served on any person other than the company or be advertised.

(5) At the first hearing of the application, the Court shall give such directions concerning the procedures for or in connection with the determination of the application as it considers appropriate.

(6) Without limiting paragraph (5), the Court shall give directions concerning

(a) service of the application on, or giving notice of the application to, persons other than the company;

(b) whether the application should be advertised and, if so, the manner of its advertisement;

(c) whether a statement of claim, defence and reply to defence are to be delivered; and

(d) the manner in which evidence is to be adduced at the hearing of the application including the matters to be dealt with in evidence.

(7) Rules **162**, **163**, **165**, **166** and **167** apply to a member's application with such modifications as are necessary.

Division 2 – Interim Relief

Application for appointment of provisional liquidator.

169. (1) An application for the appointment of a provisional liquidator of a company shall propose an eligible insolvency practitioner or the Official Receiver for appointment as provisional liquidator.

(2) If the Official Receiver is proposed for appointment as provisional liquidator, he shall be given sufficient notice of the hearing to enable him to attend the hearing.

Affidavit in support of application.

170. An application for the appointment of a provisional liquidator shall be supported by an affidavit stating

(a) the grounds upon which the application is being made;

(b) that the proposed appointee has consented to act and, to the best of the applicant's belief is eligible to act as provisional liquidator of the company;

(c) whether, to the applicant's knowledge

(i) there has been proposed or is in force for the company a creditor's arrangement under Part II of the Act, or

(ii) an administrator or administrative receiver is acting in relation to the company;

(d) the applicant's estimate of the value of the assets in respect of which the provisional liquidator is to be appointed; and

(e) if the Official Receiver is proposed for appointment as provisional liquidator, whether and in what manner he has been given notice of the application.

Hearing of application.

171. (1) If the Official Receiver is proposed to be appointed as provisional liquidator, he is entitled to attend the hearing and make such representations as he considers appropriate.

(2) The Court shall not appoint the Official Receiver as provisional liquidator of a company unless he has been given notice of the application in accordance with rule **169**(2).

Order appointing provisional liquidator.

172. (1) The order appointing a provisional liquidator shall specify the functions to be carried out by him in relation to the company's affairs and assets.

(2) The Court shall, forthwith on making an order appointing a provisional liquidator, give notice to the provisional liquidator of his appointment and, as soon as is practicable

(a) send two sealed copies of the order to the provisional liquidator; and

(b) send one copy of the sealed order to any administrator or administrative receiver who has been appointed.

(3) The provisional liquidator shall, as soon as practicable, send one copy of the sealed order to the company.

Division 3 – Notice of Appointment and First Meeting of Creditors

First meeting of creditors.

173. (1) The notice of the first meeting of creditors required to be sent under section 179(1)(a) shall state

(a) the business to be conducted at the meeting, as specified in paragraph (2); and

(b) that the liquidator will, at the request of any creditor, during the period before the date of the meeting furnish the creditor with

(i) a list of the creditors of the company known to the liquidator, and

(ii) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide;

and shall be accompanied by a claim form as required by rule **185**.

(2) The first meeting of creditors may pass only one or more of the following resolutions

(a) such resolutions as are necessary to exercise the powers specified in section 179(4);

(b) a resolution to adjourn the meeting for a period of not more than 21 days;

(c) where the meeting has been requisitioned in accordance with section 183(b)(iii), a resolution that the expenses of calling and

holding the meeting are to be payable out of the assets of the company;

(d) any other resolution that the chairman allows to be put to the meeting.

Division 4 – Liquidators

Authentification of liquidator's appointment.

174. A copy of the certificate of the liquidator's appointment or, as the case may be, a sealed copy of the Court's order appointing the liquidator, may in any proceedings be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of liquidator in the company's liquidation.

Removal of liquidator.

175. (1) Application for the removal of a liquidator under section 187 is made by filing at Court

(a) an application stating the grounds upon which the removal of the liquidator is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the liquidator and the Official Receiver, unless it is his application, not less than 10 days before the date fixed for the hearing.

(3) The liquidator may file affidavit evidence in opposition to the application not less than 4 days before the date fixed for the hearing of the application.

(4) The liquidator shall, not less than 4 days after being served with an application under paragraph (2) send to the Official Receiver a statement as to whether any of the company's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of

(a) the nature, value and location of the assets;

(b) any action taken by the liquidator to deal with the assets or his reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a liquidator shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the liquidator on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove the liquidator of a company are not payable out of the assets of the company.

(8) If the Court removes a liquidator under section 187, it shall send a copy of the order removing him to

(a) the liquidator removed;

(b) any remaining liquidator; and

(c) the Official Receiver.

(9) Where the Court removes a liquidator under section 187, it may appoint the Official Receiver as liquidator under section 187(3)(b) notwithstanding that the company commenced liquidation on the appointment of a liquidator by the members under section 159(2).

Resignation of liquidator under section 188(1)(a).

176. (1) Where the liquidator resigns under section 188(1)(a) [liquidator no longer eligible to act as an insolvency practitioner in relation to the company], he shall send the Official Receiver with the notice of his resignation, a statement covering the matters specified in Rule **175**(4).

(2) The liquidator shall, if so directed by the Official Receiver, verify the statement by affidavit.

Resignation of liquidator under section 188(1)(b).

177. (1) Unless the liquidator is a joint liquidator resigning in accordance with section 188(4), the notice of a creditors' meeting sent to creditors in accordance with section 188(5) shall be accompanied by an account of the liquidator's administration of the liquidation, including a summary of his receipts and payments.

(2) The liquidator shall, not less than seven days before the date fixed for the creditors' meeting,

(a) send a copy of the notice and account referred to in paragraph (1) and a statement covering the matters specified in Rule **175**(4) to the Official Receiver; and

(b) if he was appointed by the Court, file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 188(5) either of the following resolutions is passed

(a) that the liquidator's resignation be accepted;

(b) that a new liquidator be appointed;

the chairman shall, forthwith, send the Official Receiver a copy of the resolution together with a certificate of the liquidator's appointment, signed by the chairman.

(4) Where a liquidator's resignation is accepted by the creditors, he shall forthwith

(a) send a notice of his resignation to the Official Receiver, and

(b) if he was appointed by the Court, file a notice of his resignation with the Court.

(5) The liquidator's resignation is effective from the date that the notice of his resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former liquidator.

(6) Within 14 days of receiving a copy of the endorsed notice from the Official Receiver under paragraph (5), the former liquidator shall file a copy of the endorsed notice with the Registrar.

Leave to resign.

178. (1) A liquidator shall, not less than 7 days before the date fixed for the hearing of an application for leave to resign under section 188(6A), give notice of his application to

(a) any joint liquidator;

(b) the creditors' committee, if any; and

(c) the Official Receiver.

(2) If the Court gives the liquidator leave to resign, it may make such provision as it consider appropriate with respect to matters arising in connection with the resignation.

(3) Where the Court gives the liquidator leave to resign, section 187(3) and rule **175**(9) apply with such modifications as are necessary.

(4) The Court shall send two sealed copies of the order to the liquidator, who shall forthwith send one of the copies to the Official Receiver.

(5) Within 14 days of his resignation, the former liquidator shall send a notice of his resignation to the Official Receiver and to the Registrar.

Death of liquidator.

179. (1) Where the liquidator dies, his personal representative shall give notice of his death to the Official Receiver and the Registrar, specifying the date of his death, unless notice has already been given to the Court and the Registrar under paragraphs (2) or (3).

(2) If a liquidator who dies was a partner in a firm, notice of his death may be given to the Official Receiver and the Registrar by a partner in the firm who is an insolvency practitioner.

(3) Notice of the death of a liquidator may be given by any person producing to the Court and the Registrar the relevant death certificate or a copy of it.

(4) Where the Official Receiver receives a notice under paragraph (3) and the deceased liquidator was the sole liquidator of the company, the Official Receiver shall as soon as reasonably practicable apply to the Court under section 189(1) for the appoint of a replacement liquidator, unless an application has already been made by the creditors' committee.

Advertisement of appointment.

180. (1) A liquidator who is appointed to replace a liquidator who has, for whatever reason, ceased to hold office, shall within 21 days of the date of his appointment, advertise his appointment.

(2) His advertisement shall state that he has been appointed in place of a liquidator who ceased office.

Solicitation.

181. (1) Where the Court is satisfied that any improper solicitation has been used by or on behalf of a liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the liquidator out of the assets of the company.

(2) An order of the Court under paragraph (1) overrides any resolution of the creditors' committee or any other provision of the Rules.

Division 5 – Settling List of Members

Form and contents of list of members.

182. (1) The list of members settled by the liquidator of a company under section 193(1) shall identify

(a) the classes of the company's shares, if more than one;

(b) the classes of members, if more than one.

(2) The list shall detail, in respect of each member

(a) his name and address;

(b) the number and class of shares held by him, or the extent of any other interest to be attributed to him;

(c) if the shares are not fully paid up, the amounts that have been called up and paid in respect of them, and the equivalent if his interest is other than shares.

Procedure for settling list of members.

183. (1) The notice given to each person under section 193(2) shall state

(a) in what character, and for what number of shares or what interest, he is included in the list;

(b) what amounts have been called up and paid up in respect of the shares or interest;

(c) that in relation to any shares or interest not fully paid up, his inclusion in the list may result in the unpaid capital being called; and

(d) the rights of a person to object under paragraphs (2) and (3) of this rule.

(2) If a person objects to any entry in, or omission from, the list, he shall inform the liquidator of his objection in writing within 21 days from the date of the notice.

(3) Where the liquidator receives an objection under paragraph (2), he shall, within 14 days, give notice to the objector either

(a) that he has amended the list, specifying the amendment; or

(b) that he does not accept the objection and that he does not intend to amend the list.

(4) A notice given under paragraph (3) shall contain a summary of the effects of section 193(3) and (4).

Division 6 – Claims

184. A claim made against a company in liquidation by an unsecured creditor under section 209 shall be in the prescribed form and shall specify

Claims by unsecured creditors.

(a) the name and address of the creditor;

(b) the total amount of his claim as at the commencement of the liquidation;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the company;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself.

185. (1) Unless the Court otherwise orders, the liquidator of a company shall send a claim form to each creditor of whom he is aware at the same time as he sends the creditor

Claim forms.

(a) notice of the first meeting of creditors under section 179(1)(a); or

(b) notice under section 183(b) that he does not consider it necessary to call a meeting of creditors.

(2) The liquidator shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 179(1)(a) or section 183(b).

186. The applicant for an order expunging or reducing a claim under section 210(2) shall serve a copy of his claim

Application to Court expunge or amend an admitted claim.

(a) in the case of an application by the liquidator, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the liquidator and on the creditor who submitted the claim.

Negotiable instruments.

187. The liquidator may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the liquidator.

Inspection of claims.

188. The liquidator of a company shall allow claims in his custody or control to be inspected by

(a) a creditor who has submitted a claim in the liquidation that has not been wholly rejected by the liquidator;

(b) a contributory of the company;

(c) a person acting on behalf of a person referred to in paragraph (a) or (b).

Division 7 – Distributions

Distribution by means of dividend.

189. The liquidator shall make a distribution by distributing dividends among the creditors whose claims he has admitted.

Notice to submit claim.

190. A notice issued under section 216(1) shall state that the liquidator intends to distribute a dividend and that a creditor who does not submit a claim by the date specified in the notice will be excluded from the distribution.

Distributions.

191. (1) In determining the funds available for distribution to creditors by way of dividend, the liquidator shall make provision

(a) for any claims which creditors may not have had sufficient time to make;

(b) for any claims which have not yet been determined; and

(c) for any disputed claims.

(2) A creditor who has not submitted a claim by the date specified in the notice issued under section 216(1) is not entitled to disturb, by reason that he has not participated in it, the distribution of the dividend.

(3) When a creditor referred to in subsection (2) makes a claim that is accepted by the liquidator,

(a) he is entitled to be paid, out of any money for the time being available for distributing a further dividend, a payment in respect of any dividend which he has failed to receive, and

(b) any payment under sub-paragraph (a) shall be paid before that money is used to distribute a further dividend to creditors.

(4) No action lies against the liquidator for a dividend but if he refuses to pay a dividend, the Court may, if it thinks fit, order him to pay it and also to pay, out of his own money

(a) interest on the dividend, at the Court rate, from the time when it was withheld, and

(b) the costs of the proceedings in which the order to pay is made.

Distribution of dividend.

192. Where the liquidator distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Division 8 – Disclaimer

Notice of disclaimer.

193. (1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the liquidator and filed at Court with a copy.

