

The Republic of the Union of Myanmar

Insolvency Law

2020

Unofficial Translation

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Insolvency Law
Union Hluttaw Law 1/2020
6th waning day of Tabodwe, ME
1381 February 14, 2020

The Union Hluttaw enacted the following Law:-

PART I

DIVISION 1
NAME AND COMMENCEMENT

1 Name and commencement of this Law

- (a) This Law shall be known as the Insolvency Law.
- (b) This Law commences on the date of notification determined by the President of the Union. However, Part X of this Law will only commence on the date of a separate notification by the President of the Union.

DIVISION 2
INTERPRETATION

2 Definitions

In this Law:

- (a) **"The State"** means the Republic of the Union of Myanmar;
- (b) **"applicable law"** means any existing law, rule, regulation, order, notification or directive enforceable as a law of the Union which may have an effect on the matter concerned;
- (c) **"associate"** means:
 - (i) specifically, in relation to a company:
 - (AA) a director or secretary of the company as defined in the Companies Law;
 - (BB) a related body corporate;
 - (CC) a director or secretary of a related body corporate;
 - (DD) a person (including a company) who controls the company, or who is controlled by the company;
 - (EE) a spouse, parent, sibling or child of a person referred to in (AA) (CC) or (DD); and
 - (FF) a company controlled by any person referred to in this definition; and

- (ii) generally, in relation to a person or entity (including a company):
 - (AA) a spouse, parent, sibling or child of the person or entity;
 - (BB) a person (including a company) who controls the entity, or who is controlled by the entity;
 - (CC) a company controlled by any person referred to in this definition;
- (d) **"the Association"** means the Association of Insolvency Practitioners established under Part III;
- (e) **"bankrupt"** means a person against whom a bankruptcy order has been made under Part XIII because they cannot repay their debts.
- (f) **"bankruptcy order"** means an order adjudging a natural person bankrupt due to him or her being unable to repay their debts;
- (g) **"books and papers"** and **"books"** or **"papers"** includes accounts, deeds, writing and documents;
- (h) **"business day"** means any day other than a Saturday, a Sunday, or a day which is a bank holiday in Myanmar;
- (i) **"business debt"** means a debt incurred for the purpose of carrying on an enterprise or business conducted by a company or an MSME, whether by way of finance to fund its operations or capital requirements, for the supply of goods and services to the business, or otherwise;
- (j) **"claim"** means a right to payment, which includes a right to remedy for the breach of an obligation that gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, contingent, disputed, undisputed, secured or unsecured;
- (k) **"Company"** means a company incorporated and registered under the Myanmar Companies Law;
- (l) **"contributory"** in relation to a company means one of the following:
 - (i) a person liable as a member or past member to contribute to the property of the company if it is wound up;
 - (ii) for a company with share capital, a holder of fully paid shares in the company; and
 - (iii) before the final determination of persons who are contributories because of paragraphs (i) and (ii), a person alleged to be a contributory;
- (m) **"the Council"** is a reference to the Myanmar Insolvency Practitioners' Regulatory Council established under this Law;
- (n) **"the Court"** means a court having jurisdiction under this Law to wind up a company or, ~~where applicable,~~ make a bankruptcy order;
- (o) **"debenture"** means a security issued by a company to borrow money and includes debenture stock;
- (p) **"director"** of a company or other body corporate has the same meaning as in the Companies Law;

- (q) **"estate"** in relation to a bankrupt is to be construed as including the bankrupt's **income payments orders** which the Court can make in accordance with section **Error! Reference source not found.269**;
- (r) **"excluded property"**, as used in personal insolvency, includes the following:
 - (i) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally in his or her employment, business or vocation;
 - (ii) property held by the bankrupt on trust for any other person;
 - (iii) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his or her family, up to the value prescribed by the Rules; or
 - (iv) money for temporary living expenses up to the amount prescribed by the Rules; and
 - (v) any *personal* ornaments of the bankrupt, intended for religious usage, up to the value prescribed by the Rules;
- (s) **"floating charge"** means a security interest which, at the time it was created, was a floating charge;
- (t) **"holding company"** in relation to company, means a company which owns the shares of a company which is its subsidiary)
- (u) **"MSME"** means an enterprise which has:
 - (i) if it is an incorporated MSME, at the time an application is made under Part VI, accumulated business debts to creditors in a sum totalling not more than the amount prescribed by the Regulations;
 - (ii) if it is an unincorporated MSME, at the time an application is made under Part VI, accumulated business debts of more than the amount prescribed by the Regulations;
- (v) **"Unincorporated MSME"** means an MSME that is:
 - (i) a natural person, carrying on an enterprise or business as a sole proprietor; or
 - (ii) two or more natural persons carrying on an enterprise or business as a partnership within the meaning of section 4 of the *Partnership Act 1932*;
- (w) **"insolvency practitioner"** means a person registered as such under Part III of this Law;
- (x) **"insolvent"** means unable to pay debts as and when they become payable;
- (y) **"liquidator"** means a person appointed under Part VII of this Law to wind up a company;
- (z) **"market value"** means the amount that would be realised on a sale of property in the open market by a willing vendor;
- (aa) **"Model Law"** means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, approved by United Nations General Assembly Resolution A/RES/52/158 (1997);
- (bb) **"MSME rehabilitation plan"** means a proposal which contains the matters referred to in section 121 or plan of the type referred to in it.

- (cc) **"office-holder"** means a person appointed to any of the following roles:
 - (i) receiver of a company;
 - (ii) rehabilitation manager of a company;
 - (iii) supervisor of a company's rehabilitation plan under Part V;
 - (iv) supervisor of a rehabilitation plan under Part VI;
 - (v) rehabilitation advisor to an MSME;
 - (vi) liquidator of a company, including a provisional liquidator;
 - (vii) trustee in bankruptcy;
- (dd) **"officer"**, in relation to a body corporate, includes a director or secretary;
- (ee) **"overseas corporation"** means a company or body corporate incorporated outside of the Union;
- (ff) **"Part VI Enterprise"** means an MSME;
- (gg) **"Part VI Process"** means a rehabilitation process of an MSME which implements Part VI;
- (hh) **"plan supervisor"** means a person appointed to supervise the implementation of a rehabilitation plan under Division 4 of Part V or Division 4 of Part VI;
- (ii) **"previous law"** means:
 - (i) the Myanmar *Companies Law 2017*;
 - (ii) the Yangon Insolvency Act 1909;
 - (iii) the Myanmar Insolvency Act 1920; and
 - (iv) any rules or regulations made under those laws;
- (jj) **"property"** means money, goods, objects, actionable claims, land and every description of property, whether or not tangible or intangible, moveable or immoveable, situated in the Union or outside it and every description of interest arising out of this property;
- (kk) **"provisional liquidator"** means a person appointed under section 166;
- (ll) **"Registrar"** means the Directorate of Investment and Company Administration, its successor, or such other Union level body or person as may be appointed to perform the duty of registration of companies and exercise the powers and perform the other functions and duties assigned to the Registrar under the Companies Law or other applicable law and appointed to register matters relating to personal insolvency (including MSMEs) under this Law;
- (mm) **"Rules"** means the rules made under this Law;
- (nn) **"rehabilitation advisor"** means a person appointed under Part VI to advise the proprietor, proprietors, or directors of a MSME;
- (oo) **"rehabilitation manager"** means a person appointed under Division 2 of Part V;
- (pp) **"rehabilitation plan"** means a proposal which contains the matters referred to in section 72 or plan of the type referred to in it;

- (qq) **"body corporate or related body corporate"** of a body corporate means:
 - (i) a holding company of the body corporate;
 - (ii) a subsidiary of the body corporate; or
 - (iii) a subsidiary of a holding company of the body corporate;
- (rr) **"secured creditor"** means a creditor who holds in respect of his or her claim a security over property of the debtor, and **"unsecured creditor"** is a creditor who does not hold such security;
- (ss) **"security"** means any debenture, mortgage, charge, lien or other security;
- (tt) **"security interest"** means a charge, lien, mortgage or any other form of security interest prescribed or recognised under this Law or other applicable law;
- (uu) **"special resolution"** means a resolution which has been passed by a majority of not less than three-fourths of the votes of members entitled to vote as are present in person or by proxy at a general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given;
- (x) **"subsidiary"** means:
 - (i) a company which meets one of the following criteria:
 - (AA) in which another company controls the composition of the board;
 - (BB) in which another company is in a position to exercise, or control the exercise of, more than one-half the maximum number of votes that can be exercised at a meeting of the company;
 - (CC) in which another company holds more than one-half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; or
 - (DD) is entitled to receive more than one-half of every dividend paid on shares issued by the company¹, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital; and
 - (ii) a subsidiary formed by a subsidiary company which meets the criteria in paragraph (i) will also be a subsidiary of the other company;
- (ww) **"trustee"** means a person appointed to the estate of the bankrupt under Part VIII.

3 Notification and advertising

- (a) Where actions are required by this Law to be notified or advertised, Rules may be made to prescribe the manner, content and timing of the notification or advertising.
- (b) Contravention of a notification or advertising provisions of this Law will occur when the manner, content and timing of the action does not occur consistently with the requirements of the Rules.

4 Enforcement

Where a person has contravened a notification or advertising provision under this Law:

- (a) the Registrar must fine the person an amount of 100,000 kyats where no fine is otherwise specified in this Law; and
- (b) the Court may order the person to make good the default within the time specified in the order.

5 The Registrar

- (a) For so long as the Directorate of Investment and Company Administration (or any successor agency) is assigned the role of Registrar, the person holding the office of Director General of the Directorate for Investments and Company Administration (or equivalent office howsoever named) may exercise the powers, and perform the duties and functions of the Registrar, including the power to delegate any of those powers, duties and functions to any other officer of the agency. Any delegate must act in the Registrar's authority and be subject to the control of the Registrar.
- (b) The Registrar will as soon as reasonably practicable after receiving a notification required to be made under this Law, enter the notification on the register.
- (c) The entry in the register under subsection (b) must be made in the manner that best enables persons interested in identifying notifications to locate and obtain a copy of the notification.

PART II - OBJECTIVES

6 Objectives

The objective of this Law is to create an effective insolvency regime that will:

- (a) be properly integrated with the broader legal and commercial systems of the Union;
- (b) provide an appropriate structure for the supervision and administration of insolvency proceedings in the Union and to develop insolvency practitioners who can administer the regime effectively;
- (c) provide predictable and consistent outcomes for parties involved in insolvency proceedings in the Union;
- (d) provide timely, efficient and impartial resolution of insolvencies;
- (e) facilitate the rescue and rehabilitation of viable businesses, particularly MSMEs experiencing financial difficulties, thereby preserving employment and protecting investment where appropriate;
- (f) provide an efficient liquidation process for non-viable businesses, and in doing so, ensure that the value of the property of an insolvent business are maximised so that recovery by creditors is also maximised;
- (g) provide equitable treatment between similarly situated creditors;
- (h) prevent improper use of insolvency systems; and
- (i) facilitate access to the global markets by the establishment of a framework for cross-border insolvencies.

PART III REGULATION OF INSOLVENCY PRACTITIONERS

DIVISION 1 PRELIMINARY

7 Application of this Part

The provisions in this Part applies in respect of persons who may be appointed under this Law to one or more of the following roles:

- (a) receiver;
- (b) rehabilitation manager;
- (c) rehabilitation adviser;
- (d) supervisor of a rehabilitation plan;
- (e) liquidator including provisional liquidator;
- (f) trustee.

DIVISION 2 REGISTRATION OF INSOLVENCY PRACTITIONERS

8 Code of Conduct

Every insolvency practitioner must:

- (a) be registered under this Law;
- (b) exercise his or her powers and perform his or her duties:
 - (i) for a proper statutory purpose;
 - (ii) with reasonable care and diligence; and
 - (iii) honestly and in good faith.
- (c) not improperly use his or her position to gain an advantage for himself, herself or someone else;
- (d) comply with such further conduct requirements as may be set out in the Rules.

DIVISION 3 RESTRICTIONS ON UNQUALIFIED PERSONS ACTING AS AN INSOLVENCY PRACTITIONER

9 Acting without qualification

- (a) Only an insolvency practitioner may be appointed to any of the roles identified in section 7.
- (b) A person who acts as an insolvency practitioner at a time when he or she is not qualified is liable to a fine by the Registrar of an amount not exceeding 5,000,000 kyats.

10 Persons not qualified to act as insolvency practitioners

- (a) Only a natural person may act as an insolvency practitioner.

- (b) A person is not qualified to act as an insolvency practitioner at any time if that person:
 - (i) is an undischarged bankrupt; or
 - (ii) has been convicted of an offence which in the opinion of the Myanmar Insolvency Practitioners' Regulatory Council under this Law disqualifies him or her from acting as an insolvency practitioner;
 - (iii) does not maintain insurance to the level required by the Rules;
 - (iv) does not hold a current practising certificate issued by the Council; or
 - (v) is not registered as an Insolvency Practitioner in accordance with this Law.

11 Registrar to maintain Register of Insolvency Practitioners

The Registrar must establish and maintain a Register of Insolvency Practitioners in the manner set out in the Rules.

12 Practising Certificate

- (a) The Council must issue a practising certificate to an applicant under this section who satisfies it that he or she:
 - (i) is not excluded from practice as an insolvency practitioner under the terms of section 10;
 - (ii) has completed all requirements prescribed by the Council with respect to education, practical training and experience; and
 - (iii) is a proper person to act as an insolvency practitioner in the roles to which such a practitioner may be appointed under this Law.
- (b) An application for the issue of a practising certificate must be made to the Council.
- (c) The Council must not reject an application, nor issue a practising certificate which is subject to conditions or restrictions, without inviting the applicant to defend or to make a written submission.
- (d) During the period of 1 year from the date of the commencement of this Law, the Council may issue a practicing certificate to a person who has not satisfied the requirements of subsection (a)(ii) if it considers that person to be of sufficient standing and experience to conduct himself or herself as an insolvency practitioner for this period.

13 Annual renewal of Practising Certificates

The term of a practising certificate is one year from the date of issue. It will lapse on the last day of the term unless an application for renewal is made before the expiry of the term.

14 Making of false representations

If, for the purpose of obtaining or renewing a practising certificate under section 12 or 13, a person makes a false representation or fraudulently does, or omits to do, anything, he or she will be liable to a fine by the Registrar of an amount not exceeding 2,500,000 kyats and be subject to legal proceedings in accordance with other existing laws.

DIVISION 4
INSOLVENCY PRACTITIONERS' REGULATORY COUNCIL

15 Formation of the Myanmar Insolvency Practitioners' Regulatory Council

- (a) The Union Government will form the Myanmar Insolvency Practitioners' Regulatory Council, with the following persons:
 - (i) the Auditor-General of the Union;
 - (ii) the Chairperson of the Myanmar Bar Council;
 - (iii) the Chairperson of the Central Bank of Myanmar;
 - (iv) the Registrar;
 - (v) the Chairperson of the Union of Myanmar Federation of Chambers of Commerce and Industry;
 - (vi) the Chairperson of the Myanmar Securities Exchange;
 - (vii) the Chairperson of the Association formed in accordance with Division 5 and (5) other members of the Association nominated by its Chairperson;
 - (viii) prior to the formation of the Association specified in subsection(vii), the Chairperson of the Myanmar Institute of Certified Public Accountants and (5) other members of the Association nominated by its Chairperson.
- (b) The Council will be an independent body that operates according to law.
- (c) The Council will have perpetual succession, the right to use its own seal, to sue and be sued.
- (d) The Council must hold a meeting at least once a year, and may convene a meeting as necessary.
- (e) The Council must elect from among its members, a chairperson, who will have powers of general superintendence and direction of the affairs of the Council, including the power to call meetings as required or necessary, provide reasonable notice of meetings to Council members and chair meetings when convened.
- (f) The chairperson of the Council may temporarily delegate his or her duties and responsibilities to another member of the Council should he or she be unable to perform any one or more of them at any time.
- (g) Members of the Council who are not civil servants will be entitled to remuneration and expenses approved by the Union Government.

16 The duties and functions of the Council

The Council will have the following duties and functions:

- (a) To issue or deny a practising certificate to a person who has made an application under section 12 after determining his or her eligibility to practice as an insolvency practitioner, certifying its consent to the recording of the name of that person in the Register maintained under section 11.
- (b) To renew a practising certificate to a person who has made an application under section 13.
- (c) To impose such conditions or restrictions on a practising certificate as it considers appropriate.

- (d) To prescribe practice standards, ethical standards, programs, guides, standards, manuals, and quality control programs for insolvency practice.
- (e) To hear and determine any complaint against an insolvency practitioner who is alleged to have breached his or her duties and obligations under the Law or is otherwise alleged to have been negligent or unethical in carrying out his or her duties.
- (f) To decide whether an insolvency practitioner must maintain one of the following insurances:
 - (i) professional indemnity insurance;
 - (ii) fidelity insurance,

against the liabilities that the insolvency practitioner may incur as an insolvency practitioner, and if so, in what minimum amount.
- (g) To address transitional issues relating to the functions of the Council under this Part from the commencement of this Law until the Council has the institutional capacity to fully carry out its functions.
- (h) To:
 - (i) perform such other associated functions: and
 - (ii) be granted such powers as are necessary or convenient to carry out the functions of the Council;

as may be prescribed by the Rules.

17 Formation of committees and the assignment of duties

- (a) When necessary for the efficient discharge of its functions, the Council may constitute a practitioner certification committee and a disciplinary committee and an advisory committee or an executive committees,
- (b) The Council may delegate any of its duties or powers to a committee formed under subsection (a) or the Association.

18 Foreign practitioners

- (a) The Council may, in its absolute discretion, allow a foreigner who is admitted or registered to practice as a liquidator, trustee in bankruptcy or insolvency practitioner in the jurisdiction of another country to participate in foreign proceedings in Myanmar subject to the provisions of Part 10.
- (b) In making a decision under subsection (a), the Council may specify appropriate procedures and minimum eligibility requirements for a foreign practitioner.

DIVISION 5 INSOLVENCY PRACTITIONERS' ASSOCIATION

19 Recognition of the Association

- (a) Persons who have been registered may petition the Council for the formation of the Association.
- (b) If the Council considers that the association identified in a petition received under subsection (a) can fulfil its role and functions, it may recognize that association.

- (c) Until the association specified in subsection (a) is formed, the Council may recognise the Myanmar Institute of Certified Public Accountants to undertake such functions on an interim basis.

20 Objects of the Association

The Association formed under section 19 must have the following as its objects:

- (a) to promote the professional development and regulation of insolvency practitioners in the Union;
- (b) to promote good professional and ethical conduct amongst insolvency practitioners;
- (c) to promote the services of insolvency practitioners to cater for the needs of creditors and debtors;
- (d) to cooperate with the Council in relation to the regulation of insolvency practitioners in accordance with this Law; and
- (e) to comply with guidelines issued by the Council;
- (f) where the Council has delegated any of its functions or duties to the Association, to carry them out consistently with the authority of the Council;
- (g) to make recommendation to the Council on such matters as may be set out in the Rules.

21 Association membership

- (a) A person who is not a current member of the Association will not be entitled to hold a practising certificate, nor be eligible for registration as an insolvency practitioner under section 12 of this Law.
- (b) The Association must impose requirements for its membership. Such requirements must specify that a member meets the standards and requirements set by the Association concerning continuing education and the maintenance of professional and ethical practices.
- (c) No person will be admitted to membership of the Association nor have his or her membership renewed unless he or she complies with section 12(a). Any member of the Association may have his or her membership cancelled or withdrawn if he or she fails to produce evidence of such compliance at any time when called upon to do so by the Chairperson of the Association.
- (d) The Association must promptly report to the Council that an applicant:
 - (i) has been admitted to membership of the Association; or
 - (ii) has resigned or vacated his or her membership of the Association; or
 - (iii) has had his or her membership of the Association lapsed, cancelled or withdrawn.
- (e) Any person:
 - (i) whose application for membership of the Association has been denied; or
 - (ii) whose membership of the Association has been lapsed, cancelled or withdrawn without his or her consent,

may apply to the Council to have the Association's decision reversed.

DIVISION 6 GRIEVANCE AND INVESTIGATION

22 Grievances against Insolvency Practitioners

- (a) Any person aggrieved by alleged misconduct or unethical behaviour of an insolvency practitioner may file a complaint with the Council within a time, and in a manner specified by the Council.
- (b) A complaint to the Council under subsection (a) may detail the provisions of the Law or the Rules which the insolvency practitioner is alleged to have contravened, or the standards, by-law or codes of practice which he or she is alleged to have breached, but must not be rejected solely on the basis that it fails to do so.
- (c) If a complaint of the type described in subsection (a) is received by the Association, it must promptly forward it to the Council.

23 The Association may investigate complaints

- (a) Where the Council receives a complaint under section 22, it may direct the Association to conduct an investigation of the person who is the subject of the complaint.
- (b) The investigation carried out under subsection (a) must be conducted within a time and in a manner specified by the Council.
- (c) The Association may, in the course of the investigation, require any person who has any relevant document, record, or information to give the same to the Association, and that person must supply the requested document, record or information.
- (d) The Association must keep in its custody any document, record, or information provided to it under this section for a period as it considers necessary and afterwards must return the same to the person who provided them after the conclusion of the investigation and any subsequent proceeding.
- (e) The Association must submit a report of its investigation to the Council, which will include the Association's findings as to whether there are reasonable grounds to believe that the insolvency practitioner who was the subject of the complaint under section 22 has contravened any of the provisions of the Law or the Rules or regulations; or breached any standards or guidelines issued by the Council; or contravened any by-law or code of practice issued by the Association.

24 Disciplinary committee to act on the Association's report

- (a) A complaint under this Division and any report prepared by the Association in respect of it, must be decided by the disciplinary committee.
- (b) The Council, or the disciplinary committee acting under the Council's delegated authority, may:
 - (i) carry out further inquiry, including issuing a direction to the Association to further investigate the complaint; and/or
 - (ii) issue a show cause notice to the insolvency practitioner who is the subject of the complaint.
- (c) If the disciplinary committee, having given the insolvency practitioner reasonable opportunity to respond to the allegations, is satisfied that sufficient cause exists:

- (i) it may impose conditions or restrictions on the insolvency practitioner's practising certificate and direct the Registrar to record those conditions and restrictions on the Register of Insolvency Practitioners;
- (ii) it may cancel the insolvency practitioner's practising certificate and direct the Registrar to remove his or her name from the Register of Insolvency Practitioners;
- (iii) the Council, or the disciplinary committee acting under the Council's delegated authority, may seek orders from the Court and the Court may impose the following orders:
 - (AA) that impose, where there has been a contravention of the Law or the Rules, a monetary penalty on the insolvency practitioner;
 - (BB) that direct any person who has made unlawful gain or averted loss by any activity in contravention of the Law or the Rules to disgorge an amount equivalent to that unlawful gain or aversion of loss; or
 - (CC) that order restitution be paid to any person who suffered loss on account of that contravention, from the amount so disgorged

25 The Court may make orders in relation to Insolvency Practitioners

- (a) The Court may make such orders as it thinks fit in relation to the supervision of an insolvency practitioner carrying out his or her duties and obligations under the Law or exercising his or her powers under the Law.
- (b) The Court may exercise the power under subsection (a) on its own initiative during proceedings before it, or on the application of the insolvency practitioner or the insolvency practitioners' disciplinary committee.
- (c) Without limiting subsection (a), the Court may make orders or give directions in aid of the supervisory functions and duties of the Council under this Part.
- (d) The Court may at any time require an insolvency practitioner to answer any inquiry in relation to an insolvent administration to which he or she has been appointed under this Law and may examine the insolvency practitioner or any other person on oath concerning the insolvent administration and may direct an investigation into the books of the insolvency practitioner.
- (e) The Court may, on application by the insolvency practitioners disciplinary committee, make orders in accordance with section 24(c)(iii).

26 Application to the Council of decisions of the disciplinary committee

- (a) A person aggrieved by a decision of the disciplinary committee in respect of a complaint received under section 22 may apply for the disciplinary committee's decision to be reviewed by the Council.
- (b) An application under subsection (a) must be made within 28 days of the day on which the committee's decision was notified to the person aggrieved.
- (c) Pending determination of an application filed under subsection (b), the Council may order that any action taken by the disciplinary committee under section 24(c) be stayed and may injunct the Registrar from acting on any notice or direction given to him or her by the disciplinary committee under paragraphs (i) or (ii) of section 24(c).
- (d) The Council may:
 - (i) uphold, revoke or suspend any decision of the disciplinary committee;

- (ii) refer the matter back to the disciplinary committee for further investigation and resubmission to the Council and upon such resubmission uphold, revoke or suspend any decision of the disciplinary committee; or
- (e) In relation to sub section (c) and (d) of Section 26, the decision of the Council shall be final and conclusive.

PART IV - RECEIVERSHIP

DIVISION 1 PRELIMINARY PROVISIONS

27 Meaning of “Receiver”

A receiver of the property of a company includes:

- (a) a receiver and manager of that property;
- (b) a receiver or manager of part only of that property; or
- (c) a receiver of part only of that property; and
- (d) a receiver only of the income arising from the property or from part of it.

28 Appointing a receiver

Only a natural person may be appointed as a receiver of the property of a company.

DIVISION 2 RECEIVERS APPOINTED OUT OF COURT

29 When a receiver may be appointed

- (a) A receiver may only be appointed in one or more of the permitted circumstances referred to in subsection (b), or during the permitted periods referred to in subsection (c), and the appointment of a receiver by a secured creditor is otherwise prohibited.
- (b) A permitted circumstance is:
 - (i) where the security pursuant to which the receiver is to be appointed was created prior to the enactment of this Law;
 - (ii) where the secured creditor does not have security over all or a majority of the assets of the company, and the operation of Part V or Part VI of this Law does not otherwise prohibit the appointment of a receiver;
 - (iii) where the Court is persuaded that special circumstances exist and makes an order:
 - (AA) itself appointing a receiver; or
 - (BB) permitting the secured creditor to appoint a receiver;
 - (iv) where otherwise permitted by the Rules.
- (c) A permitted period means a period having the following circumstances:
 - (i) the period in which the secured creditor is bound to observe the plan under either Part V or Part VI of this Law, and if the secured creditor by appointing a receiver would contravene the plan;
 - (ii) When the company is in liquidation.

30 Receiver's powers

- (a) Unless inconsistent with any of the provisions of the security under which he or she was appointed, the powers conferred on a receiver of a company are taken to include the power to:
- (i) take possession of, collect and get in the property of the company and to take any proceedings as may seem expedient for that purpose;
 - (ii) sell or otherwise dispose of the property of the company by public auction or private contract;
 - (iii) raise or borrow money by granting security over the property of the company;
 - (iv) appoint a solicitor or accountant or other professionally qualified person to assist him or her in the performance of his or her functions;
 - (v) bring or defend any action or other legal proceedings in the name and on behalf of the company;
 - (vi) refer to arbitration any dispute which may negatively affect the company;
 - (vii) effect and maintain insurances in respect of the business and property of the company;
 - (viii) use the company's seal;
 - (ix) do all acts and to execute in the name and on behalf of the company any deed, receipt or other document;
 - (x) appoint any agent to do any business which he or she is unable to do himself or herself or which can more conveniently be done by an agent, and power to employ and dismiss employees;
 - (xi) do any and all things necessary for the realisation of the property of the company;
 - (xii) make any payment which is necessary to the performance of his or her functions;
 - (xiii) carry on the business of the company;
 - (xiv) establish subsidiaries of the company;
 - (xv) transfer to subsidiaries of the company the whole or any part of the business and property of the company;
 - (xvi) grant or surrender a lease of any of the property of the company, and to take a lease of any property required or convenient for the business of the company;
 - (xvii) make any arrangement or compromise on behalf of the company;
 - (xviii) call up any uncalled capital of the company;
 - (xix) rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of those persons;
 - (xx) present or defend a petition for the winding up of the company;
 - (xxi) change the situation of the company's registered office;

(xxii) do all other things incidental to the exercise of the foregoing powers.