(3) The original notice and the copy notice shall be sealed by the Court, endorsed with the date of filing and the copy notice shall be returned to the liquidator.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the sealed notice of disclaimer was returned to the liquidator.

Communication of notice of disclaimer.

194. (1) Written notice of a disclaimer notice shall be given under section 217(3) and 218(2) by sending or giving a copy of the sealed and endorsed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 217, the following are persons whose rights are affected by a disclaimer of property

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(c) where the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a liquidator that a person's rights are affected by a disclaimer, the liquidator shall forthwith given written notice of the disclaimer to that person in accordance with this rule unless

(a) the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A liquidator disclaiming property may at any time, in addition to his obligations under the Act and the Rules, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

Duty to keep Court informed.

195. The liquidator shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Act and the Rules, specifying the name and address of each person and his interest in the property disclaimed.

Notice to elect.

196. A notice to elect shall be served on a liquidator by delivering the notice to him personally or sending it to him by registered post.

Notice to declare interest in onerous property.

197. (1) If it appears to the liquidator of a company that a person may have an interest in onerous property, he may give notice to that person to declare, within 14 days, whether he claims any interest in the property and, if so, the nature and extent of his interest.

(2) If a person fails to comply with a notice given under paragraph (1), the liquidator is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

Application for vesting order or order for delivery.

198. (1) An application for a vesting order or an order for delivery under section 221 shall be made within three months of

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the liquidator;

whichever is the earlier.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the liquidator and an affidavit

(a) stating whether his claim is based upon an interest in the disclaimed property or whether it is based upon an undischarged liability;

(b) specifying the date upon which he received a copy of the liquidator's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 221.

(3) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the liquidator

(a) a sealed copy of the application endorsed by the Court; and

(b) a copy of the affidavit filed in support.

(4) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(5) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the liquidator.

(6) Unless there is one or more applications pending under section 221, in a case where the property disclaimed is of a leasehold nature, and section 218(2) applies to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Division 9 – Miscellaneous Provisions

Prescribed Priority.

199. The following costs and expenses of the liquidation shall be paid in the order of priority in which they are listed (the "prescribed priority")

(a) the costs and expenses properly incurred by the liquidator in preserving, realising or getting in the property of the company or in carrying on the company's business, including

(i) the costs and expenses of any legal proceedings which the liquidator has brought or defended whether in his own name or in the name of the company; and

(ii) the costs of and in connection with an examination ordered under section 285.

(b) the costs and expenses of complying with a notice issued by the Official Receiver under section 271(2);

(c) the remuneration of the provisional liquidator;

(d) the deposit lodged on an application for the appointment of a provisional liquidator;

(e) the costs of the application on which the liquidator was appointed, including the cots of any person appearing on the application whose costs are allowed by the Court;

(f) any costs allowed in respect of the preparation of a statement of affairs;

(g) the cost of and in respect of any creditors' committee appointed in the liquidation;

(h) any disbursements properly paid by the liquidator;

(i) the remuneration of anyone employed by the liquidator;

(j) the remuneration of the liquidator;

(k) any other fees, costs, charges or expenses properly incurred in the course of the liquidation or properly chargeable by the liquidator in carrying out his functions in the liquidation.

PART IX

GENERAL PROVISIONS WITH REGARD TO COMPANIES THAT ARE INSOLVENT OR IN LIQUIDATION

Division 1 – Statement of Affairs

Interpretation.

200. The words and expressions defined in Part XI, Divisions 1 and 2 of the Act have the same meaning in this Division.

Notice requiring statement of affairs.

201. (1) A notice requiring a relevant person to submit a statement of affairs shall state

(a) the names and addresses of all other persons, if any, to whom the same notice has been sent;

(b) the dates within which the statement of affairs shall be made up to;

(c) the time within which the statement shall be delivered to the office holder;

(d) the effect of section 277(4), (failure to submit statement of affairs and verifying affidavit an offence); and

(e) the effect of section 282, if appropriate (duty to provide information and attend on office holder).

(2) A notice under paragraph (1) shall be accompanied by the forms required for the preparation of the statement of affairs.

(3) For the purposes of paragraph (1)(b), a statement of affairs shall be made up to a date not more than 14 days before

(a) where the company is in administration, the date of the administration order;

(b) where the company is in administrative receivership, the date that the administrative receiver was first appointed; and

(c) where the company is in liquidation, the date that the liquidation commenced in accordance with section 160.

Verification and delivery of statement of affairs.

202. A statement of affairs

(a) shall be verified by affidavit; and

(b) shall be delivered to the office holder, together with the affidavit of verification, within the time period specified in the notice issued under rule **201**.

Affidavit of concurrence.

203. (1) Subject to paragraph (3), an affidavit of concurrence is an affidavit stating that the maker of the affidavit

(a) has been provided with a statement of affairs of a company prepared and verified by a relevant person in accordance with section 277 pursuant to a notice sent to him by an officer holder under section 276;

(b) concurs that the statement of affairs is complete and accurate and is not, in any respect, misleading; and

(c) has sufficient direct knowledge of the company's affairs to make the affidavit.

(2) An affidavit of concurrence shall have exhibited to it the statement of affairs with which the maker concurs.

(3) An affidavit of concurrence may be qualified in respect of matters dealt with in the statement of affairs, where the person making the affidavit of concurrence considers the statement of affairs to be erroneous or misleading or he is without the direct knowledge necessary for concurring with it.

Filing of statement of affairs and affidavit of concurrence.

204. (1) Subject to section 280 and to paragraph (2), an office holder shall as soon as reasonably practicable after receiving a verified statement of affairs or an affidavit of concurrence, file a copy with the Registrar and with the Court.

(2) A liquidator appointed by the members of a company and an administrative receiver appointed out of court is not required to file a verified statement of affairs or an affidavit of concurrence with the Court.

Release from duty to submit statement of affairs and extension of time.

205. (1) Where a relevant person has received a notice requiring him to prepare and submit a statement of affairs, he may request the office holder who sent him the notice for

(a) a release from his obligation; or

(b) an extension of time for submitting the statement of affairs;

under section 279.

(2) An office holder may grant a release of an obligation or an extension of time under section 279 at his own discretion, without having received a request from the relevant person concerned.

Application to Court where office holder refuses a request under rule **205**.

206. (1) If an office holder refuses a request made under rule **205**, the relevant person concerned may apply to the Court for an order granting him the release or the extension.

(2) An applicant shall give the office holder at least ten business days notice of an application under paragraph (1) and of any affidavit filed in support of his application.

(3) The office holder is entitled to appear and make representations at the hearing of an application under paragraph (1) and, whether or not he appears, to file with the Court a written report setting out any matters that he considers should be brought to the attention of the Court.

(4) An office holder shall send the applicant a copy of a report filed under paragraph (3) at least five business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the applicant's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made out of the assets of the company or, in the case of an administrative receivership, out of the assts under the administrative receiver's control.

(6) The Court shall send sealed copies of an order made under this rule to the office holder and to the relevant person who made the application.

Expenses of statement of affairs.

207. (1) Subject to paragraph (3), a relevant person preparing a statement of affairs and making a verifying affidavit shall be allowed, and paid by the office holder out of the assets of the company or, in the case of an administrative receivership, out of the assts under the administrative receiver's control, any expenses he incurs in so doing which the office holder considers reasonable.

(2) Nothing in this rule relieves a relevant person from any obligation with respect to the preparation, verification and submission of the statement of affairs, or to the provision of information to, the office holder.

(3) No payment may be made to the office holder or any of his associates in respect of any assistance given to a relevant person in the preparation of his statement of affairs unless approved by the creditors' committee.

Order of limited disclosure.

208. (1) Where the Court makes an order of limited disclosure under section 280 in respect of a statement of affairs, the office holder shall, as soon as reasonably practicable, file the verified statement of affairs with the Registrar, to the extent provided by the order.

(2) If there is a material change in circumstances rendering the limit on disclosure, or any part of it, unnecessary, office holder shall, as soon as reasonably practicable after the change, apply to the Court for the order to be varied or rescinded.

(3) The office holder shall, as soon as reasonably practicable after the making of an order under paragraph (2), file the verified statement of affairs with the Registrar, to the extent provided by the order.

Application by creditor for disclosure.

209. (1) If a creditor seeks disclosure of a statement of affairs or a specified part of a statement of affairs in relation to which an order has been made under section 280, he may apply to the Court for an order that the office holder disclose it or a specified part of it.

(2) An application under paragraph (1) shall be

(a) supported by an affidavit; and

(b) served on the office holder, together with the supporting affidavit, not more than 3 business days prior to the date fixed for the hearing.

(3) The Court may make an order for disclosure to the creditor subject to any conditions as to confidentiality, duration, the scope of the order in the event of any change of circumstances, or other matters as it sees fit.

(4) CPR Part 28 does not apply to an application under this Rule.

Division 2 – Investigation of Insolvent Company's Affairs

Office Holders Powers

Request by office holder for information.

210. (1) A notice to provide information under section 282(1)(a) shall specify the period within which the information shall be submitted to the office holder and shall state whether the office holder requires the information to be verified by affidavit.

(2) Where the office holder requires the recipient of a notice under section 282(1)(a) to prepare and submit accounts of the company, rule **207** applies with such modifications as are necessary.

(3) An office holder shall not require accounts to be prepared and submitted to him for a period more than 5 years prior to the appropriate date specified in paragraphs (a) to (d) of the definition of "relevant period" in section 275(1) without the leave of the Court.

(4) The office holder may issue subsequent notices to a person specified under section 282(2), notwithstanding that a previous notice has been fully complied with.

Examination before Court

Application for examination.

211. (1) An application for the examination before the Court of a person under section 284 shall be filed with the Court, without notice to the proposed examinee, together with a supporting affidavit.

(2) Neither the application nor the supporting affidavit are open to public inspection unless the Court otherwise orders.

(3) The matters contained in the supporting affidavit shall include

(a) details of the proposed examinee and his relationship with the company concerned or a connected company;

(b) details of the matters upon which the applicant seeks to examine the proposed examinee and the reasons for his belief that the proposed examinee has knowledge of these matters;

(c) details of any books, records or other documents relating to the company or a connected company that the applicant believes are in the possession of the proposed examinee that he wishes the proposed examinee to produce at the examination;

(d) if he seeks an order for a public examination, the justification for a public examination;

(e) a statement as to whether the matters upon which he seeks to examine the proposed examinee are matters that he could examine him on using his powers under sections 282 and 283 and, if so, whether or not he has conducted such an examination;

(f) if the applicant has conducted an examination under section 283, the reasons why a further examination before the Court is necessary;

(g) if the applicant is entitled to examine the proposed examinee under section 283, but has not done so, the reasons for the application to examine him before the Court.

Adjournment of examination.

212. (1) An examination held pursuant to an order made under section 285 may be adjourned by the Court either generally or to a fixed date.

(2) Where an examination has been adjourned generally, the Court may, on the application of the liquidator, the Official Receiver or the examinee

(a) fix a venue for the resumption of the hearing; or

(b) give directions as to the manner in which, and the time within which, notice is to be given to any person entitled to take part in the examination.

(3) Where the examinee applies under paragraph (2) for the resumption of a public examination, the Court may grant it on condition that the expenses of giving the notices required by that paragraph are paid by the examinee and that, before a venue, date and time for the resumed public examination is fixed, he shall deposit with the Official Receiver or liquidator, as the case may be, such sum as the Official Receiver or liquidator considers necessary to cover those expenses.

Examinee unfit for examination.

213. (1) Where an examinee is suffering from any mental disorder or physical affliction or disability that renders him unfit to undergo or attend for an examination, the Court may, on application, either stay the order for his examination or direct that it shall be conducted in such manner and at such place as it considers fit.

(2) Application under this Rule shall be made

(a) by a person who has been appointed by a court in the Virgin Islands or elsewhere to manage the affairs of, or to represent, the examinee;

(b) by a relative or friend of the examinee whom the Court considers to be a proper person to make the application; or

(c) by the Official Receiver.

(3) Where the application is made by a person other than the Official Receiver

(a) it shall be supported by the affidavit of a medical practitioner as to the examinee's mental and physical condition; and

(b) at least 7 days' notice of the application shall be given to the Official Receiver and the liquidator, if not the Official Receiver.

(4) Where the application is made by the Official Receiver it may be made ex parte, and may be supported by evidence in the form of a report by the Official Receiver to the Court.

Adjournment of examination.

214. (1) The Court may, in its discretion, adjourn an examination either to a fixed date or generally.

(2) Where an examination has been adjourned generally, the Court may at any time on the application of the Official Receiver, the liquidator if not the Official Receiver, or of the examinee

(a) fix a venue for the resumption of the examination, and
(b) give directions as to the manner in which, and the time within which, notice of the resumed examination is to be given to persons entitled to take part in it.

(3) Where application under paragraph (2) is made by the examinee, the Court may grant it on terms that the expenses of giving the notices required by that paragraph shall be paid by him and that, before a venue for the resumed examination is fixed, he shall deposit with the Court such sum as it considers reasonable to cover those expenses.

PART X

DISQUALIFICATION ORDERS

Application for disqualification order.

215. (1) Application for a disqualification order against a person (the respondent) is made by filing at Court an originating application and one or more affidavits in support, at least one of which shall be sworn by the Official Receiver.

(2) The affidavit sworn by the Official Receiver shall specify the facts and matters that the Official Receiver relies upon to support his application for a disqualification order.

(3) The application shall be endorsed with the following information

(a) that if the application is successful, the Court may make a disqualification order against the person concerned for a maximum period of 10 years;

(b) that a disqualified person is for the period of the disqualification order prohibited from engaging in any prohibited activity within the meaning of section 260; and

(c) that any evidence that the respondent wishes to be taken into consideration by the Court shall be filed with the Court and served on the Official Receiver within the time limits specified in rule **216**, which shall be set out on the application.

(4) On the filing of an application for a disqualification order, the Court shall fix, and endorse on the application, a date and time for the hearing of the application not less than eight weeks after the date that the application was filed.

(5) A sealed copy of the application together with the supporting affidavit or affidavits shall be served on the respondent not more than 14 days after the date that the application is filed.

Affidavits in response and reply.

216. (1) The respondent shall, within 28 days of the date of service of the application on him, file affidavit evidence in opposition to the application if

(a) he opposes the application for a disqualification order; or

(b) while not opposing the making of a disqualification order, he intends to adduce mitigating factors with a view to justifying a short period of disqualification.

(2) In any affidavit filed under paragraph (1), the respondent shall state the basis on which he contests the application or seeks a short period of disqualification.

(3) The respondent shall forthwith upon filing an affidavit serve a copy on the Official Receiver.

(4) The Official Receiver shall, within 14 days of receiving a copy of the respondent's affidavit or affidavits, file any further affidavits in reply that he wishes the Court to take into consideration and shall forthwith serve a copy of the affidavit or affidavits on the respondent.

Hearing.

217. (1) The Court shall, on the hearing of the application

(a) determine the application summarily; or

(b) if it considers that questions of law or fact arise that are not suitable for summary determination, give directions for the further conduct of the matter and adjourn it to a fixed date.

(2) The Court may, upon being satisfied that the respondent has been served with the application, make a disqualification order against the respondent whether or not he appears and whether or not he has filed evidence in opposition in accordance with rule **216**.

(3) Any disqualification order made against the respondent in his absence may, at any time within two years following the date of the order, be set aside or varied by the Court on such terms as it considers fit.

PART XI

BANKRUPTCY

Preliminary

Official name of trustee.

218. The official name of a bankruptcy trustee is "the trustee of the estate of (name of bankrupt) a bankrupt" but he may be known as the bankruptcy trustee of the bankrupt.

Appointment of Official Receiver as trustee.

219. (1) The Court may appoint the Official Receiver as the bankruptcy trustee of a debtor on an application under Part XII of the Act, notwithstanding that

(a) the applicant may, in his application, have proposed the appointment of an eligible insolvency practitioner as trustee;

(b) the Official Receiver has not consented to act as trustee; and

(c) the Official Receiver has not been given notice of the application.

(2) Where the Official Receiver is the trustee of a bankrupt, any provision of the Act or the Rules requiring the trustee to send or give any notice or other document to the Official Receiver shall be construed as requirement that the notice or document is to be retained by the Official Receiver as a record of the bankruptcy.

Division 1 – Bankruptcy Order

Creditor's Application

Scope of and interpretation for this Division.

220. (1) Rules **220** to **245** apply to

(a) a creditor's application for a bankruptcy order under section 296;

(b) an application of a creditor or the supervisor of an arrangement under section 301, with such modifications as are appropriate; and

(c) the making of a bankruptcy order on an application specified in paragraphs (a) or (b).

(2) In this Division, unless the context otherwise requires

"applicant" means the person making an application;

"application" means an application for a bankruptcy order under section 296 or, where appropriate, under section 301.

Form of creditor's application.

221. An application shall be dated and shall be signed

(a) by the applicant himself; or

(b) on the applicant's behalf by a person who is authorised by him and who has the requisite knowledge of the matters referred to in the application;

and shall be witnessed.

Identification of debtor.

222. (1) An application shall state the following particulars with respect to the debtor:

(a) his name;

(b) his place of residence;

(c) his occupation;

(d) the nature of his business, if any, and the address at which he carries it on; and

(e) any name other than the one specified under sub-paragraph (a), including a business name, which, to the applicant's personal knowledge, the debtor has used.

(2) The title of the proceedings shall be determined by the particulars given under paragraph (1)(a) and (e).

Particulars of liability.

223. An application shall state the following matters with respect to the liability in respect of which the application is made:

(a) the amount of the liability at the date of the application;

(b) the consideration for the liability or, if there is no consideration, the nature of the liability;

(c) if the amount claimed in the application includes interest, penalties, charges or any pecuniary consideration in lieu of

interest, the amount claimed and the rate at which and the period for which it was calculated, which shall be separately identified;

(d) when the liability was incurred or became due;

(e) if the liability is founded on a judgment or an order of a court, details of the judgment or order, including the action under which the judgment or order was obtained and the date of the judgment or order;

(f) if the debt is founded on grounds other than a judgment or an order of a court, such details as would enable the debtor to identify the debt.

Application based on statutory demand.

224. (1) An application based on the debtor's failure to comply with the requirements of a statutory demand, shall state the date and manner of service of the statutory demand and that to the best of the creditor's knowledge and belief, the demand has neither been complied with nor set aside and that no application to set it aside is pending.

(2) An application may not be made based on a statutory demand served more than 4 months before the filing date of the application.

Application based on unsatisfied execution.

225. (1) An application based on an unsatisfied execution or other process shall specify:

(a) the judgment, decree or order on which the execution was issued;

(b) the court which issued the execution against the debtor;

(c) the mode of execution; and

(d) the extent, if any, to which the judgment debt has been satisfied as a result of the execution.

(2) An application may not be made based on an execution or other process completed more than 4 months before the filing date of the application.

Other matters to be specified in application.

226. (1) An application shall state which of the conditions for making a bankruptcy order specified in section 293(1) apply to the debtor.

(2) An application under section 301 shall provide sufficient details to enable the debtor to understand the grounds on which the bankruptcy order is sought.

227. Application for a bankruptcy order is made by filing at Court an application complying with paragraph (2), together with Filing of application.

(a) an affidavit verifying service of the statutory demand, if required under rule **229**; and

(b) an affidavit in support of the application complying with rule **228**.

228. (1) An application shall be supported by an affidavit stating that the statements made in the application are true or are true to the best of the deponent's knowledge, information and belief. Affidavit in support.

(2) If the application is in respect of debts due to different creditors, the debts due to each creditor shall be separately verified.

(3) The supporting affidavit shall be made by the applicant or by the person who signed the application on the applicant's behalf.

(3) A supporting affidavit is prima facie evidence of the statements in the application to which it relates.

(4) The following documents shall be exhibited to the affidavit in support of an application:

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

229. (1) Where an application is based on the debtor's failure to comply with the requirements of a statutory demand, an affidavit of service of the statutory demand complying with rule **19** shall be filed together with the application. Affidavit of service of statutory demand.

(2) Where the statutory demand has been served other than by personal service, the affidavit shall

(a) give particulars of the steps taken to effect personal service and the reasons for which they have been ineffective;

(b) state the means whereby, attempts at personal service having been unsuccessful, it was sought to bring the demand to the debtor's attention and explain why such means would have

best ensured that the demand would be brought to the debtor's attention;

(c) exhibit evidence of such alternative mode or modes of service; and

(d) specify a date by which to the best of the knowledge, information and belief of the person making the affidavit, the demand would have come to the debtor's attention.

(3) If the affidavit specifies a date for the purposes of compliance with paragraph (2) (d), then unless the Court otherwise orders, that date is deemed to have been the date on which the statutory demand was served on the debtor.

(4) The Court shall dismiss the application for a bankruptcy order if it is not satisfied that the creditor has discharged the obligations imposed on him by rule **150**.

Service of application for bankruptcy order.

230. Subject to rule **231**, an application shall be served personally on the debtor by an officer of the Court, by the creditor making the application or his solicitor, or by a person in their employment.

Substituted service.

231. (1) If the Court is satisfied by affidavit or other evidence on oath that prompt personal service cannot be effected because the debtor is keeping out of the way to avoid service of a creditor's application, or for any other cause, the Court may order substituted service to be effected in such manner as it considers appropriate.

(2) Where an order for substituted service has been carried out, the application is deemed to have been served on the debtor.

(3) If an order has been made for substituted service of the application, a sealed copy of the order shall also be exhibited to the affidavit of service.

(4) The affidavit of service shall be filed with the Court as soon as reasonably practicable after service has been effected.

Death of debtor before service.

232. If a debtor dies before service on him of an application, the Court may order service to be effected on his personal representatives or on such other persons as it considers appropriate.

Affidavit of service of application for bankruptcy order.

233. (1) Service of an application on the debtor shall be verified by an affidavit of service complying with rule **19**.

(2) If an order has been made for substituted service of the application, a sealed copy of the order for substituted service and any evidence of service shall be exhibited to the affidavit of service.

(3) The affidavit of service shall be filed with the Court forthwith after service has been effected.

Copies of application to be sent to other persons.

234. A sealed copy of an application shall be sent, as soon as reasonably practicable

(a) if the application is made under section 301, and the applicant is not the supervisor of the arrangement, to the supervisor.

(b) if the individual is, or at any time in the previous two years has been, a regulated person, to the Commission.

Application seeking appointment of supervisor as trustee.

235. (1) This rule applies where an applicant proposes as trustee the supervisor of an arrangement in place in respect of the debtor.

(2) Within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he be appointed bankruptcy trustee; and

(b) advising the creditor

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Application opposed by debtor.

236. If a debtor intends to oppose an application he shall, not less than 5 days before the date fixed for the hearing of the application, file with the Court and send to the applicant a notice setting out the grounds on which he opposes the application.

Notice of intention to appear.

237. (1) A creditor who intends to appear on the hearing of an application shall send a notice of intention to appear to the applicant.

(2) A notice of intention to appear shall be in writing and shall specify

(a) the name and address of the person giving notice and his contact details, if any;

(b) whether it is his intention to support or oppose the application; and

(c) the amount and nature of the liability of the debtor to him;

(3) A notice of intention to appear shall be sent so as to reach the applicant no later than 16.00 hours on the business day before the date fixed for the hearing of the application, or where the hearing has been adjourned, the adjourned hearing.

List of appearances.

238. (1) An applicant shall prepare a list of the creditors, if any, who have sent him a notice of intention to appear in accordance with rule **237**, specifying, in respect of each person

(a) his name and address;

(b) his legal practitioner, if known; and

(c) whether he intends to support or oppose the application.

(2) The list shall be filed with the Court at the hearing of the application.

(3) If the Court grants a person leave to appear on the hearing of the application under rule **240**(e), the applicant shall, as soon as practicable, file an amended list of appearances with the Court.

Hearing of application.

239. (1) Subject to paragraph (2), an application shall not be heard until the expiration of 14 days, or such longer time as the Court may direct, from the service of the application on the debtor.

(2) The Court may, on such terms as it considers appropriate, hear the application at an earlier date where

(a) it is satisfied that the debtor has absconded;

(b) it is satisfied that it is a proper case for an expedited hearing; or

(c) the debtor consents to a hearing within the 14 days.

Parties who may be heard.

240. Any of the following persons may appear and be heard on the hearing of an application:

(a) the applicant;

(b) the debtor;

(c) the supervisor of any arrangement in place in respect of the debtor;

(d) any creditor who has given notice to the Court of his intention to appear at the hearing of the application;

(e) a creditor who, having failed to comply with rule **237**, is granted leave by the Court to appear; and

(f) the Official Receiver.

Non-appearance of applicant or failure to prosecute application.

241. If the applicant fails to appear on the hearing of the application or fails to prosecute the application diligently, the application may be dismissed and no subsequent application against the same debtor shall be filed by the same creditor in respect of the same debt without the leave of the Court.