- (b) A person dealing with the receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his or her powers.

31 Receiver's liability

- (a) A receiver has personal liability in respect of the obligations of the company in the circumstances described in subsections (b) or (c).
- (b) A receiver who, whether as agent for the company or not, enters into possession or assumes control of any property of a company for the purpose of enforcing any security interest, is liable for debts incurred in the course of the receivership for services rendered, goods purchased or hired, or immovable property leased, used or occupied.
- (c) The receiver is liable, in the following circumstances, for the rent or other amounts payable by the company under an agreement for property which the company continues to use or occupy, or to be in possession of during the term of appointment of the receiver; that is, where:
- (i) prior to the appointment of a receiver, the company used or occupied or was in possession of property owned or leased by another person pursuant to an agreement with that person; and
 - (ii) after the appointment of a receiver, the company continues to use or occupy or to be in possession of that property.
- (d) The liability of the receiver in subsection (c) is excused if within 7 business days after the date of his or her appointment, the receiver gives to the owner or lessor of the property a notice that states that the receiver does not propose to exercise rights in relation to the property, and after that notice the receiver does not in fact exercise rights in relation to the property.
- (e) Unless the terms of the contract under which the receiver is appointed expressly provides otherwise, a receiver is entitled to be indemnified out of the property of the company to which he or she has been appointed for any receivership claim, being:
- (i) debts of the company for which the receiver is liable under this section; and
 - (ii) liabilities and expenses incurred in good faith and without negligence by the receiver in the performance of his or her functions as receiver; and
 - (iii) the receiver's remuneration as fixed in accordance with this law.

32 Receiver's duty of care in exercising power of sale

A receiver must exercise reasonable care when exercising a power of sale in respect of a company's property.

33 Vacation of office

- (a) A receiver of a company may at any time be removed from office by order of the Court or may resign office by giving notice of his or her resignation in the manner prescribed by the Rules.
- (b) A receiver must vacate office if he or she ceases to be qualified to act as an insolvency practitioner in relation to the company.
- (c) Where, at any time, a receiver vacates or is removed from office he or she is entitled to be paid the following out of any property of the company which is in

the receiver's custody or control at that time in priority to any security held by the person by or on whose behalf he or she was appointed :-

- (i) his or her remuneration and any expenses properly incurred; and
 - (ii) any indemnity to which he or she is entitled out of the property of the company,
- (d) Where a receiver vacates or is removed from office otherwise than by death, he or she must send a notice to that effect to the Registrar within 14 days.
- (e) If a receiver fails to comply with subsection (d) without reasonable excuse, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

DIVISION 3 GENERAL PROVISIONS

34 Information to be given by receiver

- (a) Where a receiver is appointed, he or she must:
- (i) send a notice of the appointment to the company and publish the notice in the manner prescribed by the Rules within 2 business days;
 - (ii) send a notice of the appointment to the Registrar within 2 business days, who will register it; and
 - (iii) send a notice to all of the creditors of the company in so far as he or she is aware of their addresses within 28 days after the date of his or her appointment.
- (b) If the receiver without reasonable excuse fails to comply with this section, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

35 Statement of affairs of a company

- (a) Immediately following the appointment of a receiver, the receiver may issue a written notice requiring one or more relevant persons to make out and submit to him or her, a statement of the affairs of the company.
- (b) In respect of subsection (a) the Rules will specify:
- (i) the form of the written notice;
 - (ii) the details of the relevant persons; and
 - (iii) the form and content of the statement of affairs of the company.
- (c) Any persons summoned under this section to submit a statement of affairs to the receiver must do so within 21 days.
- (d) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine by the Registrar of an amount not exceeding 500,000 kyats.

36 Report by receiver

- (a) The receiver must send to the Registrar, to any other insolvency practitioner appointed by the company, and to any other person prescribed by the Rules, periodic reports as to the following matters:

- (i) the events leading up to the appointment, so far as he or she is aware of them, together with a summary of the statement of affairs made out and submitted to the receiver under section 35 and of any comments upon it that he or she may make;
 - (ii) the disposal or proposed disposal by him or her of any property of the company and the carrying on or proposed carrying of any business of the company;
 - (iii) the amounts of principal and interest payable to the secured creditor by whom or on whose behalf he or she was appointed and the amounts payable to preferential creditors; and
 - (iv) the amount likely to be available for the payment of other creditors.
- (b) The reports must be issued:
- (i) within 3 months of the receiver's appointment;
 - (ii) within 3 months of each annual anniversary of the receiver's appointment; and
 - (iii) within 3 months of the termination of the receiver's appointment.
- (c) Nothing in this section is to be taken as requiring a report under this section to include any information the disclosure of which would seriously prejudice the carrying out by the receiver of his or her functions.
- (d) If the receiver without reasonable excuse fails to comply with this section:
- (i) he or she is liable to a fine by the Registrar of an amount not exceeding 250,000 kyats; and
 - (ii) the Court may make an order directing the receiver to make good the default within the time specified in the order.

37 Receiver's duties in relation to bank accounts and financial records

- (a) A receiver of property of a company must:
- (i) open and maintain one or more bank accounts bearing the receiver's own name together with the title "receiver" and the name of the relevant company to which the receiver has been appointed;
 - (ii) pay all money of the company coming under his or her control into that or those bank accounts; and
 - (iii) ensure that no money other than the money referred to in subsection (a)(ii) is deposited into those bank accounts.
- (b) A receiver must keep such financial records as are necessary to correctly record and explain all transactions the receiver enters into as receiver, and any director, creditor, or shareholder of the company may, unless the Court otherwise orders, inspect such records by requesting them within a reasonable period.

38 Court's power to fix remuneration

- (a) On the application of an interested party, the Court may by order fix the amount to be paid by way of remuneration to a person who has been appointed receiver of the company's property under powers contained in an instrument.

- (b) When an application is made under subsection (a), the Court may:
 - (i) fix the remuneration for any period before the making of the order unless an order has already been made under the subsection regarding that prior period;
 - (ii) exercise its powers under this section even if the receiver has died or ceased to act before the making of the order;
 - (iii) require a receiver who has been paid or has retained funds for his or her remuneration in respect of any period before the making of the order which exceeds the amount subsequently fixed by the Court to account for any amount so paid or retained.
- (c) In exercising its powers under subsection (a), the Court may take account of any principles or other relevant factors that may be set out in the Rules.
- (d) The Court may vary or amend an order made under subsection (a).

39 Application to Court for directions

- (a) A receiver of the property of a company may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his or her functions as receiver.
- (b) On an application made under subsection (a), the Court may give directions, or make orders or declarations concerning the rights of persons before the Court or otherwise.

PART V CORPORATE RESCUE AND REHABILITATION

DIVISION 1 NATURE OF REHABILITATION PROCEEDING

40 Rehabilitation proceedings

- (a) Rehabilitation proceedings under this Part have the following stages:
- (i) the company Rescue Stage; and
 - (ii) the company Plan Stage,
- and references in this part to “company Rescue Stage” and “company Plan Stage” are to be interpreted as references to company’s rehabilitation process.
- Explanation 1: In the company Rescue Stage, options for rehabilitation are explored and a decision on the future of the company is made by creditors.
- Explanation 2: In the company Plan Stage, creditors resolve to approve a rehabilitation plan and the plan is implemented.
- (b) The Rescue Stage commences when a rehabilitation manager is appointed in accordance with section 47 and concludes upon:
- (i) the commencement of the Plan Stage; or
 - (ii) if the Plan Stage is not carried out, the commencement of the company’s liquidation.
- (c) The Plan Stage commences upon the signing of a rehabilitation plan in accordance with section 75, and concludes upon:
- (i) the filing with the Registrar of a notice under section 84; or
 - (ii) an order of the Court to terminate the rehabilitation plan under section 87; or
 - (iii) a decision of creditors to transition to a winding up of the company under section 85 or 86.
- (d) A rehabilitation proceeding does not terminate merely because a rehabilitation manager or plan supervisor vacates office or is removed from office.

41 Objects of rehabilitation proceedings

The objects of this Part are:

- (a) rescuing the company as a going concern;
- (b) if object in subsection (a) is not achievable, ensuring that as much as possible of its business continues in existence;
- (c) if objects in subsections (a) and (b) are not achievable, achieving a better result for the company’s creditors as a whole than would be likely if the company were wound up.

42 Court supervision

A rehabilitation manager and a plan supervisor are both subject to the supervision of the Court.

DIVISION 2
APPOINTMENT OF REHABILITATION MANAGER

43 Appointment of rehabilitation manager

Subject to section 44, an insolvency practitioner may be appointed to a company as rehabilitation manager:

- (a) by the company, in writing, upon a resolution carried by its board of directors that in the opinion of the directors voting for the resolution, the company is unable to pay, or is unlikely to be able to pay, its debts as and when they become payable and a rehabilitation manager should be appointed;
- (b) by a secured creditor, in writing that holds security over all or a majority of the company's property and where the terms of that security permit the appointment of a receiver;
- (c) by order of the Court.

44 Prohibition on appointment of rehabilitation manager in specified circumstances

A rehabilitation manager may not be appointed to a company in the following circumstances:

- (a) if the insolvency practitioner has not consented in writing to accept the appointment;
- (b) if the company is already subject to a rehabilitation proceeding under either Part V or Part VI unless ordered by the Court under section 46(b)(i);
- (c) where the proposed appointment is by the company under section 43(a):
 - (i) if it is within 12 months of the conclusion of a prior rehabilitation proceeding under Part V or Part VI;
 - (ii) if the insolvency practitioner has not confirmed in writing to the company that he or she has reviewed the financial records and list of creditors provided by the company and is satisfied that the creditor list is accurate and that the reasons for commencement of the rehabilitation proceedings are appropriate;
- (d) where the proposed appointment is by the company under section 43(a) or by a secured creditor under section 43(b), if the company is already in liquidation;
- (e) if the company is a Bank, Non-Bank Financial Institution or scheduled entity within the meaning of section 2 of the Financial Institutions Law.

45 Rehabilitation application made to Court

- (a) An application to the Court for a rehabilitation order in respect of a company may be made by:
 - (i) the company;
 - (ii) the liquidator of the company;
 - (iii) one or more directors of the company;
 - (iv) one or more creditors of the company, including a secured creditor; or
 - (v) a combination of persons listed in paragraphs (i) - (iv).

- (b) As soon as is reasonably practicable after making an application under subsection (a), the applicant must notify the following persons:
 - (i) the company;
 - (ii) any secured creditors;
 - (iii) any other persons prescribed by the Rules.
- (c) If a company is in liquidation, a rehabilitation order may only be made on the application of the liquidator of the company.
- (d) If the Court makes a rehabilitation order on an application made by the liquidator of the company:
 - (i) the Court may either discharge or stay any winding up order in respect of the company;
 - (ii) the Court may appoint the liquidator as the rehabilitation manager;
 - (iii) this Part will apply when making the order; and
 - (iv) the Court may make orders or give directions in relation to any other matters prescribed in the Rules.

46 Powers of the Court

- (a) The Court may only make an order under subsection (b)(i) if satisfied that:
 - (i) the company is unable to pay or unlikely to be able to pay its debts as and when they become payable;
 - (ii) there are reasonable prospects that an object set out in Part II can be achieved.
- (b) On hearing a rehabilitation application, the Court may:
 - (i) make an order that a rehabilitation manager be appointed;
 - (ii) dismiss the application;
 - (iii) adjourn the hearing conditionally or unconditionally;
 - (iv) treat the application as a winding-up petition and make any order under section 164;
 - (v) make any order of an interim nature pending the making of final orders, including either of the interim orders set out in subsection (c).
- (c) An interim order under subsection (b)(v) means one of the following :
 - (i) An order that restricts the exercise of specified powers of directors of the company; or
 - (ii) An order that imposes any of the restrictions set out in section 172(d), (f) and (g).

47 When appointment takes effect

The appointment of a rehabilitation manager takes effect following the occurrence of:

- (a) when made by the Court, at the time specified in the order, or where no time is specified in the order, when the order is made; and
- (b) when made by the company or the secured creditor, on the delivery to the insolvency practitioner of the written appointment document.

48 Selection of rehabilitation manager in special cases

- (a) Where the Court is prevented from appointing a rehabilitation manager by operation of section 44(b) or a liquidator by operation of section 146, and a rehabilitation proceeding had been commenced by the company after the filing of court proceedings for the appointment of a rehabilitation manager or for winding up by the Court, the Court may, if it considers it appropriate to do so, by order made in those rehabilitation or winding up proceedings, replace the insolvency practitioner appointed by the company with another insolvency practitioner. The insolvency practitioner must consent to such appointment in writing.
- (b) Where a rehabilitation manager is appointed by the company and there is a secured creditor whose security is over all or a majority of the company's property, the rehabilitation manager must send a notice of the appointment to the secured creditor within 2 business days. The secured creditor may, within 5 business days of receiving the notice, replace the appointed rehabilitation manager with an insolvency practitioner of his, her or its choice. The insolvency practitioner must consent to such appointment in writing.
- (c) Where a rehabilitation manager is appointed by a secured creditor and there is a higher ranking secured creditor whose security is also over all or a majority of the company's property, the rehabilitation manager must send a notice of the appointment to the other secured creditor within 2 business days. The other creditor may, within 5 business days of receiving the notice, replace the appointed rehabilitation manager with an insolvency practitioner of his, her or its choice. The insolvency practitioner must consent to such appointment in writing.

49 Notification of appointment

- (a) Where a rehabilitation manager is appointed, he or she must within 2 business days send a notice of the appointment:
 - (i) to the company and publish the notice in the manner prescribed by the Rules;
 - (ii) to the Registrar, who will register it as soon as reasonably practicable; and
 - (iii) to the creditors of the company insofar as he or she is aware of their addresses.
- (b) If the rehabilitation manager without reasonable excuse fails to comply with this section, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

50 Invalidity of appointment

Where the appointment of a rehabilitation manager is discovered to be invalid for any reason, the Court may order the person who purported to make the appointment to indemnify the person appointed against any liability which arises solely by reason of the appointment's invalidity.

DIVISION 3 RESCUE STAGE

Functions, duties and powers of rehabilitation manager

51 Functions of rehabilitation manager

- (a) The principal functions of the rehabilitation manager are to manage the affairs of the company while investigating options for achieving the objectives set out in section 41.
- (b) The rehabilitation manager must take into his or her custody or under his or her control all of the property to which the company is or appears to be entitled.
- (c) Where a plan is to be proposed to creditors, the rehabilitation manager must:
 - (i) investigate the viability of the proposed plan and whether it is likely to achieve the objectives set out in section 41;
 - (ii) investigate whether the proposed plan benefits an associate of the company or a secured creditor;
 - (iii) investigate the likely return to creditors if the plan is approved;
 - (iv) compare that likely return to the likely return to creditors if the plan is not approved and the company is wound up;
 - (v) issue a report which sets out the rehabilitation manager's views and opinions on each of the above matters, the reasons for those views and opinions, any other information known to the rehabilitation manager that is material to the decision of creditors, and his or her recommendation as to whether creditors should vote in favour of the plan.

52 Duty of rehabilitation manager

The rehabilitation manager must perform his or her functions:

- (a) in the interests of the company's creditors as a whole; and
- (b) as quickly and efficiently as is reasonably practicable.

53 Rehabilitation manager as agent of the company

In exercising his or her function to manage the affairs of the company, the rehabilitation manager acts as the company's agent.

54 Powers of rehabilitation manager

- (a) Subject to this Part, during the Rescue Stage, the rehabilitation manager:
 - (i) has control of the company's business, property and affairs and may cause the company to carry on that business;
 - (ii) may sell all or part of that business;
 - (iii) may remove or appoint directors of the company; and
 - (iv) may otherwise perform any function, or exercise any power, that the company's directors could perform or exercise if the company was not in rehabilitation.
- (b) Subsection (a) does not permit the rehabilitation manager to deal with property that is subject to security other than as permitted by sections 59, 60 and 61.

- (c) The rehabilitation manager of a company may convene meetings of creditors of the company.
- (d) The rehabilitation manager may by formal notice repudiate contracts and other obligations entered into before the commencement of the rehabilitation proceeding where such action is considered to be of assistance in achieving the objectives of this Part, and in such cases the contract will upon such repudiation cease to have legal effect, with the creditor entitled to submit a claim in respect of consequential losses.
- (e) Subsection (d) does not have effect in relation to security.

Protections in favour of company during Rescue Stage

55 Consequences for the company during Rescue Stage

- (a) The protections set out in section 172(d), (e), (f) and (g) that apply to a company and its property in a liquidation also apply during the Rescue Stage. The rehabilitation manager may, during the Rescue Stage, exercise the powers of the liquidator under those subsections.
- (b) Property used, or in the possession of the company that is owned or leased by another person cannot be transferred to that other person during the Rescue Stage, without the leave of the Court or the written consent of the rehabilitation manager.
- (c) During the Rescue Stage, all the powers of the directors cease unless the rehabilitation manager sanctions their exercise.

56 Protections for the company

No step may be taken during the Rescue Stage to enforce, or to continue to enforce, security over the property, without the leave of the Court or the written consent of the rehabilitation manager.

57 Protection of guarantors

No legal process may be instituted or continued during the Rescue Stage against any guarantor of the company's debts or obligations without the leave of the Court.

58 Leave and consent by the Court

Where the Court grants leave as set out in this Division, such leave may be either unconditional, or granted on such conditions as may be considered appropriate by the Court.

59 Property subject to floating charge

- (a) The rehabilitation manager may dispose of or otherwise deal with property the subject of a floating charge:
 - (i) in the ordinary course of the company's business; or
 - (ii) with the written consent of the secured party; or
 - (iii) with the leave of the Court.
- (b) The Court may only give leave under subsection (a)(iii) if satisfied that the interest of the secured creditor are adequately protected.
- (c) For the purposes of subsection (a)(i), the fact that a notice or demand may be issued, or that the floating charge has become fixed, does not of itself prevent a sale being in the ordinary course of business.

- (d) If the rehabilitation manager sells property of the company that is subject to a security interest, the rehabilitation manager must act reasonably in exercising his or her power.

60 Property subject to fixed charge

- (a) The rehabilitation manager may dispose of or otherwise deal with property the subject of a fixed charge:
 - (i) with the written consent of the secured party;
 - (ii) with the leave of the Court.
- (b) The Court may only give leave under subsection (a)(ii) if satisfied that :
 - (i) arrangements have been made to protect adequately the interest of the secured party; and
 - (ii) the order will likely assist in achieving the objects set out in section 41.

61 Protection of secured creditor in other dealings

Except as permitted in sections 59 and 60, the rehabilitation manager must not deal with a property if it may prejudice the interest in the property of the secured creditor.

General provisions

62 Liability for contracts

- (a) A rehabilitation manager has personal liability in carrying out the obligations of the company in the circumstances described in subsections (b) or (c).
- (b) Where debts are incurred by the company during the course of the Rescue Stage for money borrowed by the company or for services rendered, goods purchased or property hired, leased, used or occupied by the company during this period, the rehabilitation manager is liable for those debts where they have been incurred by him or with his express or implied consent.
- (c) Where:
 - (i) prior to the appointment of a rehabilitation manager, the company uses or occupies or is in possession of property owned or leased by another person pursuant to an agreement with that person; and
 - (ii) after the appointment of a rehabilitation manager, the company continues to use or occupy or to be in possession of that property,

the rehabilitation manager is liable for the rent or other amounts payable by the company under the agreement that is attributable to the Rescue Stage and throughout which the company continues to use or occupy, or to be in possession of, that property.
- (d) The liability of the rehabilitation manager in subsection (c) is excused if within 7 days after the date of his or her appointment, the rehabilitation manager gives to the owner or lessor of the property a notice that states that the company does not propose to exercise rights in relation to the property, and after giving such notice the company does not in fact exercise rights in relation to the property.
- (e) The rehabilitation manager must communicate with suppliers and other parties to whom this section is relevant to inform them of the effect of this section.

- (f) A rehabilitation manager is entitled to be indemnified out of the property of the company to which he or she is appointed for any rehabilitation claim, being:
 - (i) debts of the company for which the rehabilitation manager is liable under this section; and
 - (ii) liabilities and expenses incurred in good faith and without negligence by the rehabilitation manager in the performance of his or her functions as rehabilitation manager; and
 - (iii) the rehabilitation manager's remuneration as fixed in accordance with this Law.
- (g) The rehabilitation manager's right of indemnity set out in subsection (f) has priority over all of the company's unsecured debts, and the rehabilitation manager has security in the company's property for the right of indemnity.
- (h) The rehabilitation manager's security provided for in subsection (g) ranks in priority behind:
 - (i) any fixed charge or a secured creditor existing at the time of the rehabilitation manager's appointment; and
 - (ii) the interests of a receiver lawfully appointed by a secured creditor, but only in respect of rehabilitation claims incurred by the rehabilitation manager after the appointment of the receiver

63 Notification that company is in rehabilitation

- (a) When a company is in Rescue Stage:
 - (i) every invoice, order for goods or services, business letter or order form issued by or on behalf of the company, or a rehabilitation manager of the company; and
 - (ii) all the company's websites,

must contain a statement that the company is in a rehabilitation proceeding.
- (b) Subsection (a) applies to invoices, orders for goods or services, business letters or order forms in hard copy, electronic or any other form.
- (c) If default is made in complying with this section, an officer of the company and a rehabilitation manager who knowingly or wilfully authorises or permits the default are liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

64 Distribution by rehabilitation manager

The rehabilitation manager may:

- (a) make a distribution to a secured creditor in respect of the proceeds of sale of the security, subject to the operation of section 205; and
- (b) make a distribution in accordance with the order for priority set out in section 196.

65 Statement of affairs of the company

- (a) Following the appointment of a rehabilitation manager, the rehabilitation manager may issue a written notice requiring one or more relevant persons to make out and submit to him or her, a statement of the affairs of the company.

- (b) In respect of subsection (a), the Rules will specify:
 - (i) the form of the written notice;
 - (ii) the relevant persons; and
 - (iii) the form and content of the statement of affairs of the company.
- (c) Any persons required under this section to submit a statement of affairs to the rehabilitation manager must do so within 7 days of receipt of written notice.
- (d) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine by the Registrar of an amount not exceeding 500,000 kyats.

66 Appointment of creditors' committee

- (a) The creditors at any meeting of creditors may, if they think fit, appoint a creditors' committee to consult with the rehabilitation manager.
- (b) The Rules may make provision for, or in relation to, the composition, convening, conduct of, procedure and voting at, any meeting of a creditors' committee, and may confer additional functions on the committee.

67 Inspection of books by creditors.

- (a) At any time during the Rescue Stage, the Court may make an order for inspection of the company's books and papers by creditors and contributories if they so request and any books and papers in the company's possession may be inspected by creditors and contributories accordingly.
- (b) Nothing in this section excludes or restricts:
 - (i) any statutory rights of inspection of a government department or person acting under the authority of a government department; or
 - (ii) the rehabilitation manager voluntarily agreeing to allow such an inspection.

68 Applications to the Court

- (a) A rehabilitation manager may apply to the court for directions in relation to any particular matter arising in connection with the performance of his or her functions as rehabilitation manager.
- (b) The rehabilitation manager or any shareholder or creditor may apply to the court to determine any question arising in the Rescue Stage. The court, if satisfied that the granting of directions or the determination of a question will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make any other order on the application.

69 Meetings of creditors

- (a) A meeting of creditors of the company must be convened by the rehabilitation manager:
 - (i) within 30 days of his or her appointment in order to report to creditors on the progress of the rehabilitation proceeding and, if ready to do so, to consider whether to adopt a rehabilitation plan;
 - (ii) within the time frame set out in section 71(a) to consider whether to adopt a rehabilitation plan, if a rehabilitation plan had not already been voted on at the meeting referred to in (i);

- (iii) if requested by creditors who in number exceed 10% of the total number of creditors, or whose claims have an aggregated value exceeding 10% of the total value of claims of creditors.
- (b) A meeting of creditors of the company may be convened by the rehabilitation manager at any time should he or she consider it desirable to consult with creditors during the course of the rehabilitation proceeding.
- (c) The convening and conduct of creditor meetings will be in the manner prescribed in the Rules.

70 Change in identity of rehabilitation manager

- (a) The provisions set out in section 181(a), (b) and (d), 182(b) and (c) and 183(b), (c) and (d) that apply to removal, vacation of office and the filling a vacancy in the office in each case of a liquidator also apply during the Rescue Stage. However, the replacement of a rehabilitation manager at a creditors' meeting requires the consent of the secured creditors where the rehabilitation manager was appointed by that secured creditor.
- (b) Upon being appointed rehabilitation manager in accordance with subsection (a), the rehabilitation manager must give notice to the Registrar of his or her appointment within 2 business days.

71 Timing for submission of proposed rehabilitation plan

- (a) The rehabilitation manager must convene a meeting of creditors to consider whether to adopt a rehabilitation plan within 3 months from the date of the initial appointment of the rehabilitation manager.
- (b) A rehabilitation plan may be included for consideration at the meeting of creditors convened in accordance with section 69(a)(i).
- (c) Any meeting convened to consider whether creditors should adopt a rehabilitation plan may be adjourned, provided that the period of adjournment would not be beyond the date that is 4 months from the date of initial appointment of a rehabilitation manager to the company
- (d) The periods of time set out in subsections (a) and (c) may be extended by an order of the Court where there are exceptional circumstances and the Court considers that such an extension is likely to further the objects of the rehabilitation proceeding set out in section 41.
- (e) The rehabilitation manager must find ways of carrying out the rehabilitation plan and its consideration by creditors as soon as reasonably practicable within the time frame set out in this section.

72 Preparation and content of a rehabilitation plan

- (a) A rehabilitation plan may be prepared by the rehabilitation manager or by any interested party.
- (b) A rehabilitation plan must include the following details:
 - (i) the identity of the plan supervisor;
 - (ii) the respective roles and responsibilities of the directors and the plan supervisor;
 - (iii) the extent of any compromise of creditor claims, and the manner in which, and the property from which, payments are to be made;
 - (iv) the nature and duration of any moratorium period;

- (v) the extent to which the company is to be released from its debts;
 - (vi) the extent to which the shares of shareholders are comprised or transferred;
 - (vii) the conditions (if any) for parts of the plan to come into operation and for the plan to continue in operation;
 - (viii) the circumstances in which the plan terminates and whether, upon successful implementation of the plan, the company reverts fully to the control of its directors or is to be deregistered;
 - (ix) the order in which distributions amongst creditors bound by the plan are to be made;
 - (x) the day (not later than the date of commencement of the Rescue Stage) on or before which claims must have arisen if they are to be admissible under the plan;
 - (xi) the claims over the property of, and security held by, secured creditors who will be affected by the plan; and
 - (xii) any further matters prescribed by the Rules;
- (c) The rehabilitation plan must be likely to produce a return to creditors that is at least equal to the likely return if the plan does not come into effect.
 - (d) The rehabilitation plan must include the same claim priorities as would apply if the plan does not come into effect. However if each class of creditors adversely affected by a different ranking of claims also vote on the plan as a separate class of creditors, and that vote is carried by both a majority in number and a majority in value, the same priorities do not need to apply.
 - (e) A copy of the rehabilitation plan, or a summary of its material terms, must be sent to all creditors in advance of the creditors' meeting referred to in section 71, with such notice as may be prescribed in the Rules.
 - (f) The notice and the rehabilitation plan or summary to be sent to creditors must be accompanied by the rehabilitation manager's report to creditors required by section 51(c)(iii).
 - (g) The rehabilitation manager must also provide a copy of the report to any member of the company upon written request.