Extension of time for hearing.

242. (1) The applicant may, if the application has not been served, apply to the Court to fix another venue for the hearing of the application.

(2) An application under paragraph (1) shall state the reasons why the application has not been served.

(3) No costs occasioned by an application under paragraph (1) shall be allowed in the proceedings unless the Court otherwise orders.

(4) The application shall be amended before service to reflect the new hearing date.

(5) If the Court fixes another venue for the hearing, the applicant shall as soon as reasonably practicable notify any creditor who has given notice under rule **237**.

Adjournments.

243. (1) If the Court adjourns the hearing of the application, the applicant shall forthwith send a notice of the order adjourning the hearing to the debtor and any creditor who has given notice under rule **237**.

(2) A notice of an order adjourning the hearing of an application shall state the venue for the adjourned hearing.

Substitution of applicant.

244. (1) In the circumstances specified in paragraph (2), the Court may, by order, substitute as applicant, a creditor who

(a) has given notice of his intention to appear and support the application under rule **237** and appears at the hearing;

(b) wishes to prosecute the application; and

(c) was in such a position in relation to the debtor at the date on which the application was filed as would have enabled him on that date to file an application against the debtor.

(2) The Court may make a substitution order under paragraph (1) where the Court considers it appropriate to do so

(a) because the applicant applies to withdraw the application, consents to it being dismissed or fails to appear in support of the application on the day fixed for the hearing;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

(3) An order under paragraph (1) may be made on such terms as the Court considers appropriate.

(4) Where the Court makes a substitution order, the original applicant shall not be entitled to the costs of his application unless the Court otherwise orders.

(5) Where the Court makes a substitution order, the application shall be amended accordingly and shall be verified, re-filed and re-served on the debtor and the Official Receiver.

Leave to withdraw application.

245. (1) Where the applicant applies to the Court for the application to be dismissed, or for leave to withdraw it, he shall, unless the Court otherwise orders, file in Court an affidavit specifying the grounds of the application and the circumstances in which it is made.

(2) If, since the application was filed, any payment has been made to the applicant by way of settlement, in whole or in part, of the liability in respect of which the application was made, or any arrangement has been entered into for securing or compounding them, the affidavit shall state

(a) what dispositions of assets have been made for the purposes of the settlement or arrangement; and

(b) whether, in the case of any disposition, it was assets of the debtor himself, or of some other person; and

(c) whether, if it was assets of the debtor, the disposition was made with the approval of, or has been ratified by, the Court and, if so, specifying the relevant Court order.

(3) No order giving leave to withdraw an application shall be given before the application is heard.

Debtor's Application

Scope of and interpretation for this Division.

246. (1) This Division applies to an application by a debtor for a bankruptcy order under section 294 and for the making of a bankruptcy order on an application under that section.

(2) In this Division, unless the context otherwise requires, "application" means a debtor's application for a bankruptcy order under section 294.

Form of application.

247. (1) An application shall be dated and signed by the debtor and shall state

(a) his name;

(b) his residential address;

(c) his occupation, if any;

(d) the nature of his business, the address at which he carries on the business and whether he carries on the business alone or with others;

(e) any names, other than the one stated under paragraph (a), by which he is or was known or by which he carries or has carried on any business;

(2) The title of the proceedings shall be determined by the particulars given under paragraph (1)(a) and (e).

(3) The debtor shall state in his application which of the conditions for making a bankruptcy order specified in section 293(1) apply to him.

Admission of insolvency.

248. (1) An application shall contain a statement that the debtor is unable to pay his debts as they fall due, an explanation as to the cause of his insolvency and a request that a bankruptcy order be made against him.

(2) If, within the period of 5 years prior to the date that the application is filed, the debtor has had a bankruptcy order made against him, or has made a composition with his creditors in satisfaction of his debts or a scheme of arrangement of his affairs or has entered into an arrangement under Part 2, Division 2 of the Act, particulars of these matters shall be given in the application.

(3) If, at the date of the filing of the application an arrangement under Part 2, Division 2 of the Act is in force, the particulars required under paragraph (2) shall contain a statement to this effect and the name and address of the supervisor of the arrangement.

Filing of application.

249. (1) Application for a bankruptcy order is made by filing at Court an application complying with this Division, together with

(a) three copies of the application for sealing;

(b) an affidavit in support of the application made by the debtor complying with paragraph (2); and

(b) the verified statements of his assets and liabilities required by section 295(2) and two additional copies.

(2) The following documents shall be exhibited to the affidavit in support of an application:

(a) a copy of the application; and

(b) if the applicant proposes an eligible insolvency practitioner as bankruptcy trustee, a notice of eligibility and consent to act signed by the insolvency practitioner specified in the application.

(3) The Court shall

(a) return a sealed copy of the application to the applicant; and

(b) send a sealed copy of the application and a copy of the verified statements of assets and liabilities to the Official Receiver.

Application where arrangement in place.

250. (1) Where an application is made by the debtor at a time when an arrangement under Part II of the Act is in force between himself and his creditors, he shall serve a copy of the application on the supervisor.

(2) Where the debtor proposes the supervisor as his trustee, within five business days of receiving a copy of the application, the supervisor shall send a notice to each creditor of the debtor

(a) stating that an application has been made for a bankruptcy order and that it is proposed that he be appointed bankruptcy trustee; and

(b) advising the creditor

(i) of the date fixed for the hearing of the application; and

(ii) that if the creditor wishes to object to the supervisor's appointment, or respond in any other way, he shall send his objection or response to the supervisor not later than 12 noon on the day before the date fixed for the hearing.

(3) The supervisor shall file with the Court, before or at the hearing of the application, a report summarising any responses or objections that he has received.

Rules Applicable to Bankruptcy Orders

Scope of and interpretation for this Division.

251. This Division applies to bankruptcy orders whether made by the debtor, a creditor or a supervisor.

Drawing and content of bankruptcy order.

252. (1) A bankruptcy order shall be drawn by the Court.

(2) A bankruptcy order shall

(a) state the date that the application on which the order is made was filed;

(b) state the date of the making of the order; and

(c) contain a notice requiring the bankrupt forthwith after the service of the order on him to attend on the trustee at the time and place stated in the order.

(3) Where the debtor is represented by a legal practitioner, the bankruptcy order shall be endorsed with the name, address and telephone number of the legal practitioner and any reference.

Service of bankruptcy order.

253. (1) The Court shall, forthwith on making a bankruptcy order, give notice to the trustee of his appointment and send three sealed copies of the order to him as soon as is practicable.

(2) The trustee shall, forthwith on receiving the sealed copies of the bankruptcy order from the Court, send one copy to the bankrupt and one copy to the Official Receiver.

Advertisement of bankruptcy order.

254. (1) The trustee shall, within 10 days of receiving sealed copies of the bankruptcy order from the Court, advertise the Order.

(2) The advertisement shall state the name and address of the person appointed as trustee.

Stay of advertisement.

255. (1) The Court may, on the application of the bankrupt or a creditor, order the trustee not to advertise a bankruptcy order pending a further order of the Court.

(2) An application for a stay of advertisement shall be supported by an affidavit setting out the grounds on which the application is made.

(3) The applicant for an order under paragraph (1) shall serve a sealed copy of the order, if made, on the trustee and on the Official Receiver.

Amendment of title of proceedings.

256. (1) At any time after the making of a bankruptcy order, the trustee may apply to the Court for an order amending the title of the proceedings.

(2) The Court may include in an order under paragraph (1), directions for the service and advertisement of a notice of the amendment.

Division 2 – Interim Relief

Application for order under section 307(1).

257. (1) An application for an order under section 307(1) [protection of assets after application for bankruptcy order], shall propose an eligible insolvency practitioner or the Official Receiver for appointment under section 307(1)(a).

(2) If the Official Receiver is proposed for appointment, he shall be given sufficient notice of the hearing to enable him to attend the hearing.

(3) An application referred to in paragraph (1) shall be supported by an affidavit stating

(a) the grounds upon which the application is being made;

(b) where the proposed appointee is not the Official Receiver, that he has consented to act and, to the best of the applicant's belief is eligible to act as an insolvency practitioner in relation to the debtor;

(c) whether, to the applicant's knowledge, there has been proposed or is in force for the debtor a creditor's arrangement under Part II of the Act;

(d) the applicant's estimate of the value of the assets in respect of which the appointment is to be made; and

(e) if the Official Receiver is proposed for appointment, whether and in what manner he has been given notice of the application.

Hearing of application.

258. (1) If the Official Receiver is proposed to be appointed under section 307(1)(a), he is entitled to attend the hearing and make such representations as he considers appropriate.

(2) The Court shall not appoint the Official Receiver unless he has been given notice of the application in accordance with rule **257**(2).

Order under section 307(1).

259. (1) An order under section 307(1) shall state the nature and a short description of the assets of which the person appointed is to take control, and the duties to be performed by him in relation to the debtor's affairs.

(2) The Court shall, forthwith on making an order under section 307(1), give notice to the person appointed of his appointment and, as soon as is practicable send two sealed copies of the order to him.

(3) The person appointed by the Court shall, as soon as practicable, send one copy of the sealed order to the debtor.

Division 3 – Bankrupt's Estate

Duties of bankrupt with respect to after acquired property.

260. (1) The notice required to be given by the bankrupt to the trustee under section 316(4) of assets acquired by, or devolving on him, or of any increase of his income, is within 21 days of his becoming aware of assets or the increased income.

(2) If the bankrupt disposes of property before giving the notice required by this rule or in contravention of section 316(6), he shall forthwith disclose to the trustee the name and address of the person to whom he disposed of the assets and

provide any other information which may be necessary to enable the trustee to trace the assets and recover them for the estate.

(3) Where the bankrupt gives the trustee notice under paragraph (2) of assets acquired by or devolving upon him, he shall not, without the trustee's consent in writing, dispose of the assets within the period of 42 days beginning with the date of the notice.

(4) Subject to paragraph (5), paragraphs (1) to (3) do not apply to assets acquired by the bankrupt in the ordinary course of a business carried on by him.

(5) If the bankrupt carries on a business, he shall, at least once in each six month period, provide to the trustee information with respect to the business, showing the total value of goods bought and sold or, as the case may be, services supplied, and the profit or loss arising from the business.

(6) Where paragraph (5) applies, the trustee may by a notice in writing, require the bankrupt to provide such further details of the business, including accounts, as are specified in the notice.

Action against person to whom bankrupt disposed assets.

261. (1) Where assets have been disposed of by the bankrupt, before giving the notice required by rule **260**(3) or in contravention of that rule, the trustee may serve notice on the person to whom the assets were disposed of, claiming the property as part of the estate by virtue of section 318(2).

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(2) The trustee's notice under this rule shall be served within 28 days of his becoming aware of the identity of the person to whom the bankrupt disposed of the assets and an address at which he can be served.

Expenses of acquiring title to after-acquired assets.

262. Any expenses incurred by the trustee in acquiring title to after-acquired property shall be paid out of the estate, in the prescribed order of priority.

Purchase of replacement property for items of excess value.

263. (1) A purchase of replacement assets under section 319(3) may be made either before or after the realisation by the trustee of the value of the assets vesting in him under the section.

(2) The trustee is under no obligation, by virtue of the section, to apply funds to the purchase of a replacement for assets vested in him, unless and until he has sufficient funds in the estate for that purpose.

Income Payments Orders

Application for order.

264. (1) An application by the trustee for an income payments order under section 322 is made by filing with the Court an application together with a statement of the grounds upon which the application is made.

(2) The trustee shall send a notice of the application to the bankrupt not less than 28 days before the day fixed for the hearing of the application, together with sealed copies of the documents filed with the Court.

(3) A notice sent to the bankrupt under paragraph (2) shall state that

(a) unless at least 7 days before the date fixed for the hearing the bankrupt sends to the Court and to the trustee written consent to an order being made in the terms of the application, he is required to attend the hearing; and

(b) if he attends, he will be given an opportunity to show cause why the order should not be made, or an order should be made otherwise than as applied for by the trustee.

Notice of order.

265. Where the Court makes an income payments order, the trustee shall, forthwith after the order is made, send a sealed copy of the order

(a) to the bankrupt; and

(b) if the order is made under section 322(3)(b), to the person to whom the order is directed.

Order under section 322(3)(b).

266. (1) Where a person receives notice of an income payments order under section 322(3)(b), with reference to income otherwise payable by him to the bankrupt, he shall make the necessary arrangements for immediate compliance with the order.