DIVISION 4 REHABILITATION PLAN

73 When rehabilitation plan approved

- (a) A rehabilitation plan is taken as having been approved by creditors when, at a duly convened creditors' meeting where due notice of the proposed plan has been given, a resolution to enter into the plan is carried by the majority of creditors.
- (b) With the consent of the person or persons proposing the plan, the terms of the plan may be amended at the meeting of creditors, and the plan as amended may be voted on by creditors at that meeting.
- (c) For the purposes of this Division, the requisite majority is both:
 - (i) creditors the values of whose claims equal or exceed 50% of the total of claims of creditors voting at the meeting; and

- (ii) creditors in number that equal or exceed 50% of the total number of creditors voting at the meeting.
- (d) The vote may be conducted on a show of hands, but any creditor present at the meeting may require a poll to be taken and the votes cast must be formally recorded and counted to determine whether the resolution is carried or not carried by the requisite majority.
- .
- (e) In accordance with any provision in this law, should the Chair of the meeting exercise his right of a casting vote or a creditor being an associate of the debtor exercises his or her right of vote in a certain way resulting in the adoption of or rejection of a decision in the creditors meeting, an application can be made to the court and the court may pass the following orders:-
 - (i) An order that revokes the decision passed;
 - (ii) An order that revokes the decision not to pass and to adopt the said decision;
 - (iii) An order that is relevant to and needed in respect of paragraph (1) and (2) of sub section (e).
- (f) The rehabilitation manager must, upon request by any creditor or shareholder, provide a copy of his or her record of how each vote was cast when a poll was taken.
- (g) If the rehabilitation manager fails without reasonable excuse to comply with subsection 0 and (f), he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

74 Notification of appointment

- (a) A plan supervisor who is appointed must within 2 business days send a notice of the appointment to:
 - (i) the company and publish the notice in the manner prescribed by the Rules;
 - (ii) the Registrar, who will register it as soon as reasonably practicable; and
 - (iii) all of the creditors of the company insofar as he or she is aware of their addresses.
- (b) If the plan supervisor without reasonable excuse fails to comply with this section, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

75 The rehabilitation plan comes into effect

- (a) Where the rehabilitation plan is approved by the requisite majority of creditors, the rehabilitation manager must prepare a formal document to record the plan's terms, and make arrangements for such document to be signed on behalf of the company (either by its directors or its rehabilitation manager) and by the proposed plan supervisor.
- (b) The document mentioned above must be signed within 14 days of being approved by the requisite majority of creditors, or such further period as may be permitted by Court order.
- (c) Upon the rehabilitation plan being signed by the company and the plan supervisor, the Rescue Stage concludes, and the Plan Stage commences.

76 Consequences of rehabilitation plan

- (a) Subject to this Part, a rehabilitation plan:
 - (i) constitutes a compromise between the company and its creditors and shareholders.
 - (ii) can affect:
 - (A) the shareholding rights of shareholders even though they have not voted; and
 - (B) the rights of creditors regardless of whether or not they attended the meeting or whether or not they voted in favour of the plan.
- (b) If, at the time a rehabilitation plan takes effect, a winding up summons remains pending before the Court, or a winding up earlier commenced had been stayed during the Rehabilitation Stage, the plan supervisor must:
 - (i) file in the winding up proceedings a notice of his or her appointment as plan supervisor; and
 - (ii) the Court must, as appropriate, dismiss the winding up summons or set aside the winding up order.

77 Effect of rehabilitation plan on stakeholders

- (a) Subject to subsections (b) and (c), the rehabilitation plan will bind all creditors of the company, so far as concerns claims arising on or before the day on which the Rescue Stage commenced.
- (b) Subsection (a) does not prevent a secured creditor from realising or otherwise dealing with its secured property, except so far as:
 - (i) the plan so provides in relation to a secured creditor who voted in favour of resolution of creditors to adopt the plan; or
 - (ii) the Court so orders under section 78.
- (c) Subsection (b)(i) does not affect a right that an owner or lessor of property has in relation to that property, except so far as:
 - (i) the plan so provides in relation to an owner or lessor who voted in favour of resolution of creditors to adopt the plan; or
 - (ii) the Court so orders under section 78.
- (d) The rehabilitation plan also binds:
 - (i) the company;
 - (ii) the company's officers; and
 - (iii) the shareholders of the company in accordance with subsection (e).
- (e) The rehabilitation plan may not compromise or transfer the shares of a shareholder where to do so would be unfairly prejudicial to the interests of the shareholders.
- (f) For the purposes of subsection (e), a compromise or transfer of shares does not prejudice the interests of the affected shareholders where the shares have no residual value.

78 Court may limit rights of secured creditor or owner or lessor

- (a) Subject to subsection (c), the Court may order a secured creditor of the company not to realise or otherwise deal with its security interest other than consistently with the terms of the rehabilitation plan, except as permitted by the order.
- (b) Subject to subsection (c), the Court may order an owner or lessor of property that is used or occupied by, or is in possession of the company, not to take possession of the property or otherwise recover it, other than consistently with the terms of the rehabilitation plan, except as permitted by the order.
- (c) The Court may only make orders under either subsection (a) or (b) if satisfied that:
 - (i) the absence of such an order would have a material adverse effect on achieving the purposes of the plan; and
 - (ii) the terms of the order and any other relevant matter adequately protect the interests of the secured creditor, owner or lessor.

79 Role of plan supervisor

- (a) The functions, duties and powers of a plan supervisor are:
 - (i) setting out the rehabilitation plan;
 - (ii) the duties regarding variation or termination of the plan set out in Division 5 of this Part.
- (b) In exercising his or her functions under this Part, the plan supervisor:
 - (i) acts as agent of the company; and
 - (ii) must implement the rehabilitation plan as quickly and efficiently as is reasonably practicable.

80 Directions power

- (a) A plan supervisor may apply to the court for directions in relation to any particular matter arising in connection with the performance of his or her functions as plan supervisor.
- (b) The plan supervisor, the company, any shareholder or creditor may apply to the court to determine any question arising in the Plan Stage. The court, if satisfied that the granting of directions for the determination of a question will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make any other order on the application.

81 Notification requirement

- (a) When a company is in Plan Stage:
 - (i) every invoice, order for goods or services, business letter or order form issued by or on behalf of the company, or a plan supervisor; and
 - (ii) all the company's websites,

must contain a statement that the company is subject to a rehabilitation plan.
- (b) Paragraph (a)(i) of subsection (a) applies to invoices, orders for goods or services, business letters or order forms in hard copy, electronic or any other form.

- (c) If default is made in complying with this section, the company and any of the officers who knowingly or wilfully authorises or permits the default are liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

82 Replacing plan supervisor

- (a) The provisions set out in section 181(a), (b) and (d), 182(b) and (c) and 183(b), (c) and (d) that apply to removal, vacation of office and the filling a vacancy in the office in each case of a liquidator also apply during the Plan Stage.
- (b) Upon being appointed plan supervisor in accordance with subsection (a), the plan supervisor must give notice to the Registrar of his or her appointment within 2 business days.

DIVISION 5 WHEN REHABILITATION PLAN MAY BE VARIED OR TERMINATED

83 Identification of voting majorities

- (a) **“Double Majority”** means that both of the following majorities are achieved:
 - (i) Creditors the values of whose claims equal or exceed 50% of the total of claims of creditors voting at the meeting; and
 - (ii) Creditors in number that equal or exceed 50% of the number of creditors voting at the meeting.
- (b) **“Split Majority”** means a vote where one out of two of the majorities identified in the definition of Double Majority is achieved.

84 Termination of rehabilitation plan where objective achieved

- (a) If all obligations of the company and any other party under or in connection with the rehabilitation plan have been fulfilled and creditors' claims under the plan dealt with in accordance with the plan, the plan supervisor must lodge with the registrar a notice of termination of the plan which states the above matters.
- (b) The plan supervisor's appointment will cease to have effect when the notification referred to in subsection (a) is filed with the Registrar.
- (c) If a plan supervisor fails to lodge the notification referred to in subsection (a) without reasonable excuse he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.
- (d) If the plan provided for the deregistration of the company following successful implementation of the plan, the plan supervisor must at the same time request the Registrar to dissolve the company, and upon such lodgement, the provisions of section 212 will apply to subsection (a)..

85 Variation of rehabilitation plan

- (a) A meeting to consider variation of a rehabilitation plan must be convened by the plan supervisor:
 - (i) upon receipt of a request from the company's board of directors; or
 - (ii) when the plan supervisor considers there has been, or is likely to be, a breach of the material terms of the plan, and that a variation to the plan presents a better alternative than its termination.
- (b) The plan supervisor must, in the circumstances identified in subsection (a):
 - (i) summon a creditors' meeting in the manner prescribed in the Rules;

- (ii) send a copy of the proposed plan variation with the notice of the meeting to creditors, together with:
 - (A) an explanation of the reasons for the variation;
 - (B) the plan supervisor's opinion as to whether creditors should vote in favour of the variation, vote against the proposed variation, or should terminate the plan;
 - (C) the plan supervisor's reasons for holding his or her opinion; and
 - (D) whether the proposed revision will or may benefit an associate of the company.
- (c) The rehabilitation plan is varied when, at the duly convened creditors' meeting to consider the variation, a Double Majority is achieved.
- (d) If the resolution is not carried by the Double Majority but a Split Majority is achieved, the plan supervisor is allowed to exercise a casting vote, and if exercised in favour of the resolution to vary the plan, the resolution is carried, and the rehabilitation plan is taken to have been varied.
- (e) If the resolution to vary the plan is not carried, the chairman of the meeting must conduct a further vote of creditors on a resolution to terminate the plan.
- (f) The rehabilitation plan is terminated when a Double Majority is achieved to terminate the plan.
- (g) If the resolution to terminate the rehabilitation plan is not carried by the Double Majority but a Split Majority is achieved, the plan supervisor is allowed to exercise a casting vote, and if exercised in favour of the resolution to terminate the plan, the resolution is carried and the rehabilitation plan is taken to have been terminated.
- (h) Where the resolution to terminate the rehabilitation plan is not carried, the company must carry on implementing the plan, unaffected by the meeting, but the Court may issue an order to terminate the rehabilitation plan if considered appropriate on application in accordance with section 87.
- (i) If it is resolved to terminate the plan, the company is immediately subject to a winding up in accordance with section 88.
- (j) Within 2 business days of the conclusion of a creditors' meeting convened under this section, the plan supervisor must report any resolution and the outcome of voting to the Registrar and any other persons prescribed by the Rules.
- (k) If the plan supervisor fails without reasonable excuse to comply with subsection (j), he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.
- (l) Where a rehabilitation plan is varied under this section, a creditor of the company may apply to the Court for an order cancelling the variation, and the Court may either cancel the variation or confirm it, in whole or in part, in the interests of justice.

86 Termination of rehabilitation plan by creditors where objective not being achieved

- (a) Where there has been a breach of the rehabilitation plan, the operation of section 85(a) has not been activated, and the breach has not been remedied, the plan supervisor must convene a creditors' meeting in one of the following circumstances:

- (i) the plan supervisor considers the breach to be material and any period of time reasonably allowed for the breach to be remedied has concluded;
 - (ii) if requested by creditors representing more than either 10% of the value of creditor claims or 10% of the total number of creditors.
- (b) The meeting will be convened in accordance with the Rules and the chairman of the meeting will conduct a vote on the resolution that the rehabilitation plan be terminated.
 - (c) The voting majorities for the resolution to be carried are the same as those set out in section 85(f) and (g).
 - (d) The notification requirements are the same as those set out in section 85(j).

87 Termination of rehabilitation plan by the Court where objective not being achieved or there is abuse of process

- (a) This section applies to any of the following circumstances:
 - (i) material information about the company's business, property, affairs or financial circumstances provided to creditors when they were to vote to adopt, or vary, the rehabilitation plan was false or misleading or there was an omission from such information that was material to the decision; or
 - (ii) there was a material irregularity in the conduct of the creditors meeting in which it was resolved to enter into the rehabilitation plan; or
 - (iii) the resolution to enter into the rehabilitation plan was carried due to the votes of persons connected with associates of the company; or
 - (iv) one or more terms of the rehabilitation plan is oppressive or unfairly prejudicial to or unfairly discriminatory against one or more creditors or is contrary to the interests of the creditors of the company as a whole; or
 - (v) there has been a material contravention of the rehabilitation plan by a person bound by it; or
 - (vi) effect cannot be given to the rehabilitation plan without injustice or undue delay; or
 - (vii) the plan supervisor has acted in a manner that is inconsistent with the rehabilitation plan or his or her duties,
- (b) An application to terminate the plan may be made to the Court by the plan supervisor or any interested person in any of the circumstances set out in subsection (a).
- (c) The termination of a contract shall not effect previous operation of the contract except in the circumstances set out in subsection (d).
- (d) When an order is made by the Court terminating a contract, the Court may make such additional orders on the following persons as are considered appropriate to alter the effect of any benefits received under the plan by:
 - (i) any party in breach of the plan or a contract entered into in accordance with the plan;
 - (ii) any person connected with an associate of the company.

- (e) An application under subsection (a)(i), (ii), (iii) or (iv) may only be filed within 28 days of the creditors resolving to enter into the plan, unless the Court considers good reason is given for the delay.

DIVISION 6 TRANSITION TO WINDING UP

88 When there is a transition to winding up

- (a) Where:
 - (i) creditors resolve, in accordance with sections 85 or 86 that the rehabilitation plan be terminated; or
 - (ii) the rehabilitation proceeding concludes without creditors agreeing to enter into a rehabilitation plan or commence winding up, or no rehabilitation plan is executed within the time period specified in section 75; or
 - (iii) at the meeting convened in accordance with section 69(a)(i) or (ii), creditors resolve that the company be wound up; or
 - (iv) the Court resolves, under section 87 that the company be wound up;

the company transitions to a creditors' voluntary winding up.
- (b) The liquidator of the company will be the insolvency practitioner who was the rehabilitation manager or plan supervisor immediately prior to the transition to winding up, unless at the time of the transition creditors have resolved to appoint a different insolvency practitioner as liquidator.
- (c) The liquidator must, within 5 business days after the date of transition to winding up, lodge a written notice with the Registrar notifying of the transition, and cause the notice to be published within the required period and in the prescribed manner set out in the Rules.
- (d) The Rules may prescribe other circumstances where a company subject to a rehabilitation proceeding or a rehabilitation plan can transition to liquidation.

DIVISION 7 GENERAL PROVISIONS

89 False representations

If, for the purpose of obtaining the approval of creditors of a company to a rehabilitation plan, an officer of the company commits the following he or she will be liable to a fine by the Registrar of an amount not exceeding 2,500,000 kyats even if the proposal is not approved :-

- (a) makes any false representation;
- (b) fraudulently does, or omits to do needful.

90 Statement of affairs

- (a) Following the appointment of a rehabilitation manager or a plan supervisor, that officer may issue a written notice requiring one or more relevant persons to make out and submit to him or her, a statement of the affairs of the company.
- (b) In respect of subsection (a), the Rules will specify:
 - (i) the form of the written notice;

- (ii) the relevant persons; and
 - (iii) the form and content of the statement of affairs of the company.
- (c) Any persons required under this section to submit a statement of affairs must do so within 21 days of receipt of written notice.
- (d) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine by the Registrar of an amount not exceeding 500,000 kyats.

91 Inspection of books by creditors, etc.

- (a) At any time during either stage of a rehabilitation proceeding, the Court may make an order for inspection of the company or books and papers in the company's possession by creditors and contributories if they so request.
- (b) An inspection under subsection (a) does not exclude or restrict:
- (i) any statutory rights of inspection of a government department or person acting under the authority of a government department; or
 - (ii) the liquidator voluntarily agreeing to allow such an inspection.

PART VI - MSME INSOLVENCY

DIVISION 1 NATURE OF PROCEEDINGS UNDER THIS PART

92 Application of this Part

- (a) This Part applies to Micro and Small to Medium Enterprises, their potential rescue and rehabilitation, and their winding up.
- (b) In this Part, "**insolvent administration**" means:
 - (i) in relation to an incorporated Part VI Enterprise, winding up under Part VII; and
 - (ii) in relation to the proprietor or proprietors of an unincorporated Part VI Enterprise, bankruptcy under Part VIII.

93 Rehabilitation proceedings

- (a) The rehabilitation proceedings have the following stages:
 - (i) the Part VI Enterprise Rescue Stage; and
 - (ii) the Part VI Enterprise Plan Stage;

and references in this part to "**Part VI Enterprise Rescue Stage**" and "**Part VI Enterprise Plan Stage**" are to be interpreted as references to the rehabilitation process;

Explanation 1: In a Part VI Enterprise Rescue Stage, the best options for rehabilitation are explored and a decision on the future prospects of the Part VI Enterprise is made by creditors.

Explanation 2: In a Part VI Enterprise Rescue Stage, the creditors resolve to approve a Part VI rehabilitation plan and includes the implementation of the plan,

- (b) The Enterprise Rescue Stage commences when a rehabilitation advisor is appointed in accordance with section 101 and concludes upon:
 - (i) the commencement of the Part VI Enterprise Plan Stage; or
 - (ii) if the Part VI Enterprise Plan Stage is not carried out, the commencement of the Part VI Enterprise's winding up or bankruptcy.
- (c) The Part VI Enterprise Plan Stage commences upon the signing of a Part VI rehabilitation plan in accordance with section 125(e), and concludes upon:
 - (i) the filing with the Registrar of a notice under section 135; or
 - (ii) an order of the Court to terminate the plan under section 138; or
 - (iii) the decision of creditors not to adopt a Part VI rehabilitation plan.
- (d) a Part VI Enterprise rehabilitation proceeding does not cease merely because a rehabilitation advisor vacates office or is removed from office.

94 Aims and objectives of this Part

- (a) The objectives of this Part are:
 - (i) rescuing the Part VI Enterprise as a going concern; or
 - (ii) if the objective in paragraph (i) is not achievable, ensuring that as much as possible of its business continues in existence; or
 - (iii) if the objectives in paragraphs (i) and (ii) are not achievable, achieving a better result for the creditors of the Part VI Enterprise as a whole, than would be likely if the Part VI Enterprise were placed in insolvent administration.
- (b) The aims of this Part are:
 - (i) accommodating the limitations generally arising from the affairs, business and property of a Part VI Enterprise; and
 - (ii) providing an expedited route for Part VI Enterprises to carry out rehabilitation proceedings.

95 Court supervision of rehabilitation advisor

A rehabilitation advisor and a plan supervisor of a Part VI Enterprise are subject to the supervision of the Court.

96 Rehabilitation advisor

A person may be appointed as a rehabilitation advisor to a Part VI Enterprise only if he or she is qualified to act as an insolvency practitioner under Part III of the Law.

DIVISION 2 PART VI PROCESS

97 Commencement of Part VI Process

An insolvency practitioner may be appointed as rehabilitation advisor in one of the following circumstances:

- (a) if the Part VI Enterprise is a company, upon the company's directors resolving in writing that the company is unable to or unlikely to be able to repay its debts as and when they become payable, and that a rehabilitation advisor should be appointed;
- (b) if the Part VI Enterprise is an unincorporated enterprise, upon the proprietor of the enterprise declaring in writing that the enterprise is unable to or unlikely to be able to repay his or her debts as and when they become payable, and that a rehabilitation advisor should be appointed;
- (c) if the Part VI Enterprise is a partnership, upon the partners resolving in writing that they are unable or unlikely to be able to repay its debts as and when they become payable, and that a rehabilitation advisor should be appointed.

98 Restrictions on powers to commence

- (a) A Part VI Process may not be commenced in respect of an incorporated enterprise, where:
 - (i) the insolvency practitioner has not consented in writing to accept the appointment;
 - (ii) the company is already in rehabilitation under Part V or Part VI; or

- (iii) the company is in liquidation.
- (b) A Part VI Process may not be commenced in respect of an unincorporated Part VI Enterprise where:
 - (i) if the insolvency practitioner has not consented in writing to accept the appointment;
 - (ii) one or more of the proprietors are bankrupt;
 - (iii) in the case of a partnership, an application has been made for orders to dissolve the partnership or otherwise wind up its affairs or winding up by other methods has not been completed.
- (c) A Part VI Process may not be commenced if the insolvency practitioner referred to in subsection (a)(i) or (b)(i) has not confirmed in writing that he or she has received a list of creditors of the Part VI Enterprise setting out the name, address and approximate value of the debts owed to each, and that, having received this and any other records provided by the Part VI Enterprise and conducting any other enquiries, he or she is satisfied with his or her appointment and that the objects set out in section 94 can be fulfilled.
- (d) A rehabilitation process may not be commenced during the period of 12 months beginning with the date on which an earlier Part VI Process was commenced.

99 Notice to secured creditor

Where a rehabilitation advisor is appointed and there is a secured creditor whose security is over all or a majority of the Part VI Enterprise's property, the rehabilitation advisor must send a notice of the appointment to the secured creditor within 2 business days. The secured creditor may, within 5 business days of receiving the notice, replace the appointed rehabilitation advisor with an insolvency practitioner of his, her or its choice. The rehabilitation advisor must consent to such appointment in writing.

100 Notice of commencement

- (a) Where a rehabilitation advisor is appointed, he or she must within 2 business days send a notice of the appointment:
 - (i) to the Part VI Enterprise and publish the notice in the manner prescribed by the Rules;
 - (ii) to the Registrar, who will register it as soon as reasonably practicable; and
 - (iii) to all of the creditors of the Part VI Enterprise insofar as he or she is aware of their addresses.
- (b) The notification to the Registrar is to be accompanied by the written confirmation referred to in section 98(c), and the Registrar will register this notification as soon as reasonably practicable.
- (c) If the rehabilitation advisor without reasonable excuse fails to comply with this section, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

101 When appointment takes effect

The appointment of a rehabilitation advisor takes effect upon the delivery to the insolvency practitioner of the written appointment document.

DIVISION 3
PART VI REHABILITATION PROCESS

Functions, duties and powers of a rehabilitation advisor

102 Functions of rehabilitation advisor

- (a) The principal functions of the rehabilitation advisor are to:
 - (i) advise and assist in exploring options for a rehabilitation plan;
 - (ii) advise and assist in continuing its business during the Rescue Stage;
 - (iii) undertake the functions set out in this Part with regard to any proposed rehabilitation plan;
 - (iv) otherwise provide assistance as set out in this Part.
- (b) Where a Part VI rehabilitation plan is to be sent to creditors, it is the duty of the rehabilitation advisor to:
 - (i) investigate the viability of the plan and whether it is likely to achieve the objectives set out in section 94; and
 - (ii) investigate whether the proposed plan benefits an associate of the Part VI Enterprise or a secured creditor; and
 - (iii) investigate the likely return to creditors if the proposed plan is approved; and
 - (iv) compare that likely return if the plan is approved to the likely return to creditors if the proposed plan is not approved and the Part VI Enterprise is placed in insolvent administration;
 - (v) issue a report to creditors and include within the report the rehabilitation advisor's views and opinions on each of the above matters, the reasons for those views and opinions, any other information that is material to the decision of creditors, and his or her recommendation as to whether creditors should vote in favour of the proposed Part VI rehabilitation plan.
- (c) In performing his or her functions under subsection (b), the extent of the investigations will depend on the financial resources available to fund those investigations, and where the investigations are limited as a consequence, the report must disclose the limitations.

103 Duty of rehabilitation advisor

The rehabilitation advisor must perform his or her functions:

- (a) by putting the interests of the Part VI Enterprise's creditors as a whole first; and
- (b) as quickly and efficiently as is reasonably practicable.

104 Powers of rehabilitation advisor

Subject to this Part, during the Enterprise Rescue Stage, the rehabilitation advisor in performing his or her duties:

- (a) may exercise his or her powers under this Part as necessary.
- (b) may convene meetings of creditors,

provided that the rehabilitation advisor does not have control of the Part VI Enterprise's business, property and affairs.

Protections during the Enterprise Rescue Stage

105 Consequences of the Rescue Stage

- (a) The protections set out in section 172(d), (e), (f) and (g) that apply to a company and its property in a liquidation also apply during the Enterprise Rescue Stage.
- (b) Property used or occupied by, or in the possession of the Part VI Enterprise that is owned or leased by another person cannot be repossessed or recovered by that other person during the Enterprise Rescue Stage, without the leave of the Court or the written consent of the rehabilitation advisor.
- (c) Subject to subsection (d), during the Rescue Stage, the directors, proprietors or partners, as relevant, may exercise their powers to ensure that the business continues in the ordinary course.
- (d) During the Enterprise Rescue Stage, all the powers of the directors, proprietors or partners, as relevant:
 - (i) to conduct business or dispose of property outside of the ordinary course may only be exercised with the written consent of the rehabilitation advisor or the leave of the Court;
 - (ii) to pay creditors connected with associates of the enterprise for debts arising prior to the commencement of the Part VI Process may only be exercised with the leave of the Court;
 - (iii) to pay creditors that are not connected with associates of the Part VI Enterprise, for debts arising prior to the commencement of the Part VI Process, may only be exercised with the written consent of the rehabilitation advisor or the leave of the Court.
- (e) The written consent or the leave referred to in subsection (d) may only be granted in exceptional circumstances where entry into a rehabilitation plan is considered likely and the payment of the debt is considered necessary to further the objects of this Part.

106 Protections for the Enterprise

No step may be taken during the Rescue Stage to enforce, or to continue to enforce security, without the leave of the Court or the written consent of the rehabilitation advisor.

107 Protection of guarantors

No legal process may be instituted or continued during the Rescue Stage against any guarantor of the enterprise's debts or obligations without the leave of the Court.

108 Leave and consent may be granted on conditions

The Court may grant leave under this Division, either unconditionally, or on such conditions as may be considered appropriate by the Court.

109. Property subject to floating charge

- (a) The Part VI Enterprise may dispose of or otherwise deal with property the subject of a floating charge:
 - (i) in the ordinary course of the Part VI Enterprise's business; or

- (ii) with the written consent of the secured party; or
 - (iii) with the leave of the Court.
- (b) The Court may only give leave under subsection (a)(iii) if satisfied that :
- (i) the interest of the secured party can be adequately protected; and
 - (ii) the order will likely assist in achieving the objects set out in section 94.
- (c) For the purposes of subsection (a)(i), the fact that a notice or demand may have been issued, or that the floating charge has become fixed, does not of itself prevent a sale being in the ordinary course of business of the Part VI Enterprise.
- (d) If the Part VI Enterprise sells property that is subject to a security interest, the Part VI Enterprise's directors, proprietors or partners, as relevant, must act reasonably in exercising their power.

110 Property subject to fixed charge

- (a) The Part VI Enterprise may dispose of or otherwise deal with property the subject of a fixed charge:
- (i) with the written consent of the secured party; or
 - (ii) with the leave of the Court.
- (b) The Court may only give leave under subsection (a)(ii) if satisfied that:
- (i) there are arrangements to protect adequately the interest of the secured party; and
 - (ii) the order will likely assist in achieving the objects set out in section 94.

111 Protection of secured creditor in other dealings

Except as permitted in sections 0 and 110, the Part VI Enterprise must not deal with property of a secured creditor if it may prejudice the interest in the property of the secured creditor.

General provisions

112 Liability for debts

- (a) A rehabilitation advisor has no personal liability in respect of the debts and liabilities of the Part VI Enterprise.
- (b) The debts that are set out in sub sections **(b)** and (c) of Section 62 under a Part V rehabilitation process that would be liabilities of the rehabilitation manager are liabilities of the Part VI Enterprise that must be paid by the enterprise in the ordinary course of business.
- (c) The debts and liabilities of the Part VI Enterprise other than those referred to in subsection (b) are subject to section 105(a), and are to be addressed in, as relevant, as set out in the Part VI rehabilitation plan or insolvent administration.
- (d) If the rehabilitation advisor becomes aware that the debts and liabilities referred to in subsection (b) are not being paid in the ordinary course, he or she must exercise their power under section 139 to transition the Part VI Enterprise to a winding up.

- (e) A rehabilitation advisor is entitled to be indemnified out of the property of the Part VI Enterprise to which he or she is appointed for any rehabilitation claim, being:
 - (i) liabilities and expenses incurred in good faith and without negligence by the rehabilitation advisor in the performance of his or her functions as rehabilitation advisor;
 - (ii) the rehabilitation advisor's remuneration as fixed in accordance with this Law.
- (f) The rehabilitation advisor's right of indemnity set out in subsection (e) has priority over all of the Part VI Enterprise's unsecured debts, and the rehabilitation advisor has security in the Part VI Enterprise's property for the right of indemnity.
- (g) The rehabilitation advisor's security provided for in subsection (f) ranks in priority behind:
 - (i) any fixed charge of a secured creditor existing at the time of the rehabilitation advisor's appointment; and
 - (ii) the interests of a receiver lawfully appointed by a secured creditor, but only in respect of rehabilitation claims incurred by the rehabilitation advisor after the appointment of the receiver.

113 Notification that an enterprise is in rehabilitation

- (a) When a Part VI Enterprise is in an Enterprise Rescue Stage:
 - (i) every invoice, order for goods or services, business letter or order form issued by or on behalf of the Part VI Enterprise, or a rehabilitation advisor; and
 - (ii) all the Part VI Enterprise's websites,

must contain a statement that the enterprise is in a rehabilitation proceedings.
- (b) Subsection (a) applies to invoices, orders for goods or services, business letters or order forms in hard copy, electronic or any other form.
- (c) If default is made in complying with this section, any officer or rehabilitation advisor of the Part VI Enterprise, who knowingly or wilfully authorises or permits the default, are liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

114 Statement of affairs

- (a) As soon as is reasonably practicable after the commencement of a Part VI Process, the enterprise must make out and submit to the rehabilitation advisor, a statement of affairs of the Part VI Enterprise, the form and content of which will be prescribed in the Rules.
- (b) The rehabilitation advisor may issue a written notice requiring one or more relevant persons to make out and submit to him or her, a statement of the affairs of the Part VI Enterprise.
- (c) In respect of subsection (b), the Rules will specify:
 - (i) the form of the written notice;
 - (ii) the relevant persons; and
 - (iii) the form and content of the statement of affairs of the Part VI Enterprise.

- (d) Any persons required under this section to submit a statement of affairs to the rehabilitation advisor must do so within 7 days of receipt of written notice.
- (e) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine not exceeding 500,000 kyats.

115 Reliance on statement of affairs

- (a) A rehabilitation advisor may rely on information supplied in the statement of affairs provided under section 114(a) unless he or she has reason to doubt its accuracy.
- (b) Within 5 business days of receipt of the statement of affairs of the enterprise, the rehabilitation advisor must send a notice to each creditor identified in the statement, seeking verification that the Part VI Enterprise is indebted to that creditor as described in the statement.
- (c) A notice under subsection (b) must notify the debtor or creditor that unless he or she disputes the stated indebtedness within 5 business days, its correctness will be assumed, in the absence of proof to the contrary.

116 Inspection of books by creditors, etc.

- (a) At any time during the Enterprise Rescue Stage, the Court may make an order for inspection of the Part VI Enterprise's books and papers by creditors if requested by the creditors.
- (b) Nothing in this section excludes or restricts:
 - (i) any statutory rights of inspection of a government department or person acting under the authority of a government department; or
 - (ii) the rehabilitation advisor or Part VI Enterprise voluntarily agreeing to allow such an inspection.

117 Reference of questions to the Court

- (a) A rehabilitation advisor may apply to the court for directions in relation to any particular matter arising in connection with the performance of his or her functions.
- (b) The rehabilitation advisor or any shareholder or creditor may apply to the court to determine any question arising in the Enterprise Rescue Stage. The court, if satisfied that the granting of directions or the determination of a question will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make any other order on the application.

118 Mediation

- (a) A mediator may be appointed by the rehabilitation advisor to mediate any dispute between the Part VI Enterprise and its creditors or debtors:
 - (i) in respect of any debt or claim by or against the Part VI Enterprise; or
 - (ii) a Part VI rehabilitation plan that may be proposed.

119 Meetings of creditors

- (a) A meeting of creditors must be convened by the rehabilitation advisor:
 - (i) within the time frame set out in section 122(c)(ii) to consider whether to adopt a rehabilitation plan;

- (ii) if requested by creditors who in number exceed 10% of the total number of creditors, or whose claims have an aggregated value exceeding 10% of the total value of the claims of creditors.
- (b) A meeting of creditors of the Part VI Enterprise may be convened by the rehabilitation advisor at any time should he or she consider it desirable to consult with creditors during the course of the rehabilitation proceeding.
- (c) The convening and conduct of creditor meetings will be in the manner prescribed in the Rules.

120 Change in identity of rehabilitation advisor

- (a) The provisions set out in section 181(a), (b) and (d), 182(b) and (c) and 183(b), (c) and (d) that apply to removal, vacation of office and the filling a vacancy in the office of a liquidator may also be used during the Enterprise Rescue Stage in respect of a rehabilitation advisor. However, the replacement of a rehabilitation advisor at a creditors' meeting requires the consent of the secured creditors, where the rehabilitation advisor was appointed by that secured creditor.
- (b) Upon being appointed in accordance with subsection (a), a rehabilitation advisor must give notice to the Registrar of his or her appointment within 2 business days.

121 Preparation and content of a Part VI rehabilitation plan

- (a) A rehabilitation plan must be prepared by the enterprise, or by the rehabilitation advisor with the consent of the enterprise;
- (b) A rehabilitation plan must include the following details:
 - (i) the identity of the plan supervisor;
 - (ii) the respective roles and responsibilities of the directors, proprietors or partners, as relevant, and the plan supervisor;
 - (iii) the nature and extent of any compromise of creditor claims, the manner of payment, and the property;
 - (iv) the nature and duration of any moratorium period;
 - (v) the extent to which the enterprise is to be released from its debts;
 - (vi) the extent to which, where the Part VI Enterprise is a company, the shareholding interest of shareholders are compromised or transferred;
 - (vii) parts of the plan to come into operation or terms of the contract (if any);
 - (viii) the circumstances in which the plan terminates and whether, on successful implementation of the plan, the enterprise reverts fully to the control of its directors, proprietors or partners, as relevant, or is to be deregistered if it is a company, or dissolved if it is a partnership;
 - (ix) the order in which distributions amongst creditors bound by the plan are to be made;
 - (x) the day (not later than the date of commencement of the Enterprise Rescue Stage) on or before which claims must have arisen if they are to be admissible under the plan;
 - (xi) the extent to which the claims of secured creditors are proposed to be affected by the plan; and

- (xii) any further matters prescribed by the Rules;
- (c) must be likely to produce a return to creditors that is at least equal to the likely return if the plan does not come into effect; and
- (d) must include the same claim priorities as would apply if the plan does not come into effect, unless each class of creditors adversely affected by a different ranking of claims also vote on the plan as a separate class of creditors, and that vote is carried by both a majority in number and a majority in value.

122 Circulation and consideration of the proposed Part VI rehabilitation plan

- (a) A copy of any proposed Part VI rehabilitation plan that has been prepared under section 121 must be sent to every creditor at the last known address of each creditor and must include notification that:
 - (i) the recipient must vote for acceptance or rejection of the proposed Part VI rehabilitation plan within 21 days of the date of the notice, such acceptance or rejection to be notified in writing to the rehabilitation advisor;
 - (ii) unless written rejections to the proposed Part VI rehabilitation plan are received from creditors whose claims represent more than 50% in value of total claims and more than 50% of the total number of creditors, within 21 days of the date of the notice as provided in paragraph (i), it will come into effect on the day that is 28 days after the date of the notice.
- (b) The notice and the rehabilitation plan to be sent to creditors must be accompanied by the rehabilitation advisor's report required by section 102(b)(v).
- (c) The Part VI Enterprise must comply with this section:
 - (i) as soon as is reasonably practicable after it enters rehabilitation; and
 - (ii) in any event, within the period of 10 weeks beginning with the day on which the Part VI Process commenced.
- (d) The Rules may make provision for a Part VI Enterprise to satisfy its obligations under this section by provision of electronic access to the documents there referred to.

123 Creditors' meeting to approve plan

- (a) The rehabilitation advisor will, within 21 days of sending the proposed rehabilitation plan and notice under section 122, summon a creditors' meeting, but only if one of the following conditions are satisfied:- :
 - (i) it is requested by creditors whose claims amount to at least 30% of the total value of business debts of the Part VI Enterprise;
 - (ii) he or she is notified of creditor rejections to the plan that would result in the plan being rejected, but considers there to be a reasonable prospect of obtaining approval for the plan, or that plan with some modification to it.
- (b) With the consent of the Part VI Enterprise, the terms of the plan may be amended at the meeting of creditors, and the plan as amended may be voted on by creditors at that meeting.
- (c) The vote may be conducted on a show of hands, but if any creditor present at the meeting requires a poll to be taken the votes cast by each creditor must be formally recorded and counted to determine whether the resolution is carried or not carried by the requisite majority.

- (d) A creditors' meeting to which a Part VI rehabilitation plan is presented in accordance with this section may:
 - (i) approve the proposed plan without modification;
 - (ii) approve it with modification; or
 - (iii) reject it.
- (e) Where the creditors agree to a proposed rehabilitation plan (including any modifications) as referred to in section 125, the Part VI rehabilitation advisor must prepare a formal document to record the plan's terms, and make arrangements for such document to be signed on behalf of the Part VI Enterprise and by the proposed plan supervisor.
- (f) In accordance with any provision in this law, should the Chair of the meeting exercise his right of a casting vote or a creditor being an associate of the debtor exercises his or her right of vote in a certain way resulting in the adoption of or rejection of a decision in the creditors meeting, an application can be made to the court and the court may pass the following orders:-
 - (i) An order that annuls the decision passed;
 - (ii) An order that annuls the decision not to pass and to adopt the said decision;
 - (iii) An order that is relevant to and needed in respect of paragraph (1) and (2) of sub section (e).
- (g) In making decisions on any application made in accordance with this section, in deciding whether to adopt or reject the resolution, consideration shall be given to the benefit of the all creditors, possible benefits or detriments and the objectives of this law.

124 Failure to obtain approval for a Part VI rehabilitation plan

- (a) If a rehabilitation plan under this Part is not approved within 10 weeks of the commencement of a Part VI Process, the Part VI Process will be at an end and the following must be notified of the end of the Part VI Process:
 - (i) the rehabilitation advisor;
 - (ii) the Registrar;
 - (iii) each of the persons on whom a copy of the proposed Part VI rehabilitation plan was, or would have been, served under section 122(a).
- (b) A notice under subsection (a) must be in a form prescribed in the Rules.
- (c) When the rehabilitation advisor receives a notice under subsection (a)(i), his or her appointment will cease.
- (d) On receiving a notice under subsection (a)(ii), the Registrar must register it.
- (e) If the Part VI Enterprise fails to comply with subsection (a) without reasonable excuse, the Part VI Enterprise and each of its proprietors or directors will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

DIVISION 4 REHABILITATION PLAN

125 When the Part VI rehabilitation plan comes into effect

- (a) The Part VI rehabilitation plan will come into effect if:
 - (i) the Part VI Enterprise has complied with the requirements under section 122; and either
 - (ii) no meeting under section 123 was convened, and notification of rejection has not been received from creditors whose debts represent more than 50% in value of the total claims and more than 50% in number of total creditors within 21 days in accordance with section 122; or
 - (iii) at a creditors' meeting convened under section 123 to approve a Part VI rehabilitation plan, creditors whose debts represent more than 50% in value of claims and 50% in number of total creditors do not vote against adoption of the plan.
- (b) The rehabilitation advisor of a Part VI Enterprise must report the decision taken by creditors to the Registrar and any other persons as prescribed by the Rules within 2 business days.
- (c) The rehabilitation advisor must, upon request by any creditor provide a copy of the record of the vote at the meetings.
- (d) If the rehabilitation advisor fails without reasonable excuse to comply with subsections (b) or (c), he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.
- (e) The formal document recording the terms of the rehabilitation plan must be signed within 14 days, or such further period as may be permitted by Court order, and takes effect upon being signed by the Part VI Enterprise and the plan supervisor.

126 Notification of appointment

- (a) Where a plan supervisor is appointed, he or she must within 2 business days send a notice of the appointment:
 - (i) to the Part VI Enterprise and publish the notice in the manner prescribed by the Rules;
 - (ii) to the Registrar, who will register it as soon as reasonably practicable; and
 - (iii) to the creditors of the Part VI Enterprise insofar as he or she is aware of their addresses.
- (b) If the plan supervisor without reasonable excuse fails to comply with this section, he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

127 Consequences of Part VI rehabilitation plan

- (a) Subject to this Part, the Part VI rehabilitation plan constitutes a compromise between the Part VI Enterprise and its creditors and shareholders.

- (b) The Part VI rehabilitation plan can affect:
 - (i) the shareholding rights of shareholders even though they have not voted; and
 - (ii) the rights of creditors regardless of whether there was a meeting or not, whether they attended any such meeting or whether or not they voted in favour of the plan.
- (c) If, at the time a Part VI rehabilitation plan takes effect, a winding up or bankruptcy summons remains pending before the Court, or a winding up or bankruptcy proceeding earlier commenced had been stayed during the Enterprise Rehabilitation Stage, the plan supervisor must:
 - (i) file in the winding up or bankruptcy proceedings a notice of his or her appointment as plan supervisor; and
 - (ii) the Court must, as appropriate, dismiss the winding up or bankruptcy summons or set aside the bankruptcy or winding up order.

128 Effect of Part VI rehabilitation plan on stakeholders

- (a) Subject to subsections (b) and (c), the Part VI rehabilitation plan binds all creditors whose claims arise on or before the day on which the Enterprise Rescue Stage commenced.
- (b) Subsection (a) does not prevent a secured creditor from realising or otherwise dealing with its security, except so far as:
 - (i) the plan so provides in relation to secured creditors who voted in favour of resolution of creditors to adopt the plan; or
 - (ii) the Court so orders under section 129.
- (c) Subsection (a) does not affect a right that an owner or lessor of property has in relation to that property, except so far as:
 - (i) the plan so provides in relation to an owner or lessor who voted in favour of adopting the plan; or
 - (ii) the Court so orders under section 129.
- (d) The Part VI rehabilitation plan will also bind:
 - (i) the Part VI Enterprise;
 - (ii) the Part VI Enterprise's officers, proprietors and partners, as relevant; and
 - (iii) subject to subsection (e), where the Part VI Enterprise is a company, the shareholders of the company.
- (e) The rehabilitation plan may not compromise or transfer the shareholding interests of a shareholder where to do so would be unfairly prejudicial to the interests of the shareholders.
- (f) For the purposes of subsection (e), a compromise or transfer of shares does not prejudice the interests of the shareholders where the shares have no residual value.

129 Court may limit rights of secured creditor or owner or lessor

- (a) In accordance with sub section (c) the Court may order a secured creditor of the Part VI Enterprise not to realise or otherwise deal with its security interest other than consistently with the terms of the Part VI rehabilitation plan, except as permitted by the order.
- (b) In accordance with sub section (c) the Court may order an owner or lessor of property that is used or occupied by, or is in possession of the Part VI Enterprise, not to take possession of the property or otherwise recover it, other than consistently with the terms of the rehabilitation plan, except as permitted by the order.
- (c) The Court may only make orders under either subsection (a) or (b) if satisfied that:
 - (i) the absence of such an order would have a material adverse effect on achieving the purposes of the plan; and
 - (ii) in the terms of the order and any other relevant matter, the interests of the secured creditor, owner or lessor, as relevant, is adequately protected.

130 Role of plan supervisor

- (a) The Part VI Enterprise duties and powers of a plan supervisor are:
 - (i) setting out the rehabilitation plan;
 - (ii) the duties regarding variation or termination of the plan as set out in Division 5.
- (b) The plan supervisor's functions under this Part in a Part VI Enterprise include:
 - (i) acting as agent of the Part VI Enterprise; and
 - (ii) implementing the plan as quickly and efficiently as is reasonably practicable.

131 Directions power

- (a) A plan supervisor may apply to the court for directions in relation to any particular matter arising in connection with the performance of his or her functions as plan supervisor.
- (b) The plan supervisor, the Part VI Enterprise, any shareholder or creditor may apply to the court to determine any question arising in the Enterprise Plan Stage. The court, if satisfied that the granting of directions for the determination of a question will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make any other order on the application.

132 Notification of rehabilitation plan being implemented

- (a) When a Part VI Enterprise is in Rehabilitation Plan Stage:
 - (i) every invoice, order for goods or services, business letter or order form issued by or on behalf of the Part VI Enterprise, or a plan supervisor; and
 - (ii) all the Part VI Enterprise's websites,

must contain a statement that it is subject to a rehabilitation proceeding.

- (b) Subsection (a) applies to invoices, orders for goods or services, business letters or order forms in hard copy, electronic or any other form.
- (c) If default is made in complying with this section, any officer of the Part VI Enterprise and any plan supervisor who knowingly and wilfully authorises or permits the default are liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

133 Replacing plan supervisor

- (a) The provisions set out in section 181(a), (b) and (d), 182(b) and (c) and 183(b), (c) and (d) that apply to removal, vacation of office and the filling a vacancy in the office of a liquidator may also be used in respect of the plan supervisor in the Part VI Enterprise Plan Stage.
- (b) Upon being appointed plan supervisor in accordance with subsection (a), the plan supervisor must give notice to the Registrar of his or her appointment within 2 business days.

DIVISION 5 WHEN REHABILITATION PLAN MAY BE VARIED OR TERMINATED

134 Identification of voting majorities

- (a) **“Double Majority”** means that both of the following majorities are achieved:
 - (i) Creditors the values of whose claims equal or exceed 50% of the total of claims of creditors voting at the meeting; and
 - (ii) Creditors in number that equal or exceed 50% of the number of creditors voting at the meeting.
- (b) **“Split Majority”** means a vote where one but not both of the majorities in the Double Majority is achieved.

135 Termination of Part VI rehabilitation plan where objective achieved

- (a) If all obligations of the Part VI Enterprise and any other party under or in connection with the Part VI Enterprise rehabilitation plan have been fulfilled and creditors' claims under the plan dealt with in accordance with the plan, the plan supervisor must file with the Registrar a notice of termination of the plan which states the above matters.
- (b) The plan supervisor's appointment will cease when the notification referred to in subsection (a) is filed with the Registrar.
- (c) If a plan supervisor fails to lodge the notification in subsection (a) without reasonable excuse he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.
- (d) If the Part VI rehabilitation plan provided for the deregistration of the company or dissolution of the partnership, where relevant, following successful implementation of the plan, the plan supervisor must at the same time request the Registrar to dissolve the company or partnership, and upon such lodgement, the provisions of section 212 will apply to the facts prescribed in subsection (a).

136 Variation of Part VI rehabilitation plan

- (a) A meeting to consider variation of a Part VI rehabilitation plan must be convened by the plan supervisor:
 - (i) upon receipt of a request from the Part VI Enterprise; or
 - (ii) when the plan supervisor considers there has been, or is likely to be, a breach of the material terms of the plan, and that a variation to the plan presents a better alternative than its termination.
- (b) The plan supervisor must, in the circumstances identified in subsection (a):
 - (i) summon a creditors' meeting in the manner prescribed in the Rules;
 - (ii) send a copy of the proposed plan variation with the notice of the meeting to creditors, together with:
 - (A) an explanation of the reasons for the variation;
 - (B) the plan supervisor's opinion as to whether creditors should vote in favour of the variation, vote against the variation, or should terminate the plan;
 - (C) the plan supervisor's reasons for holding his or her opinion; and
 - (D) whether the proposed revision will or may benefit an associate of the Part VI Enterprise.
- (c) The Part VI rehabilitation plan varied when, at the duly convened creditors' meeting to consider the variation, a Double Majority is achieved.
- (d) If the resolution is not carried by the Double Majority but a Split Majority is achieved, the plan supervisor is allowed to exercise a casting vote, and if exercised in favour of the resolution to vary the Part VI rehabilitation plan, the resolution is carried, and the Part VI rehabilitation plan is taken to have been varied.
- (e) If the resolution to vary the Part VI rehabilitation plan is not carried, the chairman of the meeting must conduct a further vote in accordance with subsection (c) of creditors on a resolution to terminate the plan.
- (f) The Part VI rehabilitation plan is taken to have been terminated when the resolution to terminate the plan is carried by a Double Majority.
- (g) If the resolution to terminate the Part VI rehabilitation plan is not carried by a Double Majority but a Split Majority is achieved, the plan supervisor is allowed to exercise a casting vote, and if exercised in favour of the resolution to terminate the plan, the resolution is carried and the Part VI rehabilitation plan is taken to have been terminated.
- (h) Where the resolution to terminate the plan is not carried, the Part VI Enterprise must carry on implementing the plan, unaffected by the meeting, but the Court may issue an order to terminate the plan if considered appropriate on application in accordance with section 138.
- (i) If it is resolved to terminate the plan, the Part VI Enterprise must immediately proceed to a winding up in accordance with section 139, or a bankruptcy.
- (j) Within 2 business days of the conclusion of a creditors' meeting convened under this section, the plan supervisor must report any resolution and the outcome of voting to the Registrar and any other persons prescribed by the Rules.

- (k) If the plan supervisor fails without reasonable excuse to comply with subsection (j), he or she will be liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.
- (l) Where a Part VI rehabilitation plan is varied under this section, a creditor of the Part VI Enterprise may apply to the Court for an order cancelling the variation, and the Court may either cancel the variation or confirm it, in whole or in part, in the interests of justice.

137 Termination of rehabilitation plan by creditors where objective not being achieved

- (a) Where there has been a breach of the plan where the operation of section 136(a) has not been activated, and the breach has not been remedied, the plan supervisor must convene a creditors' meeting in one of the following circumstances:
 - (i) the plan supervisor considers the breach to be material and any period of time reasonably allowed for the breach to be remedied has concluded;
 - (ii) if requested by creditors representing more than either 10% of the value of creditor claims or 10% of the total number of creditors.
- (b) The meeting will be convened in accordance with the Rules and the chairman of the meeting will conduct a vote on the resolution that the rehabilitation plan be terminated.
- (c) The voting majorities for the resolution to be carried are the same as those set out in section 136(f) and (g).
- (d) The notification requirements are the same as those set out in section 136(j).

138 Termination of Part VI rehabilitation plan by the Court where objective not achieved or there is abuse of process

- (a) This section applies in any of the following circumstances:
 - (i) material information about the Part VI Enterprise's business, property, affairs or financial circumstances provided to creditors when they were to vote to adopt, or vary, the plan was false or misleading or there was an omission from such information that was material to the decision; or
 - (ii) there was a material irregularity in the conduct of the creditors meeting in which it was resolved to enter into the Part VI rehabilitation plan; or
 - (iii) the resolution to enter into the rehabilitation plan was carried due to the votes of persons connected with associates of the Part VI Enterprise; or
 - (iv) one or more terms of the Part VI rehabilitation plan is unfairly prejudicial to or unfairly discriminatory against one or more creditors or is contrary to the interests of the creditors of the Part VI Enterprise as a whole; or
 - (v) there has been a material contravention of the plan by a person bound by it; or
 - (vi) effect cannot be given to the rehabilitation plan without injustice or undue delay; or
 - (vii) the plan supervisor has acted in a manner that is inconsistent with the Part VI rehabilitation plan or his or her duties; or
 - (viii) the Part VI Enterprise is not qualified to be treated as a Part VI Enterprise under this Law.

- (b) An application to terminate the plan may be made to the Court by the plan supervisor or any interested person in any of the circumstances set out in subsection (a).
- (c) The termination of a plan under this section does not affect the previous operation of the plan except in the circumstances set out in subsection (d).
- (d) When an order is made by the Court terminating a Part VI rehabilitation plan, the Court may make such additional orders on the following persons as are considered appropriate to alter the effect of any benefits received under the plan by:
 - (i) any party in breach of the plan or a contract entered into in accordance with the plan; or
 - (ii) any person connected with an associate of the Part VI Enterprise.
- (e) An application under subsection (a)(i), (ii), (iii) and (iv) may only be filed within 28 days of the creditors resolving to enter into the plan, unless the Court considers good reason is given for the delay.

DIVISION 6 TRANSITION TO WINDING UP

139 When there is a transition to winding up

- (a) Where:
 - (i) creditors resolve, in accordance with sections 136 or 137 that the Part VI rehabilitation plan be terminated;
 - (ii) the rehabilitation process of a Part VI Enterprise concludes without creditors commencing a rehabilitation plan, or no rehabilitation plan is executed within the time period specified in section 125(e);
 - (iii) at the meeting convened in accordance with section 123, creditors resolve that the Part VI Enterprise's rehabilitation plan be terminated;
 - (iv) the Court orders, under section 138 that the Part VI rehabilitation plan be terminated;
 - (v) the circumstances in section 112(d) arise, and the default is not remedied within 14 days of written notification of the default being given by the rehabilitation advisor to the Part VI Enterprise;

the Part VI Enterprise, if a company, thereupon transitions to a creditors' voluntary winding up, or if a sole proprietorship, the Court must make a bankruptcy order and appoint a trustee.
- (b) The liquidator of the company, or the bankruptcy trustee, will be the insolvency practitioner who was, as relevant, the rehabilitation advisor or plan supervisor prior to the transition to winding up or bankruptcy, unless:
 - (i) creditors have resolved to appoint a different insolvency practitioner as liquidator or trustee;
 - (ii) the insolvency practitioner declines to consent in writing to the appointment.
- (c) The liquidator or trustee must, within 5 business days after the date of transition, lodge a written notice with the Registrar notifying of the transition, and cause the notice to be published within the required period and in the prescribed manner set out in the Rules.

- (d) The Rules may prescribe other circumstances where a Part VI Enterprise may transition from a rehabilitation process or rehabilitation plan to liquidation or bankruptcy.

DIVISION 7

WINDING UP INCORPORATED PART VI ENTERPRISES

140 Application of Part VII to the winding up of Part VI Enterprises

Part VII will apply to the winding up of incorporated Part VI Enterprises save as provided in this Division.