(2) The trustee may, by written notice, authorise a person making payments to him in accordance with an order under section 322(3)(b) to deduct and retain such fee as may be specified in the notice towards the clerical and administrative costs of compliance with the order.

(3) The trustee shall send a copy of any notice under paragraph (2) to the bankrupt.

(4) Where a person receives notice of an income payments order imposing on him a requirement under section 322(3)(b), he shall forthwith give notice to the trustee if

(a) he is no longer liable to make to the bankrupt any payment of income; or

(b) having made payments in compliance with the order, he ceases to be so liable.

Variation or discharge of order.

267. (1) The trustee or the bankrupt may apply to the Court to vary or discharge an income payments order.

(2) Subject to paragraphs (5) and (6), where the application is made by the trustee, rule **264** applies to an application under this rule with such modifications as are necessary.

(3) A bankrupt shall make application under paragraph (1) by filing with the Court an application, a statement of the grounds upon which it is made and any affidavit that he intends to rely on.

(4) The bankrupt shall send sealed copies of the application, the statement of grounds and any affidavit filed with the Court to the trustee not less than 28 days before the day fixed for the hearing of the application.

(5) If an income payments order is made under section 322(3)(a), and the bankrupt does not comply with it, the trustee may apply to the Court for the order to be varied, so as to take effect under section 322(3)(b) as an order to the person making the payment.

(6) The trustee's application under paragraph (1) may be made ex parte.

(7) Where an application under this rule is made by the bankrupt, the trustee may, not less than 7 days before the date fixed for the hearing, file a written report of any matters which he considers ought to be drawn to the Court's attention.

(8) The trustee shall, as soon as reasonably practicable after filing a report under paragraph (7) send a sealed copy to the bankrupt.

(9) Where the Court makes an order under this rule, the trustee shall, forthwith after the order is made, whether on his application or on the application of the bankrupt, send a sealed copy of the order or variation or discharge

(a) to the bankrupt; and

(b) if the order is made under paragraph (5) or the order varies or discharges an order made under section 322(3)(b), to the person making the payment.

Division 4 – Bankruptcy Trustee

Appointment of trustee by Court.

268. (1) Where the Court appoints a trustee, it shall as soon as reasonably practicable after the date of the order, send 2 sealed copies of the order to the trustee who shall send one copy to the Official Receiver.

(2) The trustee's appointment takes effect from the date of the order.

Authentification of trustee's appointment.

269. A sealed copy of the Court's order appointing a person as trustee of a bankrupt may, in any proceedings, be adduced as proof that the person appointed is duly authorised to exercise the powers and perform the duties of trustee in relation to the bankruptcy.

Removal of trustee.

270. (1) Application for the removal of a trustee under section 328 is made by filing at Court

(a) an application stating the grounds upon which the removal of the trustee is sought; and

(b) an affidavit setting out the evidence relied upon in support of the application.

(2) A sealed copy of the application and the affidavit shall be served on the trustee and the Official Receiver, unless it is his application, not less than 10 days before the date fixed for the hearing.

(3) The trustee may file affidavit evidence in opposition to the application not less than 4 days before the date fixed for the hearing of the application.

(4) The trustee shall, not less than 4 days after being served with an application under paragraph (2) send to the Official Receiver a statement as to whether any of the bankrupt's assets have not been realised, applied, distributed or otherwise fully dealt with and, if so, providing details of

(a) the nature, value and location of the assets;

(b) any action taken by the trustee to deal with the assets or his reason for not dealing with them; and

(c) the current position in relation to the assets.

(5) Unless the Court otherwise directs, an application for the removal of a trustee shall be held in Chambers.

(6) The Court may require the applicant to make a deposit or provide security for the costs to be incurred by the trustee on the application.

(7) Subject to any order of the Court to the contrary, the costs of an application to remove a trustee are not payable out of the bankrupt's estate.

(8) If the Court removes a trustee under section 328, it shall send a copy of the order removing him to

(a) the trustee removed;

(b) any remaining trustee; and

(c) the Official Receiver.

Resignation of liquidator under section 329(1)(a).

271. (1) Where the trustee resigns under section 329(1)(a) [trustee no longer eligible to act as an insolvency practitioner in relation to the bankrupt], he shall send the Official Receiver with the notice of his resignation, a statement covering the matters specified in **270**(4).

(2) The trustee shall, if so directed by the Official Receiver, verify the statement by affidavit.

Resignation of liquidator under section 329(1)(b).

272. (1) Unless the trustee is a joint trustee resigning in accordance with section 329(4), the notice of a creditors' meeting sent to creditors in accordance with section 329(5) shall be accompanied by an account of the trustee's administration of the bankruptcy, including a summary of his receipts and payments.

(2) The trustee shall, not less than seven days before the date fixed for the creditors' meeting, send a copy of the notice and account referred to in paragraph (1) and a statement covering the matters specified in **270**(4) to the Official Receiver and file a copy of the notice and account with the Court.

(3) If at a creditors' meeting called under section 329(5) a resolution is passed accepting the trustee's resignation, the chairman shall, forthwith, send the Official Receiver a copy of the resolution signed by the chairman.

(4) Where a trustee's resignation is accepted by the creditors, the trustee shall forthwith

(a) send a notice of his resignation to the Official Receiver, and

(b) file a notice of his resignation with the Court.

(5) The trustee's resignation is effective from the date that the notice of his resignation is received by the Official Receiver, which date shall be endorsed on the notice and a copy of the endorsed notice returned to the former trustee.

Leave to resign.

273. (1) A trustee shall, not less than 7 days before the date fixed for the hearing of an application for leave to resign under section 329(6A), give notice of his application to

(a) any joint trustee;

(b) the creditors' committee, if any; and

(c) the Official Receiver.

(2) If the Court gives the trustee leave to resign, it may make such provision as it consider appropriate with respect to matters arising in connection with his resignation.

(3) Where the Court gives the trustee leave to resign, section 328(3) applies with such modifications as are necessary.

(4) The Court shall send two sealed copies of the order to the trustee, who shall forthwith send one of the copies to the Official Receiver.

(5) Within 14 days of his resignation, the former liquidator shall send a notice of his resignation to the Official Receiver.

Death of liquidator.

274. (1) Where the trustee dies, his personal representative shall give notice of his death to the Official Receiver, specifying the date of his death, unless notice has already been given to the Court and the Official Receiver under paragraphs (2) or (3).

(2) If a trustee who dies was a partner in a firm, notice of his death may be given to the Official Receiver and the Court by a partner in the firm.

(3) Notice of the death of a trustee may be given by any person producing to the Court and the Official Receiver the relevant death certificate or a copy of it.

(4) Where the Official Receiver receives a notice under paragraph (3) and the deceased trustee was the sole trustee of the bankrupt, the Official Receiver shall, as soon as reasonably practicable, apply to the Court under section 330(1) for the appoint of a replacement trustee, unless an application has already been made by the creditors' committee.

Advertisement of appointment.

275. (1) A trustee who is appointed to replace a trustee who has, for whatever reason, ceased to hold office, shall within 21 days of the date of his appointment, advertise his appointment.

(2) His advertisement shall state that he has been appointed in place of a trustee who has ceased to hold office.

Solicitation.

276. (1) Where the Court is satisfied that any improper solicitation has been used by or on behalf of a trustee in obtaining proxies or procuring his appointment, it may order that no remuneration, or that reduced remuneration, be payable to the trustee out of the assets of the estate.

(2) An order of the Court under paragraph (1) overrides any resolution of the creditors' committee or any other provision of the Rules.

Division 5 – Administration by Trustee

Meetings of creditors.

277. (1) This rule applies to a creditors' meeting called under Part XII of the Act.

(2) The trustee shall give the bankrupt not less than 14 days notice of a creditors' meeting.

(3) If a creditors' meeting is adjourned, the chairman of the meeting shall give notice of the fact to the bankrupt, unless

(a) the bankrupt was present at the meeting; or

(b) the chairman considers it to be unnecessary or impracticable to give notice to the bankrupt.

(4) The chairman of a creditors' meeting may admit the bankrupt or any other person to the meeting, if he has given reasonable notice of his wish to be present at the meeting.

(5) The chairman's decision is final as to what, if any, intervention may be made by the bankrupt, or by any other person, admitted to the meeting under this paragraph.

(6) If the bankrupt is not present at a creditors' meeting, and it is desired to put questions to him, the chairman may adjourn the meeting with a view to obtaining his attendance.

(7) Where the bankrupt is present at a creditors' meeting, only such questions may be put to him as the chairman may in his discretion allow.

278. (1) Unless otherwise directed by the Official Receiver, a trustee shall at the end of every 6 months file with the Court and send to the Official Receiver and the creditors' committee, if any, a written report stating

Trustee's duty to report to Official Receiver and creditors.

(a) the receipts and payments for the period;

(b) details of the assets realised and the assets remaining unrealised during the period and the reasons why the assets remaining unrealised have not been realised;

(c) the progress of his administration of the bankrupt's estate and any matters in connection with his administration which he considers should be drawn to the Official Receiver's attention; and

(d) such other information as the Official Receiver may require.

(2) Where a creditors committee is not appointed, the report referred to in paragraph (1) shall be sent to each creditor.

Division 6 – Claims and Distribution of Estate

279. A claim made against a bankrupt by an unsecured creditor under section 336 shall be in the prescribed form and shall specify

Claims by unsecured creditors.

(a) the name and address of the creditor;

(b) the total amount of his claim at the date of the bankruptcy order;

(c) whether or not the claim includes uncapitalised interest;

(d) whether the whole or any part of the debt or liability, and if so which, is a preferential claim;

(e) particulars of how and when the debt or liability was incurred by the bankrupt;

(f) the documents, if any, by which the debt or liability can be substantiated;

(g) particulars of any security interest held, the date when it was given and the value that the creditor places upon it; and

(h) the name and address of the person signing the claim, if not the creditor himself.

Claim forms.

280. (1) Unless the Court otherwise orders, the trustee shall send a claim form to each creditor of whom he is aware at the same time as he sends the creditor notice of his appointment under section 326.

(2) The trustee shall as soon as is practicable send a claim form to any creditor that he becomes aware of subsequent to sending out a notice under section 326.

Application to Court expunge or amend an admitted claim.

281. The applicant for an order expunging or reducing a claim under section 337(2) shall serve a copy of his application

(a) in the case of an application by the trustee, on the creditor who made the claim; and

(b) in the case of an application by a creditor, on the trustee and on the creditor who submitted the claim.

Negotiable instruments.

282. The trustee may reject a claim in respect of money owed on a bill of exchange, promissory note, cheque or other negotiable instrument or security unless the instrument or security, or a copy certified by the creditor or his authorised representative to be a true copy, is produced to the trustee.

Inspection of claims.

283. The trustee shall allow claims in his custody or control to be inspected by

(a) a creditor who has submitted a claim in the bankruptcy that has not been wholly rejected by the trustee;

(b) the bankrupt;

(c) a person acting on behalf of a person referred to in paragraph (a) or (b).

Distribution of dividend.

284. Where the trustee distributes a dividend, he shall send to each creditor participating in the dividend, a statement containing such particulars with respect to the company, and to its assets and affairs, as will enable creditors to understand the calculation of the amount of the dividend.

Final meeting.

.**285.** (1) The trustee shall call a meeting under section 349 by sending a notice of the meeting, together with his final report, to all creditors not less than 28 days before the date fixed for the meeting.

(2) A copy of the notice and report sent to creditors under paragraph (1) shall, within the same time period, also be sent to the Official Receiver and the bankrupt

(3) The trustee's final report shall include a summary of his receipts and payments.

(4) At the final meeting, the creditors may question the trustee with respect to any matter contained in his report or concerning his administration of the bankrupt's estate.

(5) As soon as reasonably practicable after the final meeting has been held, the trustee shall send to the Official Receiver and file with the Court a notice that the meeting has been held and shall file a copy of his final report with the Court.

(6) If there is no quorum at the final meeting, the trustee shall report to the Court and the Official Receiver that a final meeting was summoned in accordance with the Rules, but there was no quorum present and the final meeting is then deemed to have been held.

Division 7 – Disclaimer

Notice of disclaimer.

286. (1) A notice of disclaimer shall contain such details of the property disclaimed as enable it to be easily identified.

(2) The notice shall be signed by the trustee and filed at Court with a copy.

(3) The Court shall return the sealed copy to the trustee.

(4) The Court shall either endorse on the copy notice or record on the Court file the method by which the notice of disclaimer was returned to the trustee.

Communication of notice of disclaimer.

287. (1) Written notice of a disclaimer notice shall be given under section 358(3) by sending or giving a copy of the sealed disclaimer notice to each person entitled to receive it.

(2) Without limiting section 358(3), the following are entitled to receive notice of a disclaimer

(a) where the property disclaimed is of a leasehold nature, every person who, to the trustee's knowledge, claims under the bankrupt as underlessee or mortgagee;

(b) where the disclaimer is of property in a dwelling house, every person who, to the trustee's knowledge, is in occupation of, or claims a right to occupy, the house;

(c) every person who, to the trustee's knowledge

(i) claims an interest in the disclaimed property, or

(ii) is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; and

(d) where the disclaimer is of an unprofitable contract, a person who is a party to the contract.

(3) If it subsequently comes to the knowledge of a trustee that a person's rights are affected by a disclaimer, the trustee shall forthwith given written notice of the disclaimer to that person in accordance with this rule unless

(a) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court otherwise orders.

(4) A disclaimer notice required to be given to a person under the age of 18 years in relation to the disclaimer of property in a dwelling house is sufficiently given if given to the parent or guardian of that person.

(5) A trustee disclaiming property may at any time, in addition to his obligations under the Act and the Rules, give notice of the disclaimer to any person who, in his opinion, ought in the public interest or otherwise to be informed of the disclaimer.

Duty to keep Court informed.

288. The trustee shall, as soon as reasonably practicable, notify the Court of each person to whom he has given notice of disclaimer in accordance with the Act and the Rules, specifying the name and address of each person and his interest in the property disclaimed.

Notice to elect.

289. (1) A notice to elect shall be served on a trustee by delivering the notice to him personally or sending it to him by registered post.

(2) Where property cannot be disclaimed by the trustee without the leave of the Court, if the trustee applies to the Court for leave to disclaim within the 28 day period specified in section 360(2), the Court shall extend the time allowed by that section for giving notice of disclaimer to a date not earlier than the date of the application.

290. (1) Where the trustee requires the leave of the Court to disclaim property claimed for the bankrupt's estate under section 318 or 319, he may apply for that leave ex parte. Application for leave to disclaim.

(2) An application under paragraph (1) shall be accompanied by a report

(a) giving such particulars of the property proposed to be disclaimed as enable it to be easily identified.

(b) setting out the reasons why, the property having been claimed for the estate, the Court's leave to disclaim is now applied for, and

(c) specifying the persons, if any, who have been informed of the trustee's intention to make the application.

(3) If the report states that any person's consent to the disclaimer has been signified, a copy of that consent shall be annexed to the report.

(4) The Court may, on consideration of the application, grant the leave applied for and it may, before granting leave

(a) order that notice of the application be given to all such persons who, if the property is disclaimed, will be entitled to apply for a vesting or other order under section 362; and

(b) fix a venue for the hearing of the application under section 361(2).

291. (1) If it appears to the trustee that a person may have an interest in onerous property, he may give notice to that person to declare, within 14 days, whether he claims any interest in the property and, if so, the nature and extent of his interest. Notice to declare interest in onerous property.

(2) If a person fails to comply with a notice given under paragraph (1), the trustee is entitled to assume that, for the purposes of the disclaimer of that property, the person concerned has no interest in it.

292. (1) An application for a vesting order or an order for delivery under section 362 shall be made within three months of the earlier of Application for vesting order or order for delivery.

(a) the applicant first becoming aware of the disclaimer; or

(b) the applicant receiving a notice of the disclaimer from the trustee.

(2) The application shall be filed with the Court accompanied by a copy of the application for service on the trustee and an affidavit

(a) stating whether his claim is based upon

(i) an interest in the disclaimed property,

(ii) an undischarged liability, or

(iii) the occupation of a dwelling house;

(b) specifying the date upon which he received a copy of the trustee's notice of disclaimer or otherwise became aware of the disclaimer; and

(c) specifying the grounds upon which his application is based and the order that he desires the Court to make under section 362.

(3) The Court shall return a sealed copy of the application to the applicant.

(4) Not less than seven days before the date fixed for the hearing of the application, the applicant shall serve on the trustee

(a) a copy of the sealed application; and

(b) a copy of the affidavit filed in support.

(5) On the hearing of the application, the Court may give directions as to other persons, if any, who should be given notice of the application and the grounds on which it is made.

(6) Sealed copies of any order made on the application shall be sent by the Court to the applicant and the trustee.

(7) Unless there is one or more applications pending under

(a) section 359(2), in a case where the property disclaimed is of a leasehold nature; or

(b) section 359(4), in a case where the property disclaimed is property in a dwelling house;

and section 359(2) or 359(4), as the case may be, apply to suspend the effect of the disclaimer, the order of the Court shall include a direction giving effect to the disclaimer.

Division 8 – Investigation of Bankrupt's Affairs

Statement of Assets and Liabilities

Statement of assets and liabilities.

293. (1) The statement of assets and liabilities required

(a) to be filed by a debtor under section 295(2) together with his application for a bankruptcy order; and

(b) to be submitted by a bankrupt under section 366(1);

shall be in the prescribed form and shall contain the information required by the form.

(2) Without limiting paragraph (1), a statement of assets and liabilities shall set out

(a) the assets and liabilities of the debtor or bankrupt;

(b) the names and addresses of the creditors of the debtor or bankrupt; and

(c) the security interests held by creditors of the debtor or bankrupt and the dates upon which the security interests were created.

Scope of rules **295** to **298**.

294. Rules **295** to **298** apply in respect of a statement of assets and liabilities required to be submitted by a bankrupt under section 366(1).

Submission and filing of verified statement.

295. (1) The trustee of a bankrupt shall provide him with the forms required to complete the statement of assets and liabilities together with instructions for completing the forms.

(2) The bankrupt shall verify his statement of assets and liabilities by affidavit and submit it to the trustee together with one copy.

(3) The trustee shall file the verified statement of assets and liabilities in Court.

Release from duty to submit statement of assets or liabilities and extension of time.

296. (1) A bankrupt may request the trustee

(a) to release him from his obligation to submit a statement of assets and liabilities; or

(b) for an extension of time for submitting the statement;

under section 366(3).

(2) The trustee may grant the bankrupt a release or an extension of time under section 366(3) at his own discretion, without having received a request from the bankrupt.

Application to Court where office holder refuses a request under rule **205**.

297. (1) If the trustee refuses a request made under rule **296**, the bankrupt may apply to the Court for an order granting him the release or the extension.

(2) The bankrupt shall give the trustee at least 10 business days notice of an application under paragraph (1) and of any affidavit filed in support of his application.

(3) The trustee is entitled to appear and make representations at the hearing of an application under paragraph (1) and, whether or not he appears, to file with the Court a written report setting out any matters that he considers should be brought to the attention of the Court.

(4) The trustee shall send the bankrupt a copy of a report filed under paragraph (3) at least 5 business days prior to the date fixed for the hearing of the application.

(5) On an application to the Court under this rule, the bankrupt's costs shall be paid in any event by him and, unless the Court otherwise orders, no allowance towards them shall be made out his estate.

(6) The Court shall send sealed copies of an order made under this rule to the trustee and to the bankrupt.

Expenses of statement of assets and liabilities.

298. (1) If the bankrupt is unable to prepare a statement of assets and liabilities himself, the trustee may, at the expense of the estate

(a) employ a person to assist the bankrupt in the preparation of the statement; or

(b) authorise an allowance payable out of the estate towards expenses to be incurred by the bankrupt in employing a person approved by the trustee to assist the bankrupt in preparing the statement.

(2) A request by the bankrupt for an authorisation under paragraph (1)(b) shall be accompanied by an estimate of the expenses involved.

(3) An authorisation given by the trustee under this rule shall be subject to such conditions, if any, as he considers appropriate with respect to the manner in which any person may obtain access to relevant books and papers.

(4) Nothing in this rule relieves the bankrupt from any obligation with respect to the preparation, verification and submission of his statement of assets and liabilities, or to the provision of information to the Official Receiver or the trustee.

Report where statement of assets and liabilities submitted.

299. (1) Where the bankrupt submits a statement of assets and liabilities under section 366(1), the trustee shall send to creditors a report containing a summary of the statement and such observations, if any, as he considers it appropriate to make with respect to it or to the bankrupt's affairs generally.

(2) The trustee need not comply with paragraph (1) if he has previously reported to creditors with respect to the bankrupt's affairs, so far as known to him, and he is of opinion that there are no additional matters which ought to be brought to their attention.

Statement of affairs dispensed with.

300. (1) Where the bankrupt has been released from the obligation to submit a statement of affairs, the trustee shall, as soon as reasonably practicable, send to creditors a report containing a summary of the bankrupt's assets and liabilities and affairs, so far as within his knowledge, and such observations, if any, as he considers it would be appropriate for him to make.

(2) The trustee need not comply with paragraph (1) if he has previously reported to creditors with respect to the bankrupt's affairs (so far as known to him) and he is of opinion that there are no additional matters which ought to be brought to their attention.

Examination

Application for examination.

301. (1) An application to the Court under section 369(1) for the examination of a bankrupt shall state whether the Official Receiver or the trustee seeks the examination to be held in public or in private.

(2) The Official Receiver or trustee shall, together with the application, file with the Court a statement setting out:

(a) the person or persons sought to be examined;

(b) a general description of the matters the person will be examined on;

(c) where the person sought to be examined is not the bankrupt or the bankrupt's spouse, the grounds for the application;

(d) whether any further orders or directions are sought under section 370(3) or (6).

(3) Unless the Court gives a direction under section 370(6)(a), the matters upon which the examinee may be examined are not limited to the matters stated in the application in accordance with paragraph (2)(b).

Advertisement of order.

302. Where the Court makes an order for the public examination of a bankrupt

(a) it may give directions for the advertisement of the order; and

(b) if it does not give such directions, the Official Receiver or the trustee, as the case may be, may advertise the order in such manner as he considers appropriate.

Application required by creditors.

303. (1) A notice to the trustee under section 369(4) shall be in writing and shall be accompanied by

(a) a list of the creditors concurring with the notice and the amount of their respective claims in the bankruptcy;

(b) written confirmation of each creditor's concurrence with the notice; and

(c) a statement of the reasons why the creditors require the trustee to make application for the examination of the bankrupt.

(2) The trustee shall not make an application as required by the creditors unless there is deposited with him such sum as he determines to be appropriate by way of security for the expenses of the hearing of the examination, if ordered.

(3) Within 28 days of receiving a notice under section 369(4), the documents specified in paragraph (1) and the security deposit, the trustee shall apply to the Court for the examination of the bankrupt.

(4) If the trustee considers that the request is an unreasonable one, he may apply to the Court for an order relieving him from the obligation to make the application otherwise required by that subsection.

(5) If the Court makes an order under paragraph (4), and the application for the order was made ex parte, the trustee shall, as soon as reasonably practicable after the order is made, give notice of the order to the creditors named in the notice.

Record of examination.

304. (1) A written record shall be kept of an examination.

(2) The record shall be read either to or by the examinee and signed by him.

(3) The Court may order that the examinee verify the written record of the examination by affidavit.

Adjournment of examination.

305. (1) An examination may be adjourned by the Court either to a fixed date or generally.

(2) Without limiting paragraph (1), the Court shall adjourn an examination if criminal proceedings have been instituted against the examinee and the Court is of opinion that the continuance of the hearing would prejudice a fair trial of those proceedings.

(3) Where an examination is adjourned generally, the Court may at any time on the application of the trustee, the Official Receiver or the bankrupt

(a) fix a venue for the resumption of the examination; and

(b) give such directions concerning the examination as it considers appropriate.

Costs of an examination.

306. (1) The costs and expenses incurred by an examinee or by a creditor in connection with an examination, including the costs of representation by a legal practitioner, shall be borne by him and shall not be payable out of the bankrupt's estate as a cost of the bankruptcy.

(2) Subject to paragraph (3), the costs of the trustee and, if appropriate, the Official Receiver in connection with an examination ordered are a cost of the bankruptcy and shall be paid out of the bankrupt's estate in accordance with the prescribed priority.

(3) Where an examination of the bankrupt has been ordered by the Court on a requisition of the creditors under section 369(4), the Court may order that the expenses of the examination are to be paid, as to the whole or a specified proportion, out of the deposit under rule **303**(2), instead of out of the estate.

Division 9 – Discharge and Annulment of Bankruptcy

Discharge

Application in relation to automatic discharge.

307. (1) This Rule applies to an application made by the Official Receiver or the trustee under section 376(2).

(2) An affidavit, or in the case of the Official Receiver, a report stating the grounds upon which the application is made shall be filed together with the application.