141 Filing and lodgement fees

Any fees imposed on an incorporated Part VI Enterprise for the filing of an application to the Court or the lodgement for registration of documents by the Registrar must be 50% of those prescribed in the Rules when the filing or lodgement is in respect of the winding up of a Part VI Enterprise.

142 Proof and ranking of claims

Any debt or claim proved in the winding up of an incorporated Part VI Enterprise of or for the benefit of a person connected with an associate of the Part VI Enterprise must be subordinated to those of all other creditors of the Part VI Enterprise; whether secured or unsecured, preferential or otherwise.

143 Liquidator not liable to incur unfunded expense

- (a) A liquidator appointed to wind up an incorporated Part VI Enterprise is not liable to incur any expense in relation to the winding up of the Part VI Enterprise if there is not sufficient property available to meet that expense.
- (b) Without limiting the generality of subsection (a), a liquidator appointed to wind up an incorporated Part VI Enterprise is not liable to:
 - (i) comply with the obligation imposed on him or her by section 178 (*Investigation by liquidator*); nor
 - (ii) investigate, prosecute or pursue any claim or action that may be available to him or her or the company under Division 8 of Part VII (*Malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions*).
- (c) On the application of a creditor or member of an incorporated Part VI Enterprise, the Court may order or direct the liquidator of that Enterprise to incur a particular expense on condition that the creditor or member indemnifies the liquidator in respect of that amount.
- (d) Nothing in this section is taken to relieve the liquidator of any obligation to incur expenses by lodging any document with the Registrar under any provision of this Law.

144 Early liquidation of incorporated Part VI Enterprises

- (a) If, upon appointment, the liquidator of an incorporated Part VI Enterprise finds that the company has no property to make a distribution to its creditors, he or she must send a notice in a form prescribed by the Rules to that effect to the Registrar.
- (b) On receiving a notice under subsection (a) the Registrar must register it.

- (c) Before sending a notice under subsection (a), the liquidator must give to every creditor of the incorporated Part VI Enterprise of whose address he or she is aware, 5 business days' notice of his or her intention to send the notice under subsection (a).
- (d) On the application of the liquidator of the Part VI Enterprise or a creditor of the Part VI Enterprise who undertakes to pay any amount by which the costs and expenses incurred by the liquidator in winding up the Part VI Enterprise exceeds the value of the property of the company, the Court may order that the notice in subsection (a) shall not be sent.
- (e) Unless the Court otherwise orders, the incorporated Part VI Enterprise is deemed to be dissolved at the end of the period of 3 months beginning with the date of registration of a notice sent under subsection (a).
- (f) After expiry of the period in subsection (e), the Court may on the application of a creditor or any interested party, order the reinstatement of the company to the register of companies.

PART VII - WINDING UP

DIVISION 1 PRELIMINARY

145 Application of this Part

- (a) This Part applies to the winding up of:
 - (i) a company registered under the Myanmar Companies Law; and
 - (ii) a body corporate registered under section 3 of the Myanmar Companies Law;
 - (iii) a body corporate to which Division 10 applies, with such adaptations as are set out in that division.
- (b) The winding up of a company registered under the Myanmar Companies Law may be either:
 - (i) voluntary; or
 - (ii) by the Court.

146 Priority of rehabilitation proceedings

If a company is the subject of a rehabilitation proceeding under Part V or Part VI of this Law, no winding up proceeding, whether voluntary or Court ordered, may be commenced or proceed, except where permitted under those parts.

147 Circumstances in which company may be wound up voluntarily

- (a) A company may be wound up voluntarily in one of the following circumstances:
 - (i) where the constitution of the company fixes a period for the duration of the company and that period expires or provides that the company is to be dissolved upon the occurrence of an event and the event occurs and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;
 - (ii) if the company resolves by special resolution that the company be wound up voluntarily; or
 - (iii) in the circumstances identified in Part V and Part VI as constituting a transition to a winding up.
- (b) The expression "resolution for voluntary winding up" when used in this Part means a resolution passed under either of subsections (a)(i) or (ii) of this section.

148 Distinction between "members'" and "creditors'" voluntary winding up

A winding up where directors' statutory declarations under section 151 have been made is a "members' voluntary winding up"; and a winding up where such declarations have not been made is a "creditors' voluntary winding up".

149 Conversion of voluntary winding up to Court ordered winding up

The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the Court; but in the case of an application by a contributory if the Court is satisfied that the rights of the contributories will be prejudiced by a voluntary winding up, a voluntary winding up may be changed to a winding up by the Court.

150 When winding up taken to have commenced

The winding up of a company is taken to have commenced:

- (a) in the case of a voluntary winding up, at the time that the resolution for winding up was passed;
- (b) in the case where a rehabilitation process has transitioned to a winding up, at the time of commencement of that rehabilitation process; and
- (c) in the case of a winding up by the Court:
 - (i) where the order was made at a time when a voluntary winding up was in progress, at the time the resolution for voluntary winding up was passed;
 - (ii) otherwise, at the time of filing of the petition for the winding up of the company.

DIVISION 2
MEMBERS' VOLUNTARY WINDING UP

151 Members' voluntary winding up - statutory declaration of solvency

- (a) Where it is proposed to wind up a company voluntarily in either of the circumstances identified in section 147(a)(i) or (ii), the majority of directors may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and have formed the opinion that the company will be able to pay its debts in full, together with interest, within a period not exceeding one year from the commencement of the winding up.
- (b) A declaration by the directors under subsection (a) has no effect for the purposes of this Law if:
 - (i) it is not made within the 3 weeks before the date of the passing of the resolution for winding up; and
 - (ii) it includes a statement of the company's assets and liabilities as at the date before the making of the declaration.
- (c) In the case of a public company or a wholly owned subsidiary of a public company, the declaration made by directors under subsection (b) must be supported by a report of the company's auditors.
- (d) The declaration must be delivered to the Registrar.
- (e) A director making a declaration under this section without having grounds for the opinion that the company will be able to pay its debts in full, together with interest, within the period specified, is liable to a fine by the Registrar of an amount not exceeding 1,000,000 kyats.
- (f) If the company is wound up under a resolution passed within 3 weeks after the making of the declaration, and its debts are not paid or provided for in full within the period specified, it is to be presumed that the director did not have reasonable grounds for his or her opinion, unless the contrary is shown.

- (g) If the declaration of solvency is not delivered to the Registrar within the time prescribed by the Rules, the company and every officer in default is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

152 Appointment of liquidator

- (a) In a members' voluntary winding up, the company in general meeting must appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its property.
- (b) The appointed insolvency practitioner must consent in writing to act in that role.

153 Effect of company's insolvency

- (a) Where a liquidator appointed under section 152 forms the opinion that the company will be unable to pay its debts in full within the period stated in the declaration made under section 151, or in a further period considered by the liquidator to be reasonable, he or she must:
 - (i) summon a meeting of creditors for a day not later than the 28th day after the day on which he or she formed that opinion;
 - (ii) send notices of the creditors' meeting to the creditors to be received not less than 5 business days before the day on which that meeting is to be held;
 - (iii) cause notice of the creditors' meeting to be advertised in accordance with the Rules; and
 - (iv) during the period before the day on which the creditors' meeting is to be held, give creditors without charge any information concerning the affairs of the company as they may reasonably require.
- (b) The notice of the creditors' meeting given under subsection (a) must state that information will be given without charge under paragraph (iv) of that subsection.
- (c) The liquidator must also:
 - (i) make out a statement as to the affairs of the company;
 - (ii) lay that statement before the creditors' meeting; and
 - (iii) preside at that meeting as the chair.
- (d) The statement as to the affairs of the company must show:
 - (i) particulars of the company's assets, debts and liabilities;
 - (ii) the names and addresses of the company's creditors;
 - (iii) the securities held by the company's creditors;
 - (iv) the dates when the securities were respectively given; and
 - (v) further or other information as prescribed by the Rules.
- (e) The statement as to the affairs of the company must be verified by the liquidator as being correct to the best of his or her knowledge and belief.

154 Conversion to creditors' voluntary winding up

If a creditors' meeting under section 153 is held, the Law has effect as if the declaration under section 151 had not been made and the creditors' meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 156 and the members' voluntary winding up becomes a creditors' voluntary winding up

**DIVISION 3
CREDITORS' VOLUNTARY WINDING UP**

155 Application of this Division

This Division applies in relation to a creditors' voluntary winding up, save that sections 156 and 157 do not apply where:

- (a) under section 154, a members' voluntary winding up has become a creditors' voluntary winding up;
- (b) a rehabilitation proceeding under Parts V or VI has transitioned to a voluntary winding up in accordance with those Parts.

156 Meeting of creditors

- (a) In the case of the voluntary winding up of a company registered under the Myanmar Companies Law, the company:
 - (i) must cause a meeting of its creditors to be summoned for the same day as the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;
 - (ii) must cause the notices of the creditors' meeting to be sent by post to the creditors not less than 5 business days before the day on which that meeting is to be held; and
 - (iii) must cause notice of the creditors' meeting to be advertised in accordance with the Rules.
- (b) The notice of the creditors' meeting must state that a list of the names and addresses of the company's creditors will be available for inspection free of charge at the liquidator's office, or in such other manner permitted by the Rules.

157 Directors to lay statement of affairs before creditors

- (a) The directors of the company must:
 - (i) make out a statement in the form and with the content prescribed by the Rules as to the affairs of the company;
 - (ii) cause that statement to be laid before the creditors' meeting under section 156; and
 - (iii) appoint one of their number to preside at that meeting as chair.
- (b) If:
 - (i) the directors without reasonable excuse fail to comply with subsection (a); or
 - (ii) any director without reasonable excuse fails to comply with subsection (a), so far as requiring him or her to attend and preside at the creditors' meeting,

the director or directors will be liable to a fine by the Registrar of an amount not exceeding 1,250,000 kyats.

158 Appointment of liquidator

- (a) In a creditors voluntary winding up, the creditors of the company at their meeting under section 156 must appoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.
- (b) If no liquidator is appointed by the creditors at the meeting referred to in subsection (a), the liquidator may be appointed by the company.
- (c) The appointed insolvency practitioner must consent in writing to act in that role.

**DIVISION 4
WINDING UP BY THE COURT**

Jurisdiction

159 Jurisdiction of the Courts

The District Courts of each State, Region, Self-Administered Division and Self-Administered Zone of the Union have the jurisdiction to wind up a company registered under the Myanmar Companies Law.

160 Application to a higher Court

If any question arises in any winding up proceeding which all the parties to the proceeding, or which any one of them may apply to the Court. The Court may if it considers just and beneficial, accede wholly or partially to the application on such conditions as it thinks fit or may make any other order it considers appropriate.

Grounds and effect of winding-up petition

161 Circumstances in which company may be wound up by the Court

- (a) A company may be wound up by the Court if:
 - (i) the company has by special resolution resolved that the company be wound up by the Court;
 - (ii) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
 - (iii) the company is insolvent;
 - (iv) the Court is satisfied that it is just and equitable that the company should be wound up; or
 - (v) the Court is satisfied there are proper grounds of public interest.
- (b) Grounds of public interest for the purposes of subsection (a)(v) are:
 - (i) the company has no directors; or
 - (ii) the company has carried on business, or entered into one or more transactions, with intent to defraud creditors of the company or any other person, or for any fraudulent purpose.

162 Presumed insolvency

- (a) A company is presumed to be insolvent if:
 - (i) a creditor to whom the company is indebted in a sum exceeding the minimum amount prescribed in the Rules, then due, has served on the company, by leaving it at the company's registered office, a written demand in the form prescribed by the Rules, requiring the company to pay the sum so due and the company has for 21 days afterwards neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or
 - (ii) a creditor submits to the Court that an execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part.
- (b) A presumption arising under subsection (a)(i) operates unless contrary evidence is provided.

163 Application for winding up

- (a) An application to the Court for the winding up of a company based on insolvency must be by petition presented by a director or directors, or a creditor.

Explanation: A creditor includes a contingent or prospective creditor.
- (b) In addition to the parties referred to in subsection (a), standing to wind up the company on the grounds in section 161 is also conferred on contributories and the Registrar.

164 Powers of Court on hearing of petition

On hearing a winding up petition, the Court may:

- (a) order the winding up of the company and appoint a liquidator; or
- (b) dismiss the petition; or
- (c) adjourn the hearing conditionally or unconditionally; or
- (d) make an interim order; or
- (e) make any other order,

but the Court must not refuse to make a winding up order on the ground only that the company's property has been mortgaged to an amount equal to or in excess of that property, or that the company has no property.

165 Power to stay or restrain proceedings against company

If another civil proceeding is pending in a Court or arbitral tribunal in relation to the company at any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may:

- (a) apply to the Court or arbitration tribunal for a stay of that civil proceeding; or
- (b) apply to the Court having jurisdiction to wind up the company to restrain further steps being taken in the other proceeding,

and the Court or arbitration tribunal to which the application is so made may stay or restrain the proceedings.

*Appointment of liquidator***166 Appointment and powers of provisional liquidator**

- (a) The Court may appoint a liquidator provisionally at any time after the presentation of a winding up petition, and before the making of a winding up order.
- (b) When a liquidator is provisionally appointed by the Court:
 - (i) he or she must carry out the functions, and exercise the powers, that the Court confers on him or her; and
 - (ii) the remuneration payable to the him or her will be determined by the Court.

167 Appointment of liquidator

- (a) Upon an order being made for the winding up of a company, the Court must appoint an insolvency practitioner as liquidator.
- (b) One of the following persons must be appointed as the liquidator and their consent in writing must be tendered to the Court for the appointment to be effective:
 - (i) a nominee of the applicant for the winding up order; or
 - (ii) where no person is so nominated, the Official Receiver must be appointed by the Court.
- (c) Where no insolvency practitioner is nominated, the Court must appoint the Official Receiver as a liquidator.

168 Process where Official Receiver appointed as liquidator

- (a) If the Official Receiver is appointed as liquidator by the Court, he or she must summon a creditors' meeting in the interests of the creditors for the purpose of:
 - (i) confirming the appointment of the Official Receiver as liquidator; or
 - (ii) choosing a person qualified to act as an insolvency practitioner to be liquidator of the company in place of the Official Receiver.
- (b) A meeting under subsection (a) must be summoned and conducted in the manner specified in the Rules and held not later than the 21st day after the day on which the Official Receiver was appointed.
- (c) Where the Official Receiver appointed under this section determines that there are insufficient funds to summon and conduct this creditors' meeting, subsections (a) and (b) do not have to be complied with.

169 Meeting to replace appointed liquidator

- (a) If, within 28 days after the date of publication of the notices appointment of the Official Receiver as liquidator, there is a written request by creditors of the company whose debts amount to at least 10% by value of the total debts of the company, a liquidator must summon a creditors' meeting for the purpose of:
 - (i) confirming his or her appointment as liquidator; or
 - (ii) choosing a person qualified to act as an insolvency practitioner in relation to the company to be liquidator of the company in his or her place.

- (b) A meeting under subsection (a) must be held within 14 days after the day on which the request was received by the liquidator.

170 Appointment by the Court following rehabilitation process

Where a winding up order is made that causes the appointment of a rehabilitation manager, plan supervisor or rehabilitation advisor to cease having effect, the Court may if considered appropriate appoint that person as liquidator of the company.

Investigation procedures

171 Power to stay winding up

- (a) The Court may make an order staying the winding up proceedings, immediately or at an appropriate time, and on such terms and conditions as the Court thinks fit.
- (b) A stay order may be made at any time after an order for winding up, on the application either of the liquidator or any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed.
- (c) Before making an order under this section, the Court may require the liquidator to give to it a report with respect to any facts or matters which are in his or her opinion relevant to the application.

DIVISION 5 CONSEQUENCES OF WINDING UP

172 Consequences of winding up

Following the appointment of a liquidator:

- (a) the corporate state and corporate powers of the company continue until the company is dissolved;
- (b) the company must cease to carry on its business, except so far as required for its beneficial winding up;
- (c) all the powers of the directors cease, except so far as the liquidator sanctions their continuance or, in the case of a members' voluntary winding up, their continuance is sanctioned by the company in general meeting;
- (d) no action, proceeding or arbitration against the company or its property may be proceeded with, or commenced, except by leave of the Court or on such terms as the Court may impose;
- (e) any disposition of the company's property without the consent of the liquidator is void unless the Court otherwise orders;
- (f) any attachment, sequestration, distress or execution put in force against the company or its property after the commencement of the liquidation is void; and
- (g) any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members arising from the transfer, made after the appointment of the liquidator, is void.

Nothing in this section affects the rights of a secured creditor in respect of its security, or the exercise of those rights.

173 Custody of company's property

When a winding up order has been made, or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator must take into his or her custody or under his or her control all the property to which the company is or appears to be entitled.

174 Vesting of company property in liquidator

On the application of the liquidator, the Court may order or direct that all or any part of the property belonging to the company or held by trustees on its behalf will vest in the liquidator by his or her official name.

175 Effect of execution or attachment

- (a) Where a creditor has issued execution against the goods or land of a company or has attached any debt due to it and the company is subsequently wound up, the creditor is not entitled to retain the benefit of the execution or attachment if the execution or attachment is not completed before the commencement of the winding up.
- (b) However:
 - (i) if a creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor had notice is substituted, for the purpose of subsection (a), for the date of commencement of the winding up;
 - (ii) a person who purchases in good faith under a sale by the officer charged with the execution of the writ any goods of a company acquires a good title to them against the liquidator;
 - (iii) the rights conferred by subsection (a) on the liquidator may be set aside by the Court in favour of the execution creditor to such extent and subject to such terms as the Court thinks fit; and
 - (iv) any benefit retained by the execution creditor remains liable to be set aside under section 361.
- (c) For purposes of this Law:
 - (i) an execution against goods is completed by seizure and sale;
 - (ii) an attachment of a debt is completed by receipt of payment of the debt; and
 - (iii) an execution against land is completed by seizure, or by the appointment of a receiver to the land.

176 Duties of officers charged with execution of writs and other processes

- (a) The following applies where a company's goods are taken in execution and, before their sale or the completion of the execution, notice is served on the officer charged with execution of the writ or other process, that a provisional liquidator has been appointed or that a winding-up order has been made, or that a resolution for voluntary winding up has been passed.
- (b) The officer charged with execution must, when required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator.

- (c) The officer's costs of execution are secured over the goods or money delivered under subsection (b) and the liquidator may sell the goods, or a sufficient part of them, for the purpose of satisfying that security by paying the costs.
- (d) The rights conferred by this section on the liquidator may be set aside by the Court in favour of the execution creditor to such extent and subject to such terms as the Court thinks fit.

DIVISION 6 LIQUIDATORS

Preliminary

177 General functions of liquidator

- (a) The principal functions of the liquidator are to ensure that as soon as reasonably practicable the property of the company is brought under his or her control and management and distributed to the company's creditors and, if there is a surplus, to the persons entitled to it.
- (b) The liquidator must use his or her own discretion in the management of the company's property and its distribution among its creditors within the limitations imposed by this Law.
- (c) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and it is his or her duty to summon meetings at such times as the creditors may direct, or whenever requested in writing to do so by creditors who hold at least one-tenth of the total value of creditors' claims.

178 Investigation by liquidator

- (a) It is the duty of the liquidator to investigate:
 - (i) if the company has failed, the causes of the failure; and
 - (ii) generally, the formation, business, dealings and affairs of the company,
 and to make such report to the Registrar as he or she thinks fit.
- (b) The extent of the investigation will be dependent on the financial resources of the company, the impact of the cost on the return to creditors, and whether the liquidator is aware of any evidence to suggest misconduct or the availability of recovery proceedings.
- (c) The report is, in any proceedings, prima facie evidence of the facts stated in it.

Liquidator's powers and duties

179 The liquidator's general powers

- (a) Subject to this section, a liquidator of a company may:
 - (i) carry on the business of the company so far as is, in the opinion of the liquidator, required for the beneficial management or winding up of that business; and
 - (ii) subject to the provisions of Division 7, pay any class of creditors in full; and
 - (iii) make any compromise or arrangement with creditors or persons claiming to be creditors or having any claim (present or future, certain or

contingent, ascertained or sounding only in damages) against the company or whereby the company may be rendered liable; and

- (iv) compromise any calls, debts, liabilities and any claims (present or future, certain or contingent, ascertained or sounding only in damages) between the company and a contributory or other debtor, and all disputes in any way relating to or affecting the property or the winding up of the company, and give a complete discharge in respect of, any such call, debt, liability or claim.
- (b) Subject to this section, a liquidator of a company may:
- (i) bring or defend any legal proceeding on behalf of the company; and
 - (ii) appoint a solicitor to assist him or her in his or her duties; and
 - (iii) sell or otherwise dispose of, in any manner, all or any part of the property of the company; and
 - (iv) execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary a seal of the company; and
 - (v) obtain credit, whether on the security of the property of the company or otherwise; and
 - (vi) take any act necessary for obtaining payment of any money due from a contributory or debtor; and
 - (vii) appoint an agent to do any business that the liquidator is unable to do, or that it is unsuitable for the liquidator to do, in person; and
 - (viii) do all such other things for the company's affairs as are necessary for winding up the affairs of the company and distributing its property.
- (c) Except with the approval of the Court, of the creditors' committee or of a resolution of the creditors, a liquidator of a company must not compromise a debt to the company if the amount is more than a minimum amount prescribed by the Rules.
- (d) Except with the approval of the Court, of the creditors' committee or of a resolution of the creditors, a liquidator of a company must not enter into an agreement on the company's behalf if the duration of the agreement is more than 6 months, even if the contract may end, or may be discharged, within those 6 months.
- (e) A liquidator of a company is entitled to inspect at any reasonable time any books of the company.
- (f) Subject to this Part, the liquidator must use his or her own discretion in the management of affairs and property of the company and the distribution of its property.
- (g) Where the liquidator in exercise of the powers conferred by this Law disposes of any property of the company to an associate of the company, he or she must, if there is for the time being a creditors' committee, give notice of that matter to the committee.

180 Liquidator's duty to report

- (a) If the winding up of a company is not concluded within one year after its commencement, the liquidator must send to the Registrar a statement in the form prescribed by the Rules, containing the prescribed particulars with respect to the proceedings in, and the position of, the liquidation.
- (b) A report under subsection (a) must also be submitted annually until the winding up is concluded.
- (c) If a liquidator without reasonable excuse fails to comply with this section:
 - (i) he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats; and
 - (ii) the Court may make an order directing the liquidator to make good the default within the time specified in the order.

181 Vacation of office of liquidator

A liquidator:

- (a) may resign his or her office as liquidator;
- (b) must resign his or her office as liquidator if he or she ceases to be a person qualified to act as an insolvency practitioner;
- (c) must resign as liquidator as soon as reasonably practicable after the final meeting has been held and reporting requirements are satisfied; and
- (d) is taken to have resigned upon his or her death.

182 Removal of liquidator

A liquidator may be removed from office, and another appointed in his or her place, in the following circumstances:

- (a) in the case of a members' voluntary liquidation, by a resolution carried at a general meeting convened for that purpose;
- (b) in the case of a creditors' voluntary liquidation or a court ordered winding up, by a resolution carried at a duly convened creditors' meeting;
- (c) in any liquidation, by an order of the Court if cause for removal is proven.

183 Filling of vacancy in office of liquidator

If there is a vacancy in the office of liquidator, that vacancy may be filled in the following ways:

- (a) in the case of a members' voluntary liquidation, by a resolution carried at a general meeting convened for that purpose;
- (b) in the case of a creditors' voluntary liquidation or Court ordered winding up, by a resolution of creditors at a duly convened creditors' meeting;
- (c) in any liquidation, by an order of the Court;
- (d) in the case where one liquidator resigns with another, or other, liquidator(s) remaining in office, by the remaining liquidator(s) appointing a replacement should he, she or they choose to do so.

184 No liquidator appointed or nominated by company

Where, in a winding up, no person has yet been appointed, or is acting, as liquidator, the directors may exercise their powers with the sanction of the Court. The powers of the directors may be exercised without the sanction of the Court for the following limited purposes:

- (a) in the case of a creditors' voluntary winding up, insofar as necessary to comply with sections 156 (creditors' meeting) and 157 (statement of affairs);
- (b) to dispose of perishable goods; and
- (c) to do things necessary for the protection of the company's property.

185 Release of liquidator

- (a) When a person ceases to be a liquidator of a company, or has distributed a final dividend (if any) and held the final meeting, he or she may apply to the Court for an order that he or she be released from liability in respect of the company.
- (b) A Court must consider whether the liquidator has properly conducted the administration of the affairs of the company and his or her duties as liquidator, provided that in respect of any action of a liquidator in carrying out his or her function:
 - (i) the order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact; and
 - (ii) does not affect any action that may be taken under section 217 of this Law.

186 Review of liquidators' decision

If any person is aggrieved by an act or decision of the liquidator, that person may apply to the Court and, on hearing an application, the Court may confirm, reverse or modify the act or decision.

187 Corrupt inducement affecting appointment

A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to:

- (a) securing his or her own appointment or nomination as the company's liquidator; or
- (b) securing or preventing the appointment or nomination of some person other than himself or herself as the company's liquidator,

is liable to a fine by the Registrar of an amount not exceeding 2,500,000 kyats.

DIVISION 7
PROVISIONS OF GENERAL APPLICATION IN WINDING UP

General Provisions

188 Notification that company is in liquidation

- (a) When a company is being wound up:
 - (i) every invoice, order for goods or services, business letter or order form issued by or on behalf of the company, or a liquidator of the company or a receiver or manager of the company's property; and

- (ii) all the company's websites,

must contain a statement that the company is in liquidation.

- (b) Paragraph (a)(i) of Subsection (a) applies to invoices, orders for goods or services, business letters or order forms in hard copy, electronic or any other form.
- (c) If default is made in complying with this section, any officer of the company, any liquidator of the company and any receiver or manager who knowingly or wilfully authorises or permits the default are liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

189 Statement of affairs

- (a) Following the appointment of a liquidator, the liquidator may issue a written notice requiring one or more relevant persons to make out and submit to him or her, a statement of the affairs of the company.
- (b) In respect of subsection (a), the Rules will specify:
 - (i) the form of the written notice;
 - (ii) the relevant persons; and
 - (iii) the form and content of the statement of affairs of the company.
- (c) Any persons required under this section to submit a statement of affairs of the company to the liquidator must do so within 21 days of receipt of written notice.
- (d) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine by the Registrar of an amount not exceeding 500,000 kyats.

190 Appointment of creditors' committee

- (a) The creditors at any meeting of creditors may, if they think fit, appoint a creditors' committee to exercise the functions conferred on it by or under this Law.
- (b) The Rules may make provision for, or in relation to, the composition of creditors' committees, as well as the convening, conduct of, procedure and voting at, any meeting of a creditors' committee, and may confer additional functions on the committee.

191 Inspection of books by creditors, etc.

- (a) At any time after making a winding up order, the Court may make an order for inspection of the company's books and papers by creditors and contributories if they so request and any books and papers in the company's possession may be inspected by creditors and contributories accordingly.
- (b) Nothing in this section excludes or restricts:
 - (i) any statutory rights of inspection of a government department or person acting under the authority of a government department; or
 - (ii) the liquidator voluntarily agreeing to allow such an inspection.

192 Reference of questions to the Court

- (a) A liquidator may apply to the Court for directions in relation to any particular matter arising in connection with the performance of his or her functions.

- (b) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company. The Court, if satisfied that the granting of directions or the determination of a question will be just and beneficial, may accede wholly or partially to the application on such conditions as it thinks fit, or may make any other order on the application.

193 Powers of Court to be cumulative

Powers conferred on the Court by this Law are in addition to, and not in restriction of, any existing powers of instituting proceedings against a contributory or debtor of the company.

Distribution priorities

194 Debts rank equally

Subject to the priorities otherwise set out in this Law, all debts and claims proved in the winding up rank equally, and, if the property of the company is insufficient to meet them in full, they must be paid proportionately.

195 Distribution of company's property

On the winding up of a company under this Part, its property must be:

- (a) First, applied in satisfaction of the priority claims set out in the applicable Division;
- (b) secondly applied in satisfaction of the company's liabilities *pari passu*, unless this Law otherwise provides; and
- (c) thirdly, distributed among the members according to their rights and interests in the company, unless the company's constitution otherwise provides.

196 Payment of priority claims

- (a) In this section:
 - (i) **IP's Expenses** means expenses properly incurred by a relevant Insolvency practitioner;
 - (ii) **IP's Remuneration** means the remuneration entitlement of a relevant Insolvency practitioner;
 - (iii) **Relevant Employee** means an employee of the company in the period prior to the commencement of the liquidation, other than:
 - (A) a director; or
 - (B) a former director (former director is a person who held office of a director prior to the person ceasing to be a director;
 - (iv) **Rehabilitation Debts** means, in relation to a company that has transitioned to a winding up from a process under Part V or Part VI, debts of the company that were incurred during that process but which have not been paid;
 - (v) **Relevant IP** means, in relation to the company:
 - (A) the liquidator;
 - (B) where at the time of the liquidator's appointment the company was in a rehabilitation process under Part V, the rehabilitation manager; and

- (C) where at the time of the liquidator's appointment the company was in a rehabilitation process under Part VI, the rehabilitation adviser.
- (vi) Liabilities of Relevant Employees that are liabilities of the types referred to in subsection (b) which were attributable to the period during a rehabilitation process under Part V or Part VI but were not paid, are deemed to be included within the relevant priority.
- (b) In the winding up of a company, the following debts and claims must be paid in the following order, in priority to all other unsecured debts or claims against the company:
 - (i) first, IP's Expenses;
 - (ii) next, if the liquidator was appointed by Court order, the legal costs in respect to the application for that order;
 - (iii) next, the IP's Remuneration;
 - (iv) next, wages, salary or other remuneration owed to Relevant Employees in respect of work performed before the commencement of the liquidation;
 - (v) next, other amounts owed to Relevant Employees in respect of leave for the period before the commencement of the liquidation;
 - (vi) next, severance entitlements owed to relevant employees;
 - (vii) next, compensation for any injury suffered in the course of employment owed to Relevant Employees;
 - (viii) next, Rehabilitation Debts;
 - (ix) next, such further or other debts as may be prescribed by the Rules
- (c) The debts within a class referred to in each of the sub-paragraphs above rank equally between themselves, and must in each case be paid in full, unless the property of the company is insufficient to meet them, in which case they must be paid proportionately.

197 Interest on debts

- (a) Any surplus remaining after the payment of the debts proved in a winding up must be applied in paying interest on those debts in respect of the periods since the company went into liquidation, before being applied for any other purpose.
- (b) All interest under this section ranks equally, whether or not the debts on which it is payable rank equally.
- (c) The rate of interest payable under this section in respect of any debt is the rate applicable to that debt apart from the winding up, or if no such interest is specified, at the rate specified in the Rules.

198 Debt subordination

- (a) In this section, debt subordination means an agreement or declaration by a creditor of a company that a specified debt, or part of a debt, that the company owed to that creditor will not be repaid to a specific extent before other specified debts are repaid.
- (b) Nothing in this Part renders a debt subordination by a creditor unenforceable, except to the extent that the debt subordination would disadvantage any other

creditor of the company who was not a party to, or otherwise concerned in, the debt subordination.

199 Application of proceeds of contracts of insurance

- (a) Where a company is insured under a contract of insurance against liability to third parties, then, if an amount in respect of such a liability is received by the company or the liquidator from the insurer, the amount must, after deducting any expense of or incidental to getting that amount, be paid by the liquidator to the third party in respect of whom the liability was incurred in priority to all debts mentioned in section 196.
- (b) If the liability of the insurer to the company is less than the liability of the company to the third party, subsection (a) does not limit the rights of the third party in respect of the balance.

Adjudication of debts and claims

200 Debts or claims admissible to proof

- (a) In every winding up, all debts payable by, and all claims against, the company, the circumstances giving rise to which occurred before the commencement of the company's winding up, are admissible to proof against the company; whether such debts or claims are present or future, certain or contingent, ascertained or sounding only in damages.
- (b) Even though the circumstances giving rise to a debt payable by the company or a claim against the company occur on or after the commencement of the company's winding up, the debt or claim is admissible to proof against the company in the winding up in the following circumstances:
 - (i) the circumstances occur at a time when the company was in rehabilitation or subject to a rehabilitation plan under Part V or Part VI; and
 - (ii) the company was in such rehabilitation or subject to such rehabilitation plan immediately before the resolution or Court order that the company be wound up; and
 - (iii) the claim or liability has not been paid as part of the rehabilitation proceedings.
- (c) Unless the member or contributory has paid to the company or liquidator all amounts that the person is liable to pay to the company as a member or contributory, such debts may not be admissible to proof against the company.

201 Proof of debts or claims

- (a) Where a liquidator calls on all or any creditors to prove their debts or claims against the company, those creditors called upon in accordance with the Rules must prove their debt or claim by lodging with the liquidator within the time prescribed, a proof of debt or claim in the form prescribed by the Rules, supported by documents as prescribed by the Rules.
- (b) Nothing in subsection (a) prevents a liquidator from admitting to proof a debt or claim without requiring it to be proved. In addition, a liquidator must not reject a debt or claim if he or she has not called for it to be proved under subsection (a).
- (c) The liquidator must adjudicate such debts or claims as are made against the company as provided by the Rules.

- (d) A person whose debt or claim has been adjudicated by the liquidator in accordance with this section may apply to the Court to review the liquidator's adjudication in accordance with the Rules.

202 Mutual credit and set-off

- (a) Where there have been mutual credits, mutual debits or other mutual dealings between an insolvent company that is being wound up and a person has a debt or claim admitted against the company:
 - (i) an account is what is due from the one party to the other in respect of those mutual dealings;
 - (ii) the sum due from the one party is to be set-off against any sum due from the other party; and
 - (iii) only the balance of the account is admissible to proof against the company or is payable to the company.
- (b) A person is not entitled under this section to claim the benefit of a set-off if, at the time of giving credit to the company or at the time of receiving credit from the company, the person had notice that the company was insolvent.

203 Power to exclude creditors not proving in time

The Court may fix a time or times within which creditors are to prove their debts or claims. If they are not proved within such time, they must be excluded from any distribution of already proved debts.

204 Proof of debt by secured creditor

- (a) This section applies in relation to the proof of a secured debt in the winding up of an insolvent company.
- (b) In the winding up of an insolvent company, a secured creditor is not entitled to prove the whole or a part of the secured debt otherwise than in accordance with this section and with any other provisions of this Law or the Rules that are applicable to proving the debt.
- (c) The creditor's proof of debt must be in writing.
- (d) If the creditor surrenders security to the liquidator for the benefit of creditors generally, the creditor may prove for the whole of the amount of the secured debt.
- (e) If the creditor realises secured property, the creditor may prove for any balance due after deducting the net amount realised, if the liquidator is satisfied that the realisation has been effected in good faith and in a proper manner.
- (f) If the creditor has not realised or surrendered the secured property, the creditor may estimate its value and prove for the balance due after deducting the value so estimated.
- (g) If subsection (f) applies, the proof of debt must include particulars of the security and the creditor's estimate of its value.
- (h) If a secured creditor's proof of debt is in respect of the balance due after deducting the creditor's estimate of the value of the secured property, the creditor may later amend the proof of debt by altering the estimated value.
- (i) Where a creditor who has amended a proof of debt under subsection (h) has received an amount in excess of the amount to which the creditor is entitled, the creditor must, without delay, repay the amount of the excess to the liquidator.

- (j) Where a creditor who has so amended a proof of debt has received less in the winding up of the company than the amount to which the creditor is entitled under the amended proof of debt, the creditor is entitled to be paid out of the money remaining for distribution in the winding up the amount of the deficiency before any of that money is applied in the payment of future distributions, but the creditor is not entitled to affect a distribution made before the amendment of the proof of debt.
- (k) Where a secured creditor's proof of debt is in respect of the balance due after deducting the creditor's estimate of the value of the secured property, and subsequently the creditor realises the security, and the net amount realised is not the estimated value, the net amount realised must be substituted for the estimated value and it is to be taken as if the proof of debt had been amended accordingly under subsections (i) and (j).

205 Priority of Relevant Employees out of any security

To the extent that the priority entitlements of Relevant Employees set out in section 196 are not otherwise discharged, payment of those claims must be made in priority over the claims of a secured party in respect to the net proceeds of realisation of its security. This section applies regardless of whether the company is in liquidation.

206 Power to disclaim onerous property

- (a) The liquidator of a company may disclaim any onerous property under this section by the giving of a notice of disclaimer in the form prescribed by the Rules even if he or she has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (b) The following is onerous property for the purposes of this section:
 - (i) any unprofitable contract; and
 - (ii) any other property of the company which is unsaleable or not readily saleable or is which may give rise to a liability to pay money or perform any other onerous act.
- (c) A disclaimer under this section:
 - (i) operates, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but
 - (ii) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.
- (d) A notice of disclaimer must not be given under this section in respect of any property if:
 - (i) a person interested in the property has applied in writing to the liquidator or one of his or her predecessors as liquidator requiring the liquidator or that predecessor to decide whether he or she will disclaim or not; and
 - (ii) the period of 28 days beginning with the day on which that application was made, or a longer period as the Court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.
- (e) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is taken to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

207 Disclaimer of leaseholds

- (a) The disclaimer of any leasehold property does not take effect unless a copy of the notice of disclaimer has been served on every person claiming under the company as sublessee or mortgagee.
- (b) In addition, it is not effective if no application under section 209 is made with respect to that property within 14 days beginning with the day on which the last notice served under this subsection was served, however, where such an application has been made, the Court may direct that the disclaimer will take effect.
- (c) Where the Court gives a direction under subsection (a) of section 209, it may also, instead of, or in addition to, any order it makes under that section, make orders with respect to fixtures, tenant's improvements and other matters arising out of the lease.

208 General powers of Court with respect to disclaimer

- (a) This section and section 209 apply where the liquidator has disclaimed property under section 206.
- (b) An application under this section may be made to the Court by:
 - (i) any person who claims an interest in the disclaimed property;
 - (ii) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.
- (c) The Court may, on an application under this section, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to:
 - (i) a person entitled to it or a trustee for that person;
 - (ii) a person subject to such a liability as is mentioned in subsection (b)(ii) or a trustee for that person.
- (d) The Court must not make an order under subsection (c) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (e) The effect of any order under this section must be taken into account in assessing for the purpose of section 206(e) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (f) An order under this section vesting property in any person shall be deemed to be a legal transfer and need not be completed by conveyance, assignment or transfer.

209 Powers of Court with respect to the disclaimer of leaseholds

- (a) The Court must not make an order under section 208 vesting property of a leasehold nature in any person claiming under the company as sublessee or mortgagee except on terms that such person:
 - (i) must not act contrary to the same liabilities and obligations as the company was subject to under the lease at the commencement of the winding up;
 - (ii) if necessary, must not act contrary to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him or her at the commencement of the winding up.

- (b) For the purposes of an order under section 208 relating to only part of any property comprised in a lease, the requirements of subsection (a) apply as if the lease comprised only the property to which the order relates.
- (c) Where subsection (a) applies and a person is not willing to accept an order under section 208 on the terms required by that subsection, the Court may, by order under that section, vest the company's estate or interest in the property in any person who is liable to perform the lessee's covenants in the lease, whether personally or in a representative capacity, and whether alone or jointly with the company.
- (d) The Court may vest that estate and interest in that person freed and discharged from all estates, encumbrances and interests created by the company.
- (e) Where subsection (a) applies and a person claiming under the company as sublessee or the mortgagee declines to accept an order under section 208, that person is excluded from all interest in the property.

Rescission of contracts

210 Rescission of contracts by the Court

- (a) On the application of a person who is entitled to the benefit or subject to the burden of a contract made with the company, the Court may make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.
- (b) Any damages payable under the order to such a person may be proved by him or her as a debt in the winding up.

Finalisation of liquidation and dissolution

211 Final meeting before dissolution

- (a) As soon as the company's affairs are fully wound up, the liquidator must make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and then must call a meeting of the creditors or a meeting of members if it is a members' voluntary winding up, to give an explanation of it.
- (b) Within one week after the date of the meetings, the liquidator must send to the Registrar a copy of the account, and minutes of the meeting, or if a quorum was not present, the account must be accompanied by a letter confirming the absence of a quorum.

212 Dissolution and reinstatement

- (a) This section applies where the liquidator has sent to the Registrar the information set out in section 211(b).
- (b) On receiving the information under subsection (a), the Registrar must immediately register the documents; and on the anniversary of 3 months from the registration the company is dissolved.
- (c) However, on the application of the liquidator or any other person who appears to the Court to be interested, the Court may make an order deferring the date at which the dissolution of the company is to take effect.
- (d) On the application of any interested party, the Court may make an order reinstating the company that has been dissolved to the register of companies,

on such terms or conditions as are considered appropriate, and appoint a liquidator to it.

- (e) It is the duty of the person who applies for an order of the Court to deliver to the Registrar within 5 business days a copy of the order for registration and if that person fails to do so he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

213 Early dissolution

- (a) If it appears to the liquidator of a company, or to the Official Receiver when appointed under section 168, that the realisable property of the company is insufficient to cover the expenses of the winding up, he or she may at any time apply to the Registrar for the early dissolution of the company.
- (b) Before making that application, the liquidator or Official Receiver must give not less than 14 days' notice of his or her intention to do so to the company's creditors and contributories and, if there is a receiver of the company, to that receiver.
- (c) With the giving of the notice under subsection (b), the liquidator or Official Receiver ceases to be required to perform any duties imposed on him or her in relation to the company, its creditors or contributories, apart from a duty to make an application under subsection (a) of this section.
- (d) On receiving the liquidator's or Official Receiver's application under subsection (a) the Registrar must immediately register it and, at the end of the period of 3 months beginning with the day of the registration of the application, the company must be dissolved.
- (e) Where a notice has been given under subsection (b), the liquidator or Official Receiver or any creditor or member of the company, or a receiver appointed to the company, may apply to the Court for directions:
 - (i) that make a provision for enabling the winding up of the company to proceed as if no notice had been given under subsection (b); and
 - (ii) that may include a direction deferring the date at which the dissolution of the company is to take effect.
- (f) After expiry of the period in subsection (d), on the application of any interested party, the Court may make an order reinstating the company to the register of companies on such terms or conditions as are considered appropriate and may appoint a liquidator to it.
- (g) It is the duty of the person who applies for an order giving directions to deliver to the Registrar within 5 business days after receiving such order giving directions, a copy of the directions for registration.
- (h) If a person without reasonable excuse fails to deliver a copy as required by subsection (g), he or she is liable to a fine by the Registrar of an amount not exceeding 100,000 kyats.

DIVISION 8 MALPRACTICE BEFORE AND DURING LIQUIDATION; PENALISATION OF COMPANIES AND COMPANY OFFICERS; INVESTIGATIONS AND PROSECUTIONS; OFFENCE FOR FRAUD, DECEPTION ETC.

214 Fraud, etc. in anticipation of winding up

- (a) When a company is being wound up, any past or present officer of the company is taken to have committed an offence if, within the 12 months immediately preceding the commencement of the winding up, that person has:

- (i) fraudulently removed any part of the company's property exceeding the value prescribed in the Rules, or concealed any debt due to or from the company; or
 - (ii) concealed, destroyed, parted with, mutilated or falsified including making a false entry in any book or paper affecting or relating to the company's property or affairs; or
 - (iii) been knowingly concerned in another person doing so.
- (b) The person charged may provide a defence as follows:
- (i) for a person charged under subsection (a)(i) to prove that he or she had no intent to defraud;
 - (ii) for a person charged under subsection (a)(ii) to prove that he or she had no intent to conceal the state of affairs of the company or to defeat the law; or
 - (iii) for a person charged under subsection (a)(iii) to prove, as appropriate, that he or she had no intent to defraud or no intent to conceal the true state of affairs of the company or to defeat the law.
- (c) The Court may order that a person guilty of an offence under sub-section (a) is liable to imprisonment of up to ten years and in addition, a pecuniary penalty.

215 Misconduct in course of winding up

- (a) When a company is being wound up, any past or present officer of the company commits an offence if he or she:
- (i) does not to the best of his or her knowledge and belief fully and truly disclose to the liquidator upon written request comprehensive details of all the company's property; including how and to whom and for what consideration and when the company disposed of any part of that property, except any part as has been disposed of in the ordinary way of the company's business; or
 - (ii) does not deliver up to the liquidator or as the liquidator directs, any part of the company's property as is in his or her custody or under his or her control, and which he or she is required by law to deliver up; or
 - (iii) does not deliver up to the liquidator or as he or she directs, all books and papers in his or her custody or under his or her control belonging to the company and which he or she is required by law to deliver up; or
 - (iv) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the liquidator as soon as practicable; or
 - (v) prevents the production of any book or paper affecting or relating to the company's property or affairs.
- (b) The person charged may provide a defence as follows:
- (i) for a person charged under paragraph (i), (ii), or (iii) of subsection (a) to prove that he or she had no intent to defraud; and
 - (ii) for a person charged under paragraph (v) of that subsection to prove that he or she had no intent to conceal the state of affairs of the company or to defeat the law.
- (c) The Court may order that a person guilty of an offence under subsection (a) is liable to imprisonment of up to 3 years and in addition, a pecuniary penalty.

216 False representations to creditors

- (a) When a company is being wound up, any past or present officer of the company commits an offence if he or she makes any false representation or commits any other fraud for the purpose of obtaining the consent of any one or more of the company's creditors to an agreement with reference to the company's affairs or to the winding up.
- (b) The Court may order that a person guilty of an offence under subsection (a) liable to imprisonment of up to 7 years and in addition, a pecuniary penalty.

217 Summary remedy against delinquent directors, liquidators, etc.

- (a) This section applies if it appears in the course of the winding up of a company that a person who is or has been an officer of the company has acted or is acting as liquidator, rehabilitation manager, rehabilitation adviser or receiver of the company has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.
- (b) The reference in subsection (a) to any misfeasance or breach of any fiduciary or other duty in relation to the company includes, in the case of a person who has acted or is acting as liquidator, rehabilitation manager, rehabilitation adviser or receiver of the company, any misfeasance or breach of any fiduciary or other duty in connection with the carrying out of his or her functions in respect of the company.
- (c) The Court may, on the application of the liquidator or of any creditor or contributory, examine into the conduct of the person falling within subsection (a) and compel that person to:
 - (i) repay, restore or account for the money or property or any part of it, with interest at such rate as the Court thinks just; or
 - (ii) contribute such sum to the company's property by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.
- (d) The power to make an application under subsection (c) in relation to a person who has acted as liquidator of the company is not exercisable after he or she has been released, except with the leave of the Court.
- (e) The power of a contributory to make an application under subsection (c) is not exercisable except with the leave of the Court, but is exercisable even if he or she will not benefit from any order the Court may make on the application.

218 Fraudulent trading

If, in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors or any other person, or for any other fraudulent purpose, the Court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make contributions to the company's property as the Court thinks appropriate.

219 Wrongful trading

- (a) If:
 - (i) a company is being wound up otherwise than as a members' voluntary winding up; and

- (ii) at some time before the commencement of the winding up of the company, a director knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation,

the Court may, on the application of the company's liquidator, declare that that person is to be liable to make such contribution to the company's property as the Court thinks just and equitable.

- (b) If the Court is satisfied that a person took every step with a view to minimising the potential loss to the company's creditors as he or she ought to have taken after he or she became aware or ought to have become aware that there was no reasonable prospect that the company would avoid going into insolvent liquidation, the Court must not make an order under this section with respect to that person.
- (c) For the purposes of subsections (a) and (b), the facts which a director of a company ought to know or ascertain, the conclusions which he or she ought to reach and the steps which he or she ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having:
 - (i) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director of the company; and
 - (ii) the general knowledge, skill and experience that that director has.

220 Restriction on re-use of company names

- (a) This section applies to a person where a company is being or has been wound up otherwise than as a members' voluntary winding up and such person was a director of the company at any time in the period of 12 months before it the day went into liquidation.
- (b) For the purposes of this section, a name is a prohibited name in relation to this person if:
 - (i) it is a name by which the liquidating company was known at any time in that period of 12 months; or
 - (ii) it is a name which is so similar to a name falling within subsection(b) (i) and used by the company or in association with that company or any business carried on by that company.
- (c) Except with leave of the Court, a person to whom this section applies must not at any time in the period of 5 years beginning with the day on which the liquidating company went into liquidation:
 - (i) be a director of any other company that is known by a prohibited name; or
 - (ii) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company known by a prohibited name; or
 - (iii) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on under a prohibited name.
- (d) If a person acts in contravention of this section, he or she is liable to imprisonment for up to 2 months or a pecuniary fine, or both.

*Investigation and prosecution of malpractice***221 Prosecution of delinquent officers and members of company**

- (a) In the course of the winding up of a company, any past or present officer, or any member, of the company has been guilty of any offence in relation to the company for which he or she is criminally liable, the liquidator must, refer the matter to the Registrar. The liquidator must give to the Registrar any information sought by it, including access to such documents as may be required and facilities for inspecting and taking copies of those documents.
- (b) When taking any action under this section, the Registrar may carry out such action in person or delegate the task to a subordinate officer.
- (c) When a matter is reported or referred under subsection (a), the Registrar may seek the advice of the Union Attorney General's Office.

222 Obligations arising under section 221

- (a) Where criminal proceedings are instituted under section 221, it is the duty of the liquidator and every officer and agent of the company past and present other than the defendant to give to the Registrar all assistance in connection with the prosecution which he or she is reasonably able to give.
- (b) For the purpose of subsection (a), "agent" includes any banker or solicitor of the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

**DIVISION 9
CONTRIBUTORIES**

223 Liability as contributories of present and past members

- (a) If a company is being wound up, every present and past member will be liable to contribute to the property of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, with the following qualifications:
 - (i) a past member:
 - (A) will not be liable to contribute if he or she has ceased to be a member for more than one year before the commencement of the winding up;
 - (B) will not be liable to contribute in respect of any debt or liability incurred after he or she ceased to be a member;
 - (C) will be liable to contribute if it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them under this Law;
 - (ii) in the case of a company limited by shares, no contribution will be required from any member exceeding the amount unpaid on the shares in respect to which he or she is liable as a present or past member;
 - (iii) in the case of a company limited by guarantee, no contribution will be required from any member exceeding the amount undertaken to be contributed by him or her to the property of the company in the event of it being wound up;
 - (iv) a sum due to any member of a company in his or her character of a member, by way of dividends, profits or otherwise, will not be taken to be

a debt of the company payable to that member in a case of competition between himself or herself and any other creditor not a member of the company; but any such sum may be taken into account for the purpose of the final adjustments of the rights of the contributories among themselves.

- (b) In the winding up of a company limited by guarantee which has share capital, every member of the company will be liable, in addition to the amount undertaken to be contributed by him or her to the property of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him or her.

224 Powers of Court

The Court may make such orders as are considered appropriate to:

- (a) enforce the rights of the company against contributories; or
- (b) adjust their rights between contributories;

in accordance with existing laws.

225 Company's books to be evidence

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

DIVISION 10 WINDING UP UNREGISTERED COMPANIES

226 Meaning of "unregistered company"

For the purposes of this Division, "unregistered company" does not include a company or body corporate registered under the Companies Law, but means any other body corporate, corporation, overseas corporation, partnership, association or body corporate that may have been established under any other existing law.

227 Winding up of unregistered companies

- (a) Any unregistered company may be wound up under this Law and all the provisions of this Law about winding up apply to an unregistered company with such adaptations as are necessary, and as mentioned in the following subsections, and in any other law. In the case of a foreign unregistered company, any applicable principle of private international law.
- (b) For the purpose of determining a Court's winding-up jurisdiction, the principal place of business within Myanmar of an unregistered company is deemed to be the registered office of the company.
- (c) No unregistered company may be wound up under this Law voluntarily.
- (d) The circumstances in which an unregistered company may be wound up are as follows:
 - (i) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (ii) if the company is insolvent; or
 - (iii) if the Court is of the opinion that it is just and equitable that the company should be wound up.

228 Company incorporated outside the Union may be wound up though dissolved

Where a company incorporated outside the Union which has been carrying on business in the Union ceases to carry on business in the Union, it may be wound up as an unregistered company under this Law, even if it has been dissolved or otherwise ceased to exist as a company under the laws of the country under which it was incorporated.

229 Actions stayed on winding-up order

Where an order has been made for winding up an unregistered company, no action or proceeding must be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and on such terms as the Court may impose.

PART VIII - PERSONAL INSOLVENCY

DIVISION 1 VOLUNTARY ARRANGEMENTS

Moratorium for insolvent debtor

230 Application

This division addresses the process for, and effect of, a voluntary arrangement between a debtor who is a natural person and his or her creditors and the provisions in other Divisions of this Part VIII apply to the process for, and effect of, formal bankruptcy.

231 Moratorium order of Court

- (a) Where a debtor who is a natural person intends to propose a voluntary arrangement under this Division, an application to the Court for a moratorium order may be made by the debtor.
- (b) Without the leave of the Court, an application under subsection (a) must not be made while a bankruptcy petition presented by the debtor is pending.
- (c) The following must be carried out during the period of a moratorium order:
 - (i) no bankruptcy petition relating to the debtor may be presented or proceeded with;
 - (ii) no landlord or other person to whom rent is payable may exercise any right to repossess premises in respect of a failure by the debtor to comply with any term or condition of a tenancy of such premises, except with the leave of the Court; and
 - (iii) no other proceedings and no execution or other legal process may be commenced or continued and no distress may be levied against the debtor or his or her property except with leave of the Court.

232 Cases in which moratorium order can be made

- (a) The Court must make a moratorium order under section 231 if it complies with the following:
 - (i) the debtor intends to make a proposal under this Division and a draft of that proposal has been filed with the application;
 - (ii) on the day of the making of the application, the debtor was entitled to petition for his or her own bankruptcy;
 - (iii) that no previous application has been made by the debtor in the period of 12 months prior to that day; and
 - (iv) an insolvency practitioner has consented in writing to act as voluntary arrangement supervisor in the proposal.
- (b) The Court may make a moratorium order if it thinks that it would be appropriate for the purpose of facilitating the consideration and implementation of the debtor's proposal.
- (c) A moratorium order must not make provision in relation to a bankrupt relaxing or exempting any of the requirements of the provisions in this Part or of the Rules. However, if the Court is satisfied that that provision is unlikely to result in any significant diminution in, or have a negative effect on the value of, the debtor's

estate for the purposes of bankruptcy, the Court may include that provision in the order.

- (d) Unless the Court otherwise orders, a moratorium order made on an application under section 231 ceases to have effect at the end of the period of 28 days from the date of the order.