(3) A copy of the endorsed application, together with the affidavit or report in support, shall be sent to the persons specified in paragraph (4) so as to reach them at least 21 days before the date fixed for the hearing.

(4) The following persons are entitled to be given notice of the application

(a) the bankrupt;

(b) where the applicant is the Official Receiver and he is not the bankruptcy trustee, the bankruptcy trustee; and

(c) where the applicant is the bankruptcy trustee (not being the Official Receiver), the Official Receiver.

(5) The bankrupt may, not later than seven days before the date of the hearing, file with the Court an affidavit specifying any statements in the applicant's affidavit or report which he intends to deny or dispute.

(6) An affidavit filed under paragraph (5) shall be sent to the Official Receiver and the bankruptcy trustee, if different, not less than 4 days before the date of the hearing.

(7) If, on the hearing of the application, the Court makes an order under section 376(2), the applicant shall serve a copy on each person entitled to receive notice of the application under paragraph (4).

Application concerning order for suspension of discharge.

308. (1) This Rule applies to an application made by the bankrupt under section 377.

(2) The bankrupt shall, together with the application, file an affidavit stating the grounds upon which the application is made.

(3) A copy of the endorsed application, together with the affidavit in support, shall be sent to the Official Receiver and the trustee, if different, so as to reach them at least 28 days before the date fixed for the hearing.

(4) The Official Receiver and the bankruptcy trustee, if different

(a) may file with the Court a report of any matters which he considers ought to be drawn to the Court's attention; and

(b) may appear and be heard on the bankrupt's application.

(5) If the Court's order under section 376(2) was for the period for automatic discharge to cease to run until the fulfilment of specified conditions, the Court may request a report from the Official Receiver or the bankruptcy trustee as to whether those conditions have or have not been fulfilled.

(6) If an affidavit is filed under paragraph (4) or a report is filed under paragraph (5), copies shall be sent to the bankrupt and the Official Receiver or the bankruptcy trustee, as the case may be, not later than 14 days before the hearing.

(7) The bankrupt may, not later than seven days before the date of the hearing, file with the Court an affidavit specifying any statements in the report or affidavit referred to in paragraph (6) which he intends to deny or dispute.

(8) An affidavit filed under paragraph (7) shall be sent to the Official Receiver and the trustee, if different, not less than 4 days before the date of the hearing.

(9) If, on the bankrupt's application, the Court discharges the order under section 376(2) it shall issue a certificate to the bankrupt stating that it has done so, with effect from a specified date and the bankrupt shall send copies of the certificate to the Official Receiver and the trustee, if different.

Application for discharge.

309. (1) An application by a bankrupt for his discharge under section 378 shall state whether the application is made under subsection (1)(a) or (1)(b) of that section.

(2) Where a bankrupt makes an application for his discharge under section 378, he shall deposit with the Official Receiver such sum as the Official Receiver reasonably requires to comply with his obligations under paragraph (3).

(3) Subject to paragraph (5), upon receiving an application for discharge by the Court, the Official Receiver shall give notice of the application to every creditor who, to the Official Receiver's knowledge, has a claim outstanding against the estate which has not been satisfied.

(4) Notices under paragraph (3) shall be given not later than 14 days before the date fixed for the hearing of the bankrupt's application.

(5) If the bankrupt fails to comply with paragraph (2)

(a) the Official Receiver is not obliged to give notice under paragraph (3); and

(b) the Court shall not make an order discharging the bankrupt.

Report of Official Receiver.

310. (1) Where the bankrupt makes an application for his discharge under section 378, the bankruptcy trustee shall file an affidavit, and the Official Receiver may file a report, at least 21 days before the date fixed for the hearing of the application as to

(a) whether paragraphs (a) to (j) in section 379(4), or any of them, apply to the bankrupt and, if so, providing particulars; and

(b) any other matters that the trustee and the Official Receiver consider should be brought to the attention of the Court.

(2) A copy of the affidavit and report filed under paragraph (1) shall be sent to the bankrupt at least 14 days before the date fixed for the hearing of the application.

Annulment of Bankruptcy Order

Application for annulment.

311. An application to the Court under section 382(1) for the annulment of a bankruptcy order shall specify under which paragraph of that subsection it is made and shall be supported by an affidavit stating the grounds on which it is made.

Notice of application and other documents.

312. (1) Notice of an application under section 382(1) shall be given

(a) to the trustee and, if he is not the trustee, to the Official Receiver;

(b) if the application is made under section 382(1)(a), to the person on whose application the bankruptcy order was made; and

(c) if the applicant is not the bankrupt, to the bankrupt.

(2) Any notice required to be given, or document sent, under the rules in this Division relating to annulment to the trustee, shall also be given or sent, if he is not trustee, to the Official Receiver within the time periods specified in the relevant rule.

(3) Any notice required to be given, or document sent, under the rules in this Division relating to annulment to the trustee or any other person shall also be given, if he is not the applicant, to the bankrupt within the time periods specified in the relevant rule.

Report by trustee.

313. (1) Where the application is made under section 382(1)(b), not less than 21 days before the date fixed for the hearing, the trustee shall file with the Court a report with respect to the following matters:

(a) the circumstances leading to the bankruptcy;

(b) the extent of the bankrupt's assets and liabilities at the date of the bankruptcy order and at the date of the application;

(c) details of the bankrupt's creditors who are known to him to have claims, but have not submitted them; and

(d) such other matter as the person making the report considers would assist the Court in making a decision on the application.

(2) The report filed under paragraph (1) shall include particulars of the extent to which, and the manner in which, the debts and expenses of the bankruptcy have been paid or secured and, in so far as the debts and expenses of the bankruptcy are unpaid but secured, the person making the report shall state in it whether and to what extent he considers the security to be satisfactory.

(3) A copy of the report shall be sent to the applicant at least 14 days before the date fixed for the hearing.

(4) The applicant for an order annulling the bankruptcy may, if he wishes, file further affidavits in reply to the trustee's report.

(5) The applicant shall send a copy of any affidavit sworn under paragraph (4) to the trustee.

(6) Where the Official Receiver is not the trustee, he may file a report with the Court, a copy of which shall be sent to the applicant at least 7 days before the hearing.

Power of Court to stay proceedings.

314. (1) The Court may, in advance of the hearing, make an interim order staying any proceedings which it thinks ought, in the circumstances of the application, to be stayed.

(2) Except in relation to an application for an order staying all or any part of the proceedings in the bankruptcy, application for an order under this rule may be made ex parte.

(3) Where application is made under this rule for an order staying all or any part of the proceedings in the bankruptcy, the applicant shall send a copy of the application to the trustee in sufficient time to enable him to be present at the hearing and to make any representations he may wish to make.

(4) Where the Court makes an order under this rule staying all or any part of the proceedings in the bankruptcy, the rules in this Division in connection with an annulment continue to apply.

(5) If the Court makes an order under this rule, it shall send copies of the order to the applicant and to the trustee.

Notice to creditors who have not submitted a claim.

315. Where an application for annulment is made under section 382(1)(b) and the trustee reports under rule **313** that there are creditors of the bankrupt who have not submitted a claim, the Court may

(a) direct the trustee to send notice of the application to such of those creditors as the Court thinks ought to be informed of it, with a view to their submitting a claim for their debts within 21 days;

(b) direct the trustee to advertise the application so that creditors who have not submitted a claim may do so within a specified time; and

(c) adjourn the application, for a period of not less than 35 days.

The hearing.

316. (1) The trustee shall attend the hearing of the application.

(2) If he is not trustee, the Official Receiver may but is not required to attend unless he has filed a report under rule **313**(6).

(3) If the Court makes an order on the application, it shall send copies of the order to the applicant and the trustee and to the Official Receiver, if he is not the trustee.

Security to be provided by bankrupt.

317. (1) This rule applies to an application made under section 382(1)(b).

(2) If a debt is disputed, or a creditor who has submitted a claim can no longer be traced, the Court shall not annul the bankruptcy unless the bankrupt has give such security, in the form of money paid into court, or a bond entered into with approved sureties, as the Court considers adequate to satisfy any sum that may subsequently be found to be due to the creditor concerned together with, if the Court considers it appropriate, costs.

(3) Where under paragraph (2), security has been given in the case of an untraced creditor, the Court may direct that particulars of the alleged debt, and the security, be advertised in such manner as it considers appropriate.

(4) If advertisement is ordered under this paragraph, and no claim on the security is made within 12 months from the date of the advertisement, or the first advertisement, if more than one, the Court shall, on application being made to it, order the security to be released.

Notice to creditors.

318. (1) Where the trustee has notified creditors of the bankruptcy order, and the bankruptcy order is annulled, he shall as soon as reasonably practicable notify them of the annulment.

(2) Expenses incurred by the trustee in giving notice under this rule are a charge in his favour on the assets of the former bankrupt, whether or not actually in his hands.

(3) Where any assets is in the hands of any person other than the former bankrupt himself, the trustee's charge is valid subject only to any costs that may be incurred by that other person in effecting realisation of the property for the purpose of satisfying the charge.

Advertisement of annulment.

319. (1) Where a bankruptcy order is annulled, the former bankrupt may require the Official Receiver to advertise the annulment.

(2) Advertisement of the annulment under paragraph (1) shall be at the cost of the former bankrupt, and the Official Receiver is not obliged to advertise the annulment until the former bankrupt has paid the costs of advertisement to him.

Trustee's final account.

320. (1) The annulment of a bankruptcy order under section 382 does not operate to release the trustee from any duty or obligation imposed on him by or under the Act or the Rules to account for his transactions in connection with the former bankrupt's estate.

(2) The trustee shall send to the Official Receiver, and file in Court, a copy of his final account as soon as reasonably practicable after the Court's order annulling the bankruptcy order.

(3) The final account shall include a summary of the trustee's receipts and payments in the administration of the former bankrupt's estate.

(4) The trustee is released from such time as the Court may determine, having regard to whether

(a) paragraph (2) of this Rule has been complied with; and

(b) any security given under Rule **317**(2) has been, or will be, released.

Division 10 – Miscellaneous Provisions

Prescribed priority.

321. The following costs and expenses of the bankruptcy shall be paid in the order of priority in which they are listed (the "prescribed priority")

(a) the costs and expenses properly incurred by the trustee in preserving, realising or getting in the property of the bankrupt or in carrying on the bankrupt's business, including

(i) the costs and expenses of any legal proceedings which the trustee has brought or defended whether in his own name or in the name of the bankrupt; and

(ii) the costs of and in connection with an examination ordered under section 370.

(b) the remuneration of any person appointed under section 307;

(c) the deposit lodged under section 307(3);

(d) the costs of the application on which the trustee was appointed, including the costs of any person appearing on the application whose costs are allowed by the Court;

(e) any costs allowed in respect of the preparation of a statement of assets and liabilities;

(f) the cost of and in respect of any creditors' committee appointed in the bankruptcy;

(g) any disbursements properly paid by the trustee;

(h) the remuneration of anyone employed by the trustee;

(i) the remuneration of the trustee;

(j) any other fees, costs, charges or expenses properly incurred in the course of the bankruptcy or properly chargeable by the trustee in carrying out his functions in the bankruptcy.

322. (1) The Official Receiver shall maintain a register of bankruptcy orders of which he receives notice under rule **253**(1) or (2). Register of Bankruptcy Orders.

(2) The register of bankruptcy orders shall contain the following information:

(a) the date of the bankruptcy order and the Court reference number;

(b) the name and any former name, gender, occupation (if any) and date of birth of the bankrupt;

(c) the bankrupt's last known address;

(d) where the bankrupt has been an undischarged bankrupt at any time in the period of 15 years ending with the date of the bankruptcy order in question, the date of the most recent of any previous bankruptcy orders, excluding any bankruptcy order that has been annulled under section 382;

(e) any name by which the bankrupt is known other than his true name;

(f) any business or trading names that the bankrupt uses or, during the previous ten years, has used;

(g) the name and address of the bankruptcy trustee;

(h) subject to paragraph (i), where the bankrupt is eligible for automatic discharge under section 376, the date on which the bankrupt will be discharged or, if the bankrupt is not eligible for automatic discharge under section 376, a statement to that effect;

(i) if the Court makes an order under section 376(2), details of the order together with the revised discharge date, if any;

(j) details of any order made under section 377

(k) the date on which the bankrupt is discharged and any conditions to which the discharge is subject.

(3) If, pursuant to rule **316**(3), the Official Receiver is given notice of the making of an annulment order under section 382, he shall enter the annulment order in the register of bankruptcy orders.