233 Effect of filing application

At any time during the filing of an application for a moratorium order:

- (a) no landlord or other person to whom rent is payable may repossess premises in respect of a failure by the debtor to comply with any term or condition of his or her tenancy or such premises, except with the leave of the Court;
- (b) the Court may forbid the levying of any distress on the debtor's property or its subsequent sale, or both, and stay any action, execution or other legal process against the property or person of the debtor; and
- (c) any court in which proceedings are pending against a person may either stay the proceedings when presented with proof that an application under section 231 has been filed, or allow them to continue on such terms as it thinks fit.

Debtor's proposal

234 Report of the proposed insolvency practitioner

- (a) A proposal for a voluntary arrangement under this Division must provide for a person to act as a voluntary arrangement supervisor for the purpose of supervising and implementing of the arrangement and that person must be qualified to act as an insolvency practitioner under Part III.
- (b) Where a moratorium order has been made on an application under section 231, the nominated person must submit a report to the Court before the order ceases to have effect, stating:
 - (i) whether, in his or her opinion, the proposal of the debtor has a reasonable prospect of being approved and implemented; and
 - (ii) whether, in his or her opinion, the creditors of the debtors should be given the opportunity to consider the debtors' proposal.
- (c) For the purpose of enabling the nominee to prepare his or her report, the debtor must:
 - (i) submit to the nominee a document setting out the terms of the voluntary arrangement which the debtor is proposing;
 - (ii) submit to the nominee a statement of his or her affairs as required by the Rules; and
 - (iii) answer any questions reasonably put to him or her by the nominee in respect of any documents submitted under this section.
- (d) On the application of the nominee, the Court may extend the period for which the moratorium order has effect so as to enable the nominee to have more time to prepare his or her report.
- (e) If the Court is satisfied on receiving the nominee's report that the debtor's creditors should be given the opportunity to consider the debtor's proposal, the Court must direct that the period for which the moratorium order has effect will be

extended for such further period as it may specify in the direction, for the purpose of enabling the debtor's proposal to be considered by his or her creditors.

- (f) The Court may discharge the moratorium order if it is satisfied, on the application of the nominee that:
 - (i) the debtor has failed to comply with his or her obligations under subsection (c); or
 - (ii) for any other reason, it would be inappropriate for the debtor's proposal to be submitted to his or her creditors.

235 The debtor's proposal and the nominee's report

- (a) A voluntary arrangement proposed by a debtor under this Division must not include any provision that would:
 - (i) affect the right of a secured creditor to enforce his or her security, except with the agreement of the creditor concerned; or
 - (ii) except with the agreement of the preferential creditor concerned, result in:
 - (A) any debt that is not a preferential debt being paid in any manner as part of the priority for the preferential debts; or
 - (B) the payment to a preferential creditor is a smaller proportion than is paid to another preferential debt.
- (b) For the purpose of enabling the nominee to prepare a report under subsection (c), the debtor must:
 - (i) submit to the nominee a document setting out the terms of the voluntary arrangement which the debtor is proposing;
 - (ii) submit to the nominee a statement of his or her affairs in the form prescribed by the Rules; and
 - (iii) answer any questions reasonably put to him or her by the nominee in respect of any documents submitted under this section.
- (c) If the nominee is of the opinion that the debtor is able to petition for his or her own bankruptcy, the nominee must provide copies of the document and statement mentioned in subsection (b), together with his or her report regarding the proposed voluntary arrangement to the creditors of the debtor within 14 days after receiving those documents or such longer period as the Court may allow.
- (d) A nominee's report prepared under subsection (c) must state:
 - (i) whether, in his or her opinion, the voluntary arrangement which the debtor is proposing has a reasonable prospect of being implemented; and
 - (ii) whether, in his or her opinion, having regard to the financial position of the debtor, the proposed arrangement is likely to result in a better return to creditors than if a bankruptcy order was made against the debtor.
- (e) On an application made by the nominee, the Court may extend the period within which the nominee is to submit his or her report.

236 Summoning of creditors' meeting

- (a) The nominee must, unless the Court otherwise directs, summon a meeting of creditors stating the time, date and place in his or her report.
- (b) The nominee must give notice of the meeting to every creditor of whose address the nominee is aware.

237 Decisions of creditors' meeting

- (a) A creditors meeting summoned under section 236 must decide whether to approve or reject the arrangement submitted by the debtor.
- (b) The meeting may approve the proposed arrangement with modifications consented to by the debtor.
- (c) A voluntary arrangement proposed by a debtor under this division, including one that has been modified in accordance with subsection (b) will be taken as having been rejected by creditors when creditors representing both more than 50% of the value of total claims and more than 50% in number of creditors vote against adopting the plan or will otherwise be taken as having been approved by creditors.

238 Report of decisions to Court

- (a) After the debtor's proposal has been decided by creditors, the nominee must:
 - (i) give notice of the decision to all of the creditors of the debtor whose addresses are known to him or her; and
 - (ii) report the result to the Court.
- (b) If the report under paragraph (ii) of subsection (a) is that the creditors of the debtor have declined to approve the voluntary arrangement, the Court must discharge any moratorium order which is in force in relation to the debtor;

239 Effect of approval

- (a) This section has effect where the creditors of the debtor have approved the proposed voluntary arrangement, with or without modifications.
- (b) The approved arrangement binds every person who:
 - (i) was entitled to vote at the meeting (whether or not such a meeting was called and, if so, whether he or she was present or represented at it); or
 - (ii) would have been so entitled if he or she had had notice of it
- (c) If, when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of subsection (b) has not been paid and the arrangement did not come to an end prematurely, the debtor will at that time become liable to pay to that person the amount payable under the arrangement.
- (d) Any moratorium order in force in relation to the debtor until the end of the period of 28 days beginning with the day on which the nominee's report was provided to creditors under section 235, ceases to have effect at the end of that period.

240 Challenge of decision approving the voluntary arrangement

- (a) An application to the Court may be made by any one or more of the persons specified in subsection (b) below on one of the following grounds:
 - (i) that a voluntary arrangement approved by creditors under this Division unfairly prejudices the interests of a creditor; or
 - (ii) that there has been some material irregularity in relation to the consideration and approval of the arrangement by creditors; or
 - (iii) that the debtor is not insolvent.
- (b) The persons who may apply under this section are:
 - (i) a creditor;
 - (ii) the debtor;
 - (iii) the nominee.
- (c) An application under this section must not be made after the end of the period of 28 days beginning with the day on which the report was made to the Court under paragraph (ii) of section 238(a) or, in the case of a notice not being received under paragraph (i) of that subsection, after the end of the period of 28 days beginning with the day on which he or she became aware of it.
- (d) Where on an application under this section, the Court is satisfied as to either of the grounds mentioned in subsection (a), it may do one or both of the following:
 - (i) revoke or suspend any approval given by creditors;
 - (ii) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal to reconsider the original proposal.
- (e) Where after giving a direction under subsection (d)(ii) for the summoning of a meeting to consider a revised proposal, the Court is satisfied that the debtor does not intend to submit such a proposal, the Court may revoke or suspend any approval previously given by creditors.
- (f) Where the Court gives a direction under subsection (d)(ii), it may also give an order continuing or renewing the effect in relation to the debtor of any moratorium order for such period as may be specified or may issue a new moratorium order.
- (g) In any case where the Court gives an order under subsection (d)(ii) or revokes or suspends an approval under subsection (d)(i) or subsection (e), the Court may give such supplemental directions as it thinks fit with respect to:
 - (i) things done under any voluntary arrangement approved by creditors; and
 - (ii) such things done as could not have been done if a moratorium order had been in force in relation to the debtor when they were done.
- (h) Except in pursuance of the preceding provisions of this section, an approval given by creditors under this Division is not invalidated by any irregularity at or in relation to obtaining that approval.

241 False representations etc.

- (a) A debtor commits an offence, if for the purpose of obtaining the approval of his or her creditors to a proposal for a voluntary arrangement, the debtor:
 - (i) makes any false representation, or
 - (ii) fraudulently does or omits to do anything.
- (b) Subsection (a) applies even if the proposal of the debtor is not approved by the creditors.
- (c) A debtor guilty of an offence under this section is liable to imprisonment of 7 years or a fine of 5,000,000 kyats, or both.

242 Prosecution of delinquent debtors

- (a) This section applies where a arrangement approved by creditors has taken effect.
- (b) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he or she is criminally liable, he or she must immediately:
 - (i) report the matter to the Registrar;
 - (ii) provide the Registrar with such information and any necessary assistance; and
 - (iii) give any other assistance.

243 Arrangements coming to an end prematurely

For the purposes of this Division, a voluntary arrangement approved by creditors comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of section 239(b)(i).

244 Implementation and supervision of approved voluntary arrangement

- (a) This section applies where a voluntary arrangement approved by creditors under this Division.
- (b) The person who is for the time being carrying out the functions in relation to the voluntary arrangement will be known as the supervisor of the voluntary arrangement.
- (c) If the debtor, any of his or her creditors or any other interested person is dissatisfied by any act, omission or decision of the supervisor, he or she may apply to the Court; and on such an application the Court may:
 - (i) confirm, reverse or modify any act or decision of the supervisor;
 - (ii) give him or her directions; or
 - (iii) make such other order as it thinks fit.
- (d) The supervisor may apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement.

- (e) The Court may, make an order appointing a person who is qualified to act as an insolvency practitioner under Part III either in substitution for the existing supervisor or to fill a vacancy whenever:
 - (i) it is expedient to appoint another person to carry out the functions of the supervisor; and
 - (ii) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court.
- (f) The power conferred to the Court by subsection (e) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one or more of those persons.

DIVISION 2 BANKRUPTCY PROCEEDINGS

245 Who may present a bankruptcy petition

- (a) A petition for a bankruptcy order to be made against a natural person may be presented by:
 - (i) one of the person's creditors or jointly by more than one of them; or
 - (ii) the person him or herself.
- (b) When a person specified in subsection (a) makes an application, the Court may make a bankruptcy order on a debtor.

246 Conditions to be satisfied in respect of debtor

- (a) A bankruptcy petition must not be presented to the Court under section 245 unless the debtor:
 - (i) is domiciled in the Union; or
 - (ii) is personally present in the Union on the day on which the petition is presented; or
 - (iii) at any time in the period of 3 years ending with that day, has been ordinarily resident or has had a place of residence in the Union, or has carried on business in the Union.
- (b) The reference in paragraph (iii) of subsection (a) to a person carrying on business includes:
 - (i) the carrying on of business by a firm or partnership of which the person is a member, and
 - (ii) the carrying on of business by an agent or manager for the debtor or for such a firm or partnership.

247 Other conditions for the presentation of a petition

- (a) A bankruptcy petition may not be withdrawn without the leave of the Court.
- (b) The Court may dismiss a bankruptcy petition or stay proceedings on such a petition, if it appears to be appropriate to do so on the grounds that there has been a contravention of the Law or Rules or for any other reason in the petition.
- (c) Where the Court orders a stay under subsection (a), it may do so on such terms and conditions as it thinks fit.

*Creditor's petition for bankruptcy order***248 Grounds of creditor's petition**

- (a) A creditor's petition presented under paragraph (i) of subsection 245(a) must be in respect of one or more debts owed by the debtor, and the petitioning creditor or each of the petitioning creditors must be a person to whom the debt or at least one of the debts is owed.
- (b) A creditor's petition may be presented to the Court in respect of a debt or debts only if, at the time the petition is presented:
 - (i) the amount of the debt, or the aggregate amount of the debts, is equal to or exceeds the amount prescribed by the Rules;
 - (ii) the debt, or each of the debts, is for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain future time;
 - (iii) the debt, or each of the debts, is an unsecured debt or is a debt to which section 251 applies;
 - (iv) the debt, or each of the debts, is a debt which the debtor is unable to pay or appears to have no reasonable prospect of being able to pay;
 - (v) there is no outstanding application to set aside a bankruptcy notice under section 250 in respect of the debt or any of the debts;
- (c) A creditor's petition may be presented to the Court if, at the time the petition is presented, the debtor has defaulted under the obligations imposed on him or her by:
 - (i) a rehabilitation plan entered into under Part VI; or
 - (ii) a voluntary arrangement entered into under Division 1 of this Part.

249 Definition of "inability to pay"

- (a) For the purposes of paragraph 248(b)(iv) of subsection 248(b), an immediately payable debt is taken to be unable to be paid if it meets one of the following criteria:
 - (i) a notice has been served on the debtor under paragraph 250(a)(i) of subsection 250(a), and at least 21 days have elapsed since the notice was served, and it has been neither complied with nor set aside; or
 - (ii) execution in accordance with the law issued in respect of the debt on a judgment or order of any court in favour of the petitioning creditor has been returned unsatisfied in whole or in part.
- (b) For the purposes of paragraph 248(b)(iv) of subsection 248(b), a debt will be taken to have no reasonable prospect of payment if the petitioning creditor to whom the debt is owed has served on the debtor a bankruptcy notice under paragraph 250(a)(ii) of subsection 250(a) and at least 21 days have elapsed since the notice was served, and it has been neither complied with nor set aside.

250 Notice of bankruptcy petition

- (a) A creditor may serve a bankruptcy notice which requires one of the following in the form prescribed by the Rules:
 - (i) pay a debt or to secure or compound for it to the satisfaction of the creditor within 21 days of the notice being served; or
 - (ii) establish to the satisfaction of the creditor that there is a reasonable prospect that the debtor will be able to pay the debt when it falls due.
- (b) A bankruptcy notice must be served on the debtor in accordance with the Rules.
- (c) A bankruptcy notice is valid even if the sum specified in the notice as the amount due exceeds the amount in fact due, and the debtor does not give notice to the creditor that he or she disputes the validity of the notice within the time allowed for payment.
- (d) Where the amount specified in a bankruptcy notice exceeds the amount in fact due and the debtor does not give notice to the creditor in accordance with subsection (c), he or she will be deemed to have complied with the notice if he or she takes such steps as would have amounted to compliance with the notice if the amount due had been correctly specified in it within the time allowed for payment.
- (e) Where an application has been made to the Court to set aside the bankruptcy notice before the expiration of the time fixed for compliance, the Court may extend the time for compliance with the bankruptcy notice.
- (f) Where the debtor has applied to the Court for an order setting aside the bankruptcy notice before the expiration of the time fixed for compliance on the grounds of a counter-claim, set-off or cross demand and the Court has not decided on such a counter-claim, set-off or cross demand before the expiration of that time, the time will be deemed to have been extended until the day on which the Court decides.

251 Creditor with security

- (a) A debt which is the debt, or one of the debts, in respect of which a creditor's petition is presented will not be considered a secured debt if either:
 - (i) the petition contains a statement by the secured creditor that he or she is willing to give up his or her security for the benefit of all the other creditors in the event of a bankruptcy order being made; or
 - (ii) the petition is expressed not to be made in respect of the secured part of the debt and contains a statement by that person of the estimated value at the date of the petition of the security for the secured part of the debt.
- (b) In a case falling within paragraph (a)(ii) of subsection (a), the secured and unsecured parts of the debt are to be treated for the purposes of sections 248 to 250 of the Law as separate debts.

252 Expedited petition

In the case of a creditor's petition presented wholly or partly in respect of a debt which is the subject of a bankruptcy notice, the petition may be presented before the end of the 21 day period there mentioned if there is a serious possibility that the debtor's property or the value of any of his or her property will be significantly diminished during that period and the petition contains a statement to that effect.

253 Proceeding on creditor's petition

- (a) A creditor's petition presented to the Court under this section must be in the form prescribed by the Rules, and the petitioning creditor must pay such fee as may be prescribed by the Court.
- (b) The facts set out in the petition must include a statement that the debtor is indebted to the applicant for an amount which exceeds the amount prescribed for the purposes of paragraph (i) of subsection 248(b), and must be verified by affidavit sworn by or on behalf of the petitioning creditor.
- (c) Where a petition is presented under this section based on the debtor's failure to comply with a bankruptcy notice, the petition must be accompanied by proof of service of the bankruptcy notice and proof that the debtor failed to comply with it.
- (d) Where a petition presented under this section alleges insolvency based on the debtor's failure to comply with his or her obligations under either a Part VI rehabilitation plan or a voluntary arrangement, the petition must include details of the non-compliance relied upon.
- (e) A petition presented under this section, together with a copy of any affidavit verifying its contents and service of any bankruptcy notice under section 250, must be served on the debtor in accordance with the Rules at least 5 business days prior to the date allocated for the hearing of the petition by the Court.
- (f) The Court must make a bankruptcy order on a creditor's petition only if it is satisfied that the debt in the petition is either:
 - (i) a debt which, having been payable at the date of the petition has been neither paid nor secured or compounded; or
 - (ii) a debt which the debtor has no reasonable prospect of being able to pay when it falls due.
- (g) In a case in which the petition is made under section 248, the Court must not make a bankruptcy order until at least 21 days have elapsed since the service of any bankruptcy notice.
- (h) The Court may dismiss the petition if it is satisfied that the debtor is able to pay his or her debts or is satisfied that:
 - (i) the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented;
 - (ii) the acceptance of that offer would have required the dismissal of the petition; and
 - (iii) the offer has been unreasonably refused;

and, in determining for the purposes of this subsection whether the debtor is able to pay his or her debts, the Court must take into account his or her existing debts and contingent liabilities.

254 Where debtor is a Part VI Enterprise

- (a) Where it appears to the Court that the debtor who is the subject of the petition is a proprietor of a Part VI Enterprise, whether solely or in partnership with others, it may make orders or give directions for the commencement of a Part VI Process in respect of the Enterprise.

- (b) An application under this section may be made to the Court by the debtor, one or more other proprietors of the Part VI Enterprise, one or more creditors, or the Court may make orders on its own motion.
- (c) The Court may make the following orders under subsection (a)
 - (i) adjourn the creditor's petition while the Part VI Process proceeds; or
 - (ii) dismiss the creditor's petition.

255 Appointment of trustee or Official Receiver (creditor's petition)

- (a) Where a bankruptcy order is made on a creditor's petition, the Court must appoint the Official Receiver or a person qualified to act as an insolvency practitioner under Part III to be the trustee of the estate of the bankrupt;
- (b) A person (other than the Official Receiver) appointed under subsection (a) must provide his or her written consent to accept the appointment and that consent must be tendered to the Court. Where no written consent is tendered, the Court must appoint the Official Receiver as a provisional receiver to call a meeting of creditors as provided in section 256.
- (c) Where a bankruptcy order is made in respect of a person who has been the subject of a Part VI Process immediately prior to the making of the order, the Court may appoint the rehabilitation advisor as the trustee of the bankrupt's estate, but may not do so without his or her consent.

256 Where Official Receiver appointed

- (a) If the Official Receiver is appointed by the Court under section 255 as a provisional receiver, he or she must summon a creditors' meeting for the purpose of:
 - (i) choosing a person qualified to act as an insolvency practitioner under Part III to be the trustee of the bankrupt's estate in place of the Official Receiver; or
 - (ii) appointing the Official Receiver as trustee.
- (b) A meeting under subsection (a) must be summoned no later than the 21st day after the date of the bankruptcy order.
- (c) A meeting under subsection (a) must be:
 - (i) notified to creditors in writing, sent by such means as may be prescribed in the Rules to the creditors not less than 5 business days before the day on which that meeting is to be held;
 - (ii) advertised as provided in the Rules; and
 - (iii) conducted as provided in the Rules.
- (d) At any time prior to convening the creditors' meeting required by subsection (a), the Official Receiver may continue as the trustee of the bankrupt's estate.
- (e) Where the Official Receiver appointed under this section determines that he or she will continue as the trustee of the bankrupt's estate:
 - (i) subsections (a) to (d) will have no application; and
 - (ii) he or she must comply with section 264 as if appointed trustee by the Court.

- (f) Where the Official Receiver becomes the trustee of a bankrupt estate under this section, he or she will be taken to be the trustee appointed in accordance with this Part.

Debtor's petition

257 Debtor's Petition

- (a) Where a debtor is insolvent, he or she may present a petition to the Court under paragraph (ii) of subsection 245(a), seeking a bankruptcy order.
- (b) A petition presented under subsection (a) must be in the form prescribed by the Rules, and the petitioner must pay such fee as may be prescribed.
- (c) The petition under subsection (a) must be accompanied by a statement of the debtor's affairs, containing such particulars of the debtor's creditors and his or her financial position as may be prescribed in the Rules.
- (d) The facts and matters set out in the debtor's petition and the accompanying statement of affairs must be verified by affidavit.

258 Grounds of debtor's petition

A debtor's petition may be presented to the Court only on the grounds that the debtor is unable to pay his or her debts.

259 Proceeding on debtor's petition

On the hearing of a debtor's petition, the Court must not make a bankruptcy order if it appears to the Court that:

- (a) the aggregate amount of the unsecured debts to be repaid by the debtor is less than the amount prescribed for the purposes of paragraph (i) of subsection 248(b);
- (b) the value of the bankrupt's estate is equal to or more than the amount prescribed in the Rules;
- (c) within the period of 5 years prior to the date of presentation of the petition, the debtor has neither been adjudged bankrupt nor made a composition with his or her creditors in satisfaction of his or her debts; or
- (d) the debtor is a proprietor of a Part VI Enterprise but has not completed a Part VI Process.

260 Appointment of trustee or Official Receiver (debtor's petition)

- (a) Where a bankruptcy order is made on a debtor's petition, the Court must appoint the Official Receiver or a person qualified to act as an insolvency practitioner under Part III to be the trustee of the estate of the bankrupt.
- (b) A person (other than the Official Receiver) appointed under subsection (a) must provide his or her written consent to accept the appointment and that consent must be tendered to the Court. Where no written consent is tendered, the Court must appoint the Official Receiver as a provisional receiver to call a meeting of creditors as provided in the following subsections.
- (c) Where a bankruptcy order is made in respect of a person who has been the subject of a Part VI Process prior to the making of the order under subsection (a), the Court may appoint the rehabilitation advisor as the trustee of the bankrupt's estate.

- (d) Where the Official Receiver is appointed under this section, section 256 will apply as if subsection (a) of that section referred to this section.

Non-MSME Debtors

261 Petitions in respect of debtors who are not Part VI Enterprises

- (a) Where a petition is presented to the Court in respect of a debtor who is not an MSME, the Court may make one of the following orders:
- (i) the debtor undergo financial counselling;
 - (ii) a person who is qualified to act as an insolvency practitioner under Part III or the Official Receiver be appointed as a nominee under Division 1 of this Part and make such other orders under this Part as it thinks fit.
 - (iii) the debtor mediate with his or her creditors under section 262.
- (b) Where the Court makes an order under subsection (a) it must adjourn or dismiss the petition as it thinks fit.

262 Mediation Appointment of Mediator

Where a debtor has formed the view that he or she is not, or is not likely to be, able to pay his or her debts, the debtor may appoint a mediator to do one of the following:

- (a) mediate any dispute regarding any outstanding debt or debts of the debtor;
- (b) facilitate the negotiation of a voluntary arrangement with the creditors under Division 1 of this Part.

263 Moratorium Order

- (a) On an application by a debtor who has appointed a mediator under section 262, the Court may issue an order to declare a moratorium which:
- (i) prohibits any person from commencing or continuing any legal proceedings with respect to a debt or claim which that person may have or assert against the debtor;
 - (ii) prohibits the making of a bankruptcy order against the debtor; and
 - (iii) prohibits any person from taking any step to enforce any security interest in the debtor's property.
- (b) A moratorium order under subsection (a) must specify the period of time during which it will apply and such period must not exceed 28 days from the date of the order.
- (c) On the application of the debtor, the Court may extend the period of any moratorium ordered under this section for a further period of up to 28 days, but only if it is satisfied that the debtor has provided reasonable notice to each of his or her creditors of his or her intention to apply for the extension and one of the following circumstances exist:
- (i) no creditor has objected to the extension; or
 - (ii) the Court considers that such objection as has been raised to the extension ought to be rejected.

- (d) In considering an application under subsection (a) or subsection (c) the Court may have regard to:
 - (i) the impact of an order on all of the creditors, including any creditors not participating in the mediation;
 - (ii) the prospects of achieving a successful mediation in respect of the matters in section 262(a);
 - (iii) any opinion the mediator may express as to the prospects of achieving a successful mediation.
- (e) After a moratorium order is made under this section, the debtor must immediately provide a copy of the order to each of his or her creditors.

Notice of Appointment

264 Notice of appointment of trustee

- (a) Immediately upon being served with a copy of the bankruptcy order, the trustee appointed to the estate of the bankrupt must:
 - (i) give a notice of his or her appointment and to such creditors whose addresses are known to him or her; and
 - (ii) advertise the appointment as provided in the Rules.
- (b) Any notice or advertisement under subsection (a) will include the following information:
 - (i) the name and address of the bankrupt;
 - (ii) details of the bankruptcy order;
 - (iii) details of the trustee;
 - (iv) such other matters as may be prescribed by the Rules.

Commencement and duration of bankruptcy

265 Commencement and continuance

The bankruptcy of a natural person against whom a bankruptcy order has been made:

- (a) commences with the day on which the order is made; and
- (b) continues until the person is discharged under the following provisions of this Division.

266 Duration

- (a) Unless otherwise ordered by the Court, a bankrupt is discharged from bankruptcy at the end of the period of 3 years beginning with the date on which the bankruptcy order is made.
- (b) If before the end of that period, the trustee appointed to the bankrupt's estate files with the Court, a notice stating that investigation of the conduct and affairs of the bankrupt under section 274 is unnecessary or has been concluded, the bankrupt is discharged when the notice is filed.

- (c) On the application of the trustee of a bankrupt's estate, the Court may order that the period specified in subsection (a) will cease upon one of the following circumstances occurring :
 - (i) the end of a specified period; or
 - (ii) the fulfilment of a specified condition.
- (d) The Court may make an order under subsection (c) only if satisfied that the bankrupt has failed or is failing to comply with one or more obligations under this Part, and any extension must be proportionate to the seriousness of the breach.
- (e) In paragraph (ii) of subsection (c), " specified condition" includes a condition requiring that the Court be satisfied of something.
- (f) This section is without prejudice to any power of the Court to annul a bankruptcy order.

267 Effect of discharge

- (a) Where a bankrupt is discharged, the discharge releases him or her from all the debts or claims provable against his or her estate, but has no effect:
 - (i) on the functions of the trustee of his or her estate, so far as they remain to be carried out; or
 - (ii) on the carrying out of those functions under the provisions of this Part.
- (b) Discharge does not affect the right of any creditor to prove in the bankruptcy for any debt.
- (c) Discharge does not affect the right of any secured creditor to enforce his or her security for the payment of a debt.
- (d) Discharge does not release the bankrupt from any debt or claim which he or she incurred in respect of any fraud or fraudulent breach of trust to which he or she was a party.
- (e) Discharge does not release the bankrupt from any liability in respect of a fine imposed for an offence or from any liability under a recognisance.
- (f) Discharge does not, except to such extent and on such conditions as the Court may direct, release the bankrupt from any debt or claim which:
 - (i) consists in a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty or damages in respect of personal injuries to any person;
 - (ii) arises under any order made in respect of the maintenance of his or her minor children.
- (g) Discharge does not release the bankrupt from such other bankruptcy debts, not being debts provable in his or her bankruptcy, as may be prescribed in the Rules.
- (h) Discharge does not release any person other than the bankrupt from any liability from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.
- (i) Personal injuries includes death and any disease or other impairment of a person's physical or mental condition.