(4) Where the Official Receiver enters a discharge or annulment in the register of bankruptcy orders under this rule, he shall, on the expiry of three years after the date of the discharge or annulment order, delete from the register all information relating to the bankruptcy order.

(5) The register of bankruptcy orders is open to public inspection.

Changes to information entered in the register of bankruptcy orders.

323. (1) If the Official Receiver becomes aware that any information which has been entered in the register of bankruptcy orders is inaccurate he shall rectify the information entered in the register.

(2) If the Official Receiver receives notice of the death of a bankrupt in respect of whom bankruptcy information has been entered in the register of bankruptcy orders, he shall cause the date of his death to be entered in the register.

PART XII

NETTING AND FINANCIAL CONTRACTS

Financial contracts.

324. (1) For the purposes of Part XVII of the Act, a financial contract is a contract, including any terms and conditions incorporated into any such contract, pursuant to which payment or delivery obligations that have a market or an exchange price are due to be performed at a certain time or within a certain period of time.

(2) Without limiting paragraph (1), the following are financial contracts

(a) a currency, cross-currency or interest rate swap agreement;

(b) a basis swap agreement;

(c) a spot, future, forward or other foreign exchange agreement;

(d) a cap, collar or floor transaction;

(e) a commodity swap;

(f) a forward rate agreement;

(g) a currency or interest rate future;

(h) a currency or interest rate option;

(i) equity derivatives, such as equity or equity index swaps, equity options and equity index options;

(j) credit derivatives, such as credit default swaps, credit default basket swaps, total return swaps and credit default options;

(k) energy derivatives, such as electricity derivatives, oil derivatives, coal derivatives and gas derivatives;

(l) weather derivatives, such as weather swaps or weather options;

(m) bandwidth derivatives;

(n) freight derivatives;

(o) carbon emissions derivatives;

(p) a spot, future, forward or other commodity contract;

(q) a repurchase or reverse repurchase agreement;

(r) an agreement to buy, sell, borrow or lend securities, such as a securities lending transaction;

(s) a title transfer collateral arrangement;

(t) an agreement to clear or settle securities transactions or to act as a depository for securities;

(u) any other agreement similar to any agreement or contract referred to in paragraphs (a) to (t) with respect to reference items or indices relating to (without limitation) interest rates, currencies, commodities, energy products, electricity, equities, weather, bonds and other debt instruments and precious metals;

(v) any derivative or option in respect of, or combination of, one or more agreements or contracts referred to in paragraphs (a) to (u); and

(w) any agreement or contract designated as such by the Commission;

PART XIII

MISCELLANEOUS AND GENERAL

Insolvency practitioner's consent to act.

325. (1) For the purposes of section 482(1)(b), the written consent of an insolvency practitioner shall specify the appointment to which it relates.

(2) The written consent of an insolvency practitioner shall,

(a) where the appointment is to be made by the Court, specify the date of the hearing for which it is provided;

(b) where the appointment is to be made by the members of a company, specify that the consent is valid only for a meeting of the members to be held on a date specified in the consent, or at any adjournment of the meeting;

and, in either case shall state the period of time for which the consent is valid which shall not exceed 6 weeks.

Remuneration.

326. (1) In this rule, "insolvency practitioner" has the meaning specified in section 432(2).

(2) Where an administrator, liquidator or bankruptcy trustee sells assets on behalf of a secured creditor, he is entitled to be paid out of the assets reasonable remuneration fixed in accordance with the general principles contained in section 432.

(3) If the administrator, liquidator or bankruptcy trustee cannot agree his remuneration with the secured creditor, he may apply to the Court to fix the remuneration and the Court shall fix the remuneration in accordance with the general principles contained in section 432.

(4) Where insolvency practitioners are appointed jointly, the remuneration shall be apportioned as agreed between them.

(5) If jointly appointed insolvency practitioners cannot agree how the remuneration should be apportioned between them, the matter may be referred for decision to the Court, to the creditors' committee, if any, or to a meeting of creditors.

(6) If the insolvency practitioner is a legal practitioner and employs his own firm, or any partner in it, to act in or in connection with the insolvency proceeding in respect of which he is appointed, profit costs shall not be paid unless authorised by the creditors' committee or the Court.

Insolvency Surplus Account

Payments into Insolvency Surplus Account.

327. (1) Immediately after the completion of a liquidation or a bankruptcy, the liquidator or bankruptcy trustee shall pay all monies representing unclaimed assets of the company or the bankrupt to the Commission for payment into the Insolvency Surplus Account.

(2) A supervisor of a company or individual creditors' arrangement, an administrator or a receiver may at any time apply to the Court for an order permitting him to pay any monies that he holds with respect to the arrangement, administration or receivership that represent unclaimed assets to the Commission for payment into the Insolvency Services Account.

(3) The Court shall not make an order under paragraph (2) unless the Commission has been given notice of the hearing.

(4) A liquidator, bankruptcy trustee, supervisor, administrator or receiver paying money to the Commission under paragraph (1), or pursuant to an order of the Court under paragraph (2), shall provide the Commission with such information, documentation and explanations regarding the monies, the assets which they represent and the claims or potential claims that have or may be made in respect of the monies as the Commission may require.

Investment of monies in Insolvency Surplus Account.

328. (1) The Commission may invest monies standing to the credit of the Insolvency Account

(a) in one or more deposit or other interest bearing accounts with a reputable bank or banks licensed and operating in the British Virgin Islands; and

in such investments as may be approved by Executive Council for that purpose.

(2) Any interest received on monies standing to the credit of the Insolvency Account or interest or income received in respect of investments made in accordance with paragraph (1) shall be payable to the Commission and shall be treated as the funds of the Commission for the purposes of section 18 of the Financial Services Commission Act and any claimant of monies paid into the Insolvency Surplus Account shall not be entitled to make any claim in respect of such interest or income.

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Payments out of the Insolvency Surplus Account.

329. (1) The Commission shall, subject to such conditions as it may reasonably impose, pay or distribute monies from the fund to any person that it is satisfied is entitled to claim those monies under, or in respect of, the insolvency

proceeding in respect of which the monies were paid into the Insolvency Surplus Account.

(2) The Commission shall keep accounts of the monies in the Insolvency Surplus Account, including those monies that are invested in accordance with Rule 328(1), identifying the insolvency proceeding to which each receipt and payment relates and showing the balance remaining in respect of each insolvency proceeding.

(3) Any monies standing to the credit of the Insolvency Surplus Account twenty years after they were paid into the account, shall, provided that there is no outstanding claim in respect of those monies, be paid to and become the property of the Government of the British Virgin Islands and no person shall thereafter be entitled to make any claim to those monies.

SCHEDULE 1

[Rule 4(2)]

PROVISIONS OF CPR NOT APPLICABLE IN INSOLVENCY PROCEEDINGS

CPR Part	Provisions not applicable in insolvency proceedings
Part 2 (Application and Interpretation)	Rule 2.4 (Definitions), all definitions except: - "application" and "applicant"; - "court office"; - "FAX"; - "filing"; - "The Hague Convention"; - "Judge" (?) - "master"; - "month"; - "order"; - "party" and - "the overriding objective". Rule 2.5 (Who May Exercise the Powers of the Court), paragraphs (1), (2) and (3) only.
Part 3 (Time, Documents)	Rule 3.7 (Filing of documents) does not apply to a document filed with the Registrar of Companies. Rule 3.10 (Forms). Rule 3.11 (Statements of case – address for service). Rule 3.12 (Statement of case – certificate of truth).
Part 5 (Service of Claim Form Within Jurisdiction)	Rule 5.2 (Statement of claim to be served with claim form). Rule 5.16 (Service of claim by contractually agreed method). Rule 5.17 (Service of claim form on agent of principal who is out of jurisdiction). Rule 5.18 (Service of claim form for possession of vacant land).

	Rule 5.19 (Deemed date of service), paragraph (3) only.
Part 6 (Service of Other Documents)	Rule 6.6 (Deemed date of service), paragraph (3) only.
Part 7 (Service of Court Process out of Jurisdiction)	Rule 7.1 (Scope of this Part), paragraph (2)(a) and (2)(c) only. Rule 7.6 (Acknowledgement of service and defence where claim served out of the jurisdiction)
Part 8 (How to Start Proceedings)	Entire Part.
Part 9 (Acknowledgement of Service and Notice of Intention to Defend)	Entire Part.
Part 10 (Defence)	Entire Part.
Part 12 (Default Judgements)	Entire Part.
Part 13 (Setting Aside or Varying Default Judgement)	Entire Part.
Part 14 (Judgement on Admissions)	Entire Part.
Part 15 (Summary Judgement)	Entire Part.
Part 16 (Assessment of Damages);	Entire Part.

Part 17 (Interim Remedies)	Rule 17.5 (Interim payments – general procedure). Rule 17.6 (Interim payments – conditions to be satisfied and matters to be taken into account). Rule 17.7 (Powers of Court where it has made an order for an interim payment).
Part 18 (Ancillary Claims)	Entire Part.
Part 19 (Addition and Substitution of Parties)	Entire Part.
Part 20 (Changes to Statement of Case)	Entire Part.
Part 21 (Representative Parties)	Entire Part
Part 23 (Minors and Patients)	Entire Part.
Part 26 (Case Management – The Court's Powers)	Rule 26.1 (The Court's general powers of management), paragraph (2)(a) and (2)(b) only.
Part 60 (Appeals to the High Court)	Entire Part.

SCHEDULE 2

[Rule 2(2)]

PREFERENTIAL CLAIMS

1. In this Schedule

"debtor" means

(a) in the case of a liquidation, the company in liquidation; or

(b) in the case of a bankruptcy, the bankrupt.

"relevant date" means the commencement of the liquidation or the bankruptcy, as the case may be.

2. For the purposes of section 2(1), the claims set out in column 1 of the table below are preferential claims up to the maximum amount specified in column 2 of the table or up to an unlimited amount where specified in column 2.

Column 1 **Nature of claim**	**Column 2** **Maximum amount of claim to be regarded as preferential**
The amount due to a person as a present or past employee of the debtor that represents: (a) wages and salary, including commission and any amount payable by way of allowance or reimbursement, due in respect of the whole or any part of the period of 6 months immediately prior to the relevant date; or (b) accrued holiday pay in respect of any period of employment before the relevant date, whether the employee's contract of employment was terminated before or after the relevant date.	$10,000.00
The amount due by the debtor to the BVI	No limit

Social Security Board: (a) in respect of employees' contributions deducted from the employee; (b) in respect of employer's contributions payable for the 6 months immediately before the relevant date.	
The amount due in respect of pension contributions or contributions in respect of medical insurance payable during the 12 months immediately before the relevant date by the debtor as the employer of any person, including any amounts deducted from the employee.	$5,000.00 in respect of each employee
Sums due to the Government of the Virgin Islands in respect of any tax, duty, including Stamp Duty, licence fee or permit.	$50,000.00
Sums due to the Commission in respect of any fee or penalty.	$20,000.00

3. Preferential claims rank equally between themselves and, if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

SCHEDULE 3

FORMS

NO.	FORM	TITLE
1	86 (7)	Notice of Court Order to Dispose of Perishable Assets
2	88(2)	Notice of Administrator's Report on Further Enquiries
3	98(6)	Notice of Release of Administrator
4	120(3)	Notice of Vacation of Office of Receiver
5	120(5)	Notice to Registrar of Vacation of Office of Receiver
6	145(9)	Notice of Court Order to Dispose of Assets in Receivership Subject to a Security Interest
7	147(3)	Advertisement of Administrative Receiver's Report (for Newspaper or Virgin Islands Official Gazette)
8	193(1)	Settlement of List of Members
9	235(7)	Notice of Release of Liquidator
10	265(2)	Notice of Disqualification Order or Undertaking
11	266(4)	Notice of Variation of Disqualification Order or Undertaking
12	271	Report on Directors' Conduct
13	276(1)	Notice Requiring Preparation and Submission of Statement of Affairs
14	277(1)	Statement of Affairs in a Company Creditors' Arrangement, Receivership, Administration or Liquidation
15	295(2)	Statement of Assets and Liabilities in Bankruptcy or an Individual Creditors' Arrangement
16	383(8)	Notice of Release of Bankruptcy Trustee
17	482(1)A	Consent to Act
18	482(1)B	Consent to Act
19	485(2)A	Notice by an Overseas Practitioner That He Is the Sole Appointee

20	485(2)B	Notice by an Overseas Practitioner That He Is the Sole Appointee
21	R14A	Originating Application (Company)
22	R14B	Ordinary Application (Company)
23	R184	Claim Form
24	R279	Claim Form