268 Court's power to annul bankruptcy order

- (a) The Court may annul a bankruptcy order if it appears to be fresh evidence that:
 - (i) on any grounds existing at the time the order was made, the order ought not to have been made; or
 - (ii) the debts or claims provable against his or her estate and the expenses of the bankruptcy have all been either paid or secured to the satisfaction of the Court since the making of the order.
- (b) The Court may annul a bankruptcy order whether or not the bankrupt has been discharged from the bankruptcy.
- (c) Where the Court annuls a bankruptcy order:
 - (i) any sale or other disposition of property, payment made or other thing duly done, under any provision in this Part, by of the trustee or by the Court is valid; but
 - (ii) if any of the bankrupt's estate is then vested, under any of the above provisions, in such a trustee, it will vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms as the Court may direct;

**DIVISION 3
PROTECTION OF BANKRUPT'S ESTATE AND
INVESTIGATION OF THE BANKRUPT'S AFFAIRS**

269 The bankrupt's estate

- (a) For the purposes of this Part VIII, a bankrupt's estate comprises:
 - (i) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy; and
 - (ii) any property which by virtue of any of the following provisions is comprised in that estate or is treated as falling within paragraph (i).
- (b) The bankrupt's estate set out in subsection (a) does not include property which is specified to be excluded property under this Law.
- (c) For the purposes of this Part, if any person other than the bankrupt has a right or interest in relation to property comprised in a bankrupt's estate, such right or interest must not be affected. However, this does not apply to any right or interest in relation to which a statement such as is required by paragraph (i) of subsection 251(a) was made in the petition on which the bankrupt was adjudged bankrupt.

270 Restrictions on dispositions of property

- (a) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Division 5 of this Part, of the bankrupt's estate in a trustee.
- (b) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the Court, or is or was approved by the Court.
- (c) Subsection (b) applies to a payment as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid will hold the sum paid for the bankrupt as part of his or her estate.

- (d) The preceding provisions of this section do not give a remedy against any person:
 - (i) in respect of any property or payment which he or she received after the submission of a bankruptcy petition but before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented; or
 - (ii) in respect of any interest in property which derives from an interest in respect of which, by virtue of this subsection, there is no remedy.
- (e) Where after the commencement of his or her bankruptcy, the bankrupt has incurred a debt to a banker or other person and even though it is a payment which is void under this section, that debt is deemed for the purposes of any of this Part to have been incurred before the commencement of the bankruptcy if:
 - (i) that banker or person had no notice of the bankruptcy at the time the debt was incurred; or
 - (ii) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.
- (f) A disposition of property is void under this section even if the property is not or would not be comprised in the bankrupt's estate, but nothing in this section affects any disposition made by a person of property in the bankrupt's estate which is held on trust for any other person.

271 Restriction on proceedings and remedies

- (a) After the making of a bankruptcy order, no person who is a creditor of the bankrupt in respect of a debt or claim provable in the bankruptcy may:
 - (i) have any remedy against the property or person of the bankrupt in respect of that debt or claim; or
 - (ii) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the Court and on such terms as the Court may impose.
- (b) Subsection (a) does not affect the right of a secured creditor to enforce his or her security.
- (c) At any time when proceedings on a bankruptcy petition are pending or a bankruptcy order has been issued, the Court may stay any action, execution or other legal process against the property or person of the debtor or of the bankrupt.
- (d) On proof that a bankruptcy petition has been presented in respect of a person or that that person is an undischarged bankrupt, any court in which proceedings are pending against the person must either stay the proceedings or allow them to continue on such terms as it thinks fit.
- (e) Where any goods of an undischarged bankrupt are held by any person by way of pledge, pawn or other security, the trustee of the bankrupt's estate may inspect the goods, after giving notice in writing.
- (f) Where a notice has been given to any person under subsection (e), that person is not entitled, without leave of the Court, to realise his or her security unless he or she has given the trustee of the bankrupt's estate a reasonable opportunity of inspecting the goods and of exercising the bankrupt's right of redemption.
- (g) References in this section to the property or goods of the bankrupt are to any of his or her property or goods, whether or not comprised in his or her estate.

272 Power to appoint interim receiver

- (a) The Court may appoint the Official Receiver to be interim receiver of the debtor's property at any time after the presentation of a bankruptcy petition and before making a bankruptcy order, if it is shown to be necessary for the protection of the debtor's property.
- (b) Where a bankruptcy order is made in respect of a person who has been the subject of a Part VI Process, the Court may appoint the rehabilitation advisor as interim receiver.
- (c) The Court may by an order appointing any person to be an interim receiver direct that his or her powers are to be limited or restricted in any respect.
- (d) An order of the Court appointing any person to be an interim receiver must require that person to take immediate possession of the debtor's property or the part of it.
- (e) An order of the Court appointing an interim receiver may specify the interim receiver's remuneration from time to time.
- (f) If the Court does not make an order under subsection (c), an interim receiver appointed under this section will have the following rights, powers, and duties in relation to the debtor's property:
 - (i) to sell or otherwise dispose of any perishable goods comprised in the estate and any other goods so comprised the value of which is likely to diminish if they are not disposed of; and
 - (ii) to summons a general meeting of the bankrupt's creditors if he or she thinks fit.
- (g) Nothing in this section will be read to require an interim receiver appointed under this section to incur expenditure unless he or she is directed to do so by the Court.
- (h) Where an interim receiver appointed under this section seizes or disposes of any property which is not comprised in the estate, he or she will not be liable to any person in respect of any loss or damage except insofar as that loss or damage is caused by the interim receiver's negligence; provided that, at the time of the seizure or disposal, the interim receiver believed on reasonable grounds that he or she was entitled to seize or dispose of the property.
- (i) Where an interim receiver has been appointed, the debtor must give him or her such inventory of property and such other information as the interim receiver may reasonably require for the purpose of carrying out his or her functions and must provide him or her with such assistance at such times as the interim receiver may request.
- (j) Where an interim receiver is appointed, section 271(a) applies for the period between the appointment and the making of a bankruptcy order on the petition or the dismissal of the petition as if the appointment were the making of such an order.
- (k) A person ceases to be interim receiver of a debtor's property if:
 - (i) the bankruptcy petition relating to the debtor is dismissed;
 - (ii) a bankruptcy order is made on the petition; or
 - (iii) the Court by order otherwise terminates the appointment.

- (l) References in this section to the debtor's property are to all of his or her property, whether or not it would be comprised in his or her estate if he or she were adjudged bankrupt.

273 Statement of affairs

- (a) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt must submit a statement of his or her affairs which complies with the requirements prescribed in the Rules to the trustee before the end of the period of 21 days beginning with the commencement of the bankruptcy.
- (b) The trustee may:
 - (i) release the bankrupt from his or her duty under subsection (a); or
 - (ii) extend the period specified in that subsection,
 and where the trustee has refused to exercise a power conferred by this section, the Court may exercise it.
- (c) A bankrupt who, without reasonable excuse:
 - (i) fails to comply with the obligation imposed by this section; or
 - (ii) submits a statement of affairs that does not comply with the requirements prescribed in the Rules,
 is guilty of a contempt of court and liable to a penalty under this Law.

274 Investigatory duties of trustee

- (a) Upon his or her appointment, the trustee must:
 - (i) investigate the conduct and affairs of each bankrupt, including his or her conduct and affairs before the making of the bankruptcy order; and
 - (ii) make such report to the Court as he or she thinks fit.
- (b) Subsection (a) will not apply to a case in which the trustee thinks an investigation under that subsection unnecessary.
- (c) A report by the trustee under this section will be prima facie evidence of the facts stated in it in any insolvency proceedings.

275 Public examination of bankrupt

- (a) At any time after a bankruptcy order has been made, but before the bankrupt's discharge, the trustee may apply to the Court for the public examination of the bankrupt.
- (b) Unless the Court otherwise orders, the trustee must make an application under subsection (a) if notice requiring him or her to do so is given to him or her by one of the bankrupt's creditors in accordance with the Rules, with the concurrence of creditors holding not less than one-half in value of the total admitted claims, including the creditor giving notice.
- (c) On an application under subsection (a), the Court will direct that a public examination of the bankrupt is to be held on a day appointed by the Court; and the bankrupt must attend on that day and be publicly examined as to his or her affairs, dealings and property.

- (d) The following may take part in the public examination of the bankrupt and may question him or her concerning his or her affairs, dealings and property and the causes of his or her failure, namely:
 - (i) the trustee of the bankrupt's estate, if his or her appointment has taken effect;
 - (ii) the Official Receiver; and
 - (iii) any creditor of the bankrupt who has tendered a proof in the bankruptcy.
- (e) If a bankrupt without reasonable excuse fails at any time to attend his or her public examination under this section, he or she is guilty of a contempt of court and liable a penalty under this Law.

276 Duties of bankrupt in relation to the trustee and Official Receiver

- (a) Where a bankruptcy order has been made, the bankrupt is under a duty:
 - (i) to deliver possession of his or her estate to the Official Receiver or trustee; and
 - (ii) to deliver up to the Official Receiver or trustee, all books, papers and other records of which he or she has possession or control and which relate to his or her estate and affairs, including any which would be privileged from disclosure in any proceedings.
- (b) In the case of any part of the bankrupt's estate which consists of things, possession of which cannot be delivered to the trustee, and in the case of any property that may be claimed for the bankrupt's estate by the trustee, it is the bankrupt's duty to do all such things as may reasonably be required by the trustee for the protection of those things or that property.
- (c) The bankrupt must:
 - (i) give the trustee, such inventory of his or her estate and such other information; and
 - (ii) attend on the trustee at such times, as he or she may reasonably require for the objectives of this Part.
- (d) Subsection (c) applies to a bankrupt after his or her discharge.
- (e) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he or she is guilty of a contempt of court and liable to a penalty under this Law.

DIVISION 4 TRUSTEES IN BANKRUPTCY

Tenure of office as trustee

277 Appointment

- (a) No person may be appointed as trustee if he or she is not qualified to act as an insolvency practitioner under Part III at the time of the appointment.
- (b) Any power to appoint a person as trustee of a bankrupt's estate includes power to appoint two or more persons as joint trustees, but such an appointment must make provision as to the circumstances in which the trustees must act together and the circumstances in which one or more of them may act for the others.

- (c) This section is without prejudice to the provisions of this Division under which the Official Receiver is, in certain circumstances, to be trustee.

278 Removal of trustee - vacation of office

- (a) The trustee may be removed from office only by an order of the Court or by a general meeting of the bankrupt's creditors summoned specially for that purpose in accordance with the procedures set out in the Rules.
- (b) A general meeting of the bankrupt's creditors must be summoned for the purpose of replacing the trustee if such a meeting is requested by one or more of the bankrupt's creditors with the concurrence of creditors holding not less than one-quarter, in value, of the total claims, or the Court so directs.
- (c) The trustee (not being the Official Receiver) must vacate office if he or she ceases to be a person who is for the time being qualified to act as an insolvency practitioner under Part III.
- (d) The trustee may resign his or her office by giving notice of his or her resignation to the Court in the manner prescribed in the Rules.
- (e) The trustee must in the notice to the Court under subsection (d), include that a final meeting has been held under section 311 and of any decision of that meeting.
- (f) The trustee must vacate office if the bankruptcy order is annulled.

279 Cessation of duties of trustee

- (a) Where the Official Receiver has ceased to be the trustee and a person is appointed in his or her stead, the Official Receiver will cease his or her duties with effect from the following time:
 - (i) where that person is appointed by a general meeting of the bankrupt's creditors, the time at which the Official Receiver gives notice to the Court that he or she has been replaced; and
 - (ii) where that person is appointed by the Court, such time as the Court may determine.
- (b) If, while he or she is the trustee, the Official Receiver gives notice that the administration of the bankrupt's estate is for practical purposes complete, his or her duties will cease with effect from such time as the Court may determine.
- (c) A person other than the Official Receiver who has ceased to be the trustee will be released with effect from the following time:
 - (i) in the case of a person who has been removed from office by a general meeting of the creditors that has not resolved against his or her release or who has died, the time at which notice is given to the Court in accordance with the Rules that that person has ceased to hold office;
 - (ii) in the case of a person who has been removed from office by a general meeting of the creditors that has resolved against his or her release, or by the Court, or who has vacated office under subsection 278(d), such time as the Court may determine on an application by that person;
 - (iii) in the case of a person who has resigned, at the time when the resignation becomes effective unless the Court orders otherwise;

- (iv) in the case of a person who has vacated office under subsection 278(e):
 - (A) if the final meeting referred to in that subsection has not resolved to release that person, such time as the Court may determine on an application by that person; and
 - (B) if that meeting has so resolved, the time at which the person vacated office.
- (d) Where a bankruptcy order is annulled, the trustee at the time of the annulment ceases his or her duty with effect from such time as the Court may determine.
- (e) Where the Official Receiver or the trustee ceases his or her duties under this section, he or she will be discharged from all liability with effect from the time specified in the preceding provisions of this section, both in respect of acts or omissions of his or hers in the administration of the estate and otherwise in relation to his or her conduct as trustee;
- (f) Nothing in this section prevents the exercise of the Court's powers under section 283 in relation to a person who has ceased his or her duties under this section.

280 Vacancy in office as trustee

- (a) This section applies where there is a vacancy in the office of trustee.
- (b) The Official Receiver will be trustee until the vacancy is filled.
- (c) The Official Receiver may summon a general meeting of the bankrupt's creditors for the purpose of filling the vacancy and must summon such a meeting under section 295(h).
- (d) If a creditors' committee has been established under section 281, the Official Receiver may summon a meeting of the creditors' committee for the purpose of filling the vacancy.
- (e) If no alternative appointment is made, the Official Receiver will continue to be trustee of the bankrupt's estate, but without prejudice to his or her power to call a meeting under subsection (c) or (d).
- (f) References in this section to a vacancy include a case where it is necessary, in relation to any property which is or may be comprised in a bankrupt's estate, to revive the trusteeship of that estate after the holding of a final meeting summoned under section 311.

Control of trustee

281 Creditors' committee

- (a) A general meeting of creditors may establish a committee of creditors in accordance with the Rules, to exercise the functions conferred by or under this Law and the Rules.
- (b) A general meeting of the creditors must not establish such a committee or confer any functions on such a committee at any time when the Official Receiver is the trustee of the bankrupt's estate, except in connection with an appointment made by that meeting of a person to be trustee instead of the Official Receiver.

282 General control of the trustee by the Court

- (a) If a bankrupt or any of his or her creditors or any other interested person is dissatisfied with any act, omission, or decision of a trustee, he or she may apply

to the Court and on such an application, the Court may confirm, reverse or modify any act or decision of the trustee or may make such other order as it thinks fit.

- (b) The trustee may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.
- (c) Where a bankruptcy petition has been presented against more than one individual in circumstances where any one or more of them is a member of an insolvent partnership, the Court may give such directions for consolidating the proceedings, or any of them, as it thinks just.
- (d) Any order or directions under subsection (a) may be made or given on the application of the Official Receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

283 Liability of trustee

- (a) Where on an application under this section, the Court is satisfied that:
 - (i) the trustee has misapplied or retained, or become accountable for, any money or other property comprised in the bankrupt's estate; or
 - (ii) a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee in the carrying out of his or her functions,

the Court may order the trustee to repay, restore or account for money or other property for the benefit of the estate, or to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court thinks just.

- (b) An order under subsection (a) may include interest at such rate as the Court thinks just and is without prejudice to any liability arising apart from this section.
- (c) An application under this section may be made by the Official Receiver, a trustee subsequently appointed to the same estate, a creditor or the bankrupt, but the leave of the Court is required for the making of an application if it is to be made by the bankrupt or if it is to be made after the trustee has had his or her release under section 279.
- (d) The trustee is not liable to any person in respect of any loss or damage resulting from the seizure or disposal of any property which was not comprised in the bankrupt's estate but which, at the time of the seizure or disposal, the trustee believed on reasonable grounds that he or she was entitled to seize or dispose of, except in so far as that loss or damage is caused by the negligence of the trustee and he or she has a lien on the property or the proceeds if its sale for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

DIVISION 5 ADMINISTRATION BY TRUSTEE

Preliminary

284 General functions of trustee

- (a) The function of the trustee is to get in, realise and distribute the bankrupt's estate in accordance with the following provisions of this Division, and in carrying out of that function and in the management of the bankrupt's estate the trustee is entitled to use his or her own discretion, and to act in accordance with the Law.

- (b) It is the duty of the trustee, if he or she is not the Official Receiver, to:
 - (i) furnish the Official Receiver with such information;
 - (ii) produce to the Official Receiver and permit inspection by the Official Receiver of such books, papers and other records; and
 - (iii) give the Official Receiver such other assistance,
 as the Official Receiver may reasonably require for the purpose of enabling him or her to carry out his or her functions in relation to the bankruptcy.
- (c) The form and use of the official name of the trustee may be set out in the Rules.

Acquisition, control and realisation of bankrupt's estate

285 Vesting of bankrupt's estate in trustee

- (a) The bankrupt's estate will vest in any person appointed as trustee immediately on his or her appointment or, in the case of the Official Receiver, on his or her becoming trustee.
- (b) Where any property which is comprised in the bankrupt's estate vests in the trustee, it will so vest without any conveyance, assignment or transfer.

286 After-acquired property

- (a) The trustee may by notice in writing, claim for the bankrupt's estate any property which has been acquired by, or has devolved upon, the bankrupt after the commencement of the bankruptcy.
- (b) A claim may not be made in respect of:
 - (i) any excluded property; or
 - (ii) any property which by virtue of any other existing law is excluded from the bankrupt's estate.
- (c) On service on the bankrupt of a notice under this section, the property to which the notice relates will vest in the trustee as part of the bankrupt's estate and the trustee's title to that property has relation back to the time at which the property was acquired by or devolved upon the bankrupt.
- (d) Whether before or after service of a notice under this section, if:
 - (i) a person acquires possession of property in good faith, for value and without notice of the bankruptcy; or
 - (ii) a banker enters into a transaction in good faith and without such notice,
 the trustee is not entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.
- (e) References in this section to property do not include any property which may be the subject of an order under section 289 as part of the bankrupt's income.

287 Vesting in trustee of certain items of excess value

- (a) Where it appears to the trustee that the realisable value of the whole or any part of a bankrupt's excluded property exceeds the cost of a reasonable replacement for that property or that part of it, the trustee may by notice in writing, claim that property or part of it for the bankrupt's estate.

- (b) On service on the bankrupt of a notice under this section, the property to which the notice relates vests in the trustee as part of the bankrupt's estate, and the trustee's title to that property has relation back to the commencement of the bankruptcy except against a purchaser in good faith for value and without notice of the bankruptcy.
- (c) The trustee must apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any property vested in the trustee under this section and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.
- (d) For the purposes of this section, property is a reasonable replacement for other property if it is reasonably adequate for meeting the needs met by the other property.

288 Time-limit for notice under sections 286 or 287

- (a) Except with the leave of the Court, a notice may not be served:
 - (i) under section 286, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the subject property had been acquired by or had devolved upon the bankrupt;
 - (ii) under section 287, after the end of the period of 42 days beginning with the day on which the subject property first came to the knowledge of the trustee.
- (b) For the purposes of this section:
 - (i) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his or her as trustee to have come to the knowledge of the successor at the same time; and
 - (ii) where paragraph (i) does not apply, anything which comes to the knowledge of a person before he or she is the trustee is deemed to come to his or her knowledge on his or her appointment taking effect or, in the case of the Official Receiver, on his or her becoming trustee.

289 Income payments orders

- (a) The Court may make an order that so much of the bankrupt's income as may be specified in the order, during the period for which the order is in force, be paid for the benefit of the bankrupt's estate under this section.
- (b) An income payments order may be made only on the application of the trustee and before the discharge of the bankrupt.
- (c) An income payments order which would reduce the income of the bankrupt below what appears to be reasonable for meeting the domestic needs of the bankrupt and his or her family must not be made.
- (d) One of the following orders can be made under this section:
 - (i) require the bankrupt to pay the trustee an amount set out in the order; or
 - (ii) require the person making the payment to pay an amount set out in the order directly to the trustee, instead of to the bankrupt.
- (e) Where the Court makes an order under this section it may discharge or vary any order attaching the earnings of the bankrupt under the *Code of Civil Procedure*.

- (f) Sums received by the trustee under an order under this section form part of the bankrupt's estate.
- (g) An income payments order must specify the period during which it is to have effect and that period may not end after the period of three years beginning with the date on which the order is made.
- (h) An income payment order under this section may be varied on the application of the trustee or the bankrupt, whether before or after discharge.
- (i) For the purposes of this section the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or her or to which he or she from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and any payment under a pension scheme.

290 Income payments agreement

- (a) In this section, "income payments agreement" refers to a written agreement between a bankrupt and his or her trustee or between a bankrupt and the Official Receiver which provides that:
 - (i) the bankrupt is to pay to the trustee or Official Receiver an amount equal to a specified part or proportion of the bankrupt's income for a specified period; or
 - (ii) a third person is to pay to the trustee or Official Receiver a specified proportion of money due to the bankrupt by way of income for a specified period.
- (b) An agreement of a kind specified in subsection (a) may be enforced under the law as if it were a provision of an income payments order.
- (c) While an agreement under subsection (a) is in force, the Court may discharge or vary any order attaching the earnings of the bankrupt under the *Code of Civil Procedure*.
- (d) Subsections (f) and (i) of section 289 will apply to an income payments agreement as they apply to an income payments order.
- (e) An agreement under subsection (a) must specify the period during which it is to have effect and that period may not end after the period of three years beginning with the date on which the agreement is made.
- (f) An agreement under subsection (a) may be varied subject to subsection (e):
 - (i) by written agreement between the parties; or
 - (ii) by the Court on an application made by the bankrupt, his or her trustee or the Official Receiver.
- (g) The Court in varying an agreement under subsection (f)(ii):
 - (i) may not vary an income payments agreement so as to include provision of a kind which could not be included in an income payments order; and
 - (ii) must grant an application to vary an income payments agreement if and to the extent that the Court thinks variation necessary to avoid the effect mentioned in subsection 289(c).

291 Acquisition of control by trustee

- (a) Upon his or her appointment, the trustee must take possession of all books, papers and other records which relate to the bankrupt's estate or affairs and which belong to the bankrupt or are in his or her possession or under his or her control.
- (b) A bankrupt is not entitled to assert any privilege from production of books, papers and other records under this section as against the.
- (c) For the purpose of acquiring or retaining possession of the bankrupt's estate, the trustee is in the same position as if he or she were a receiver of property appointed by the Court and the Court may enforce such acquisition or retention accordingly.
- (d) Where any part of the bankrupt's estate consists of stock or shares in a company, shares in a ship or any other property transferable in the books of a company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he or she had not become bankrupt.
- (e) Where any part of the bankrupt's estate consists of one or more enforceable rights of action, they are deemed to have been legally assigned to the trustee but notice of the deemed assignment need not be given except in so far as it is necessary in a case where the deemed assignment is from the bankrupt him or herself for protecting the priority of the trustee.
- (f) Where any goods comprised in the bankrupt's estate are held by any person by way of pawn or other security and no notice has been served in respect of those goods by the trustee under subsection 271(e), the trustee may exercise the bankrupt's right of redemption in respect of any such goods.

292 Obligation to surrender control to trustee

- (a) If any of the following is in possession of any property, books, papers or other records of which the trustee is required to take possession, namely:
 - (i) the Official Receiver;
 - (ii) a person who has ceased to be trustee; or
 - (iii) a person who has been a rehabilitation advisor in respect of the bankrupt as a unincorporated MSME under Part VI,
 the Official Receiver or that person must deliver up possession of the property, books, papers or records to the trustee.
- (b) Any banker or agent of the bankrupt or any other person who holds any property to the account of or for the bankrupt must pay or deliver to the trustee all property in his or her possession or under his or her control which forms part of the bankrupt's estate and which he or she is not by law entitled to retain as against the bankrupt or trustee.
- (c) If any person without reasonable excuse fails to comply with any obligation imposed by this section, he or she is guilty of a contempt of court and liable to a penalty under this Law.

293 Charge on a bankrupt's home

- (a) Where any property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his or her spouse or former spouse is comprised in the bankrupt's estate and the trustee is unable for the time being to realise that

property, the trustee may apply to the Court for an order imposing a charge on the property for the benefit of the bankrupt's estate.

- (b) If the Court imposes a charge on any property under this section, the benefit of that charge will be comprised in the bankrupt's estate and is enforceable for the payment of any amount which is payable out of the estate otherwise than to the bankrupt, up to the value specified in the order made under subsection (a); being the value of the bankrupt's interest in the property at the time of the order.
- (c) In subsection **Error! Reference source not found.** the "charged value" means the amount specified in the charging order as the value of the debt charged on the property at the date of the order.
- (d) An order under this section made in respect of property vested in the trustee must provide for the property to cease to be comprised in the bankrupt's estate and to vest in the bankrupt, without affecting the charge and any prior charge.

294 Low value home and application for possession or charge

- (a) This section applies where property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of the bankrupt, the bankrupt's spouse, or a former spouse of the bankrupt, and the trustee applies for an order for the sale of the property, for an order for possession of the property or for an order under section 293 in respect of the property.
- (b) The Court must dismiss the application if the value of the bankrupt's interest in the property is below the amount prescribed in the Rules for the purposes of this section.

295 Powers of trustee

- (a) The trustee may exercise any of the following powers with the permission of the creditor's committee or the Court:
 - (i) the power to carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and without contravening any provisions of this Law;
 - (ii) the power to bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate;
 - (iii) the power to bring legal proceedings under sections 360 or 361;
 - (iv) the power to accept as the consideration for the sale of any property comprised in the bankrupt's estate, a sum of money payable at a future time subject to such stipulations as the creditors' committee or the Court thinks fit;
 - (v) the power to mortgage any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his or her debts;
 - (vi) the power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power; and
 - (vii) the power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of debts of the bankrupt.

- (b) The trustee may exercise any of the following powers without the permission of the creditor's committee or the Court:
 - (i) the power to sell any part of the property comprised in the bankrupt's estate;
 - (ii) the power to refer to arbitration or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt;
 - (iii) the power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.
 - (iv) the power to give receipts for any money received by him or her to the person who made the payment; and
 - (v) the power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his or her estate.
- (c) With the permission of the creditors' committee or the Court, the trustee may appoint the bankrupt:
 - (i) to superintend the management of his or her estate or any part of it;
 - (ii) to carry on his or her business for the benefit of his or her creditors; or
 - (iii) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.
- (d) A permission given for the purposes of subsection (a) or (c) will not be a general permission but must relate to a particular exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.
- (e) Where an act has been done without the permission required by subsection (a) or (c), the Court or the creditor's committee may ratify what the trustee has done for the purpose of enabling him or her to meet his or her expenses out of the bankrupt's estate. However, the act must not be ratified if it is not shown that the trustee has acted in a case of urgency and has sought its ratification without undue delay.
- (f) Where the trustee (not being the Official Receiver) in exercise of the powers conferred on him or her by this Part, disposes of any property comprised in the bankrupt's estate to an associate and the bankrupt, he or she must, if there is a creditor's committee, give notice to the committee of that exercise of that power.
- (g) The trustee may at any time summon a general meeting of the creditors if he or she thinks fit.
- (h) The trustee must summon a general meeting of the creditors if he or she is requested to do so by one or more of the creditors of the bankrupt and the request is made with the concurrence of not less than one-tenth, in value of the total debt of the creditors.
- (i) Nothing in this Law is to be construed as restricting the capacity of the trustee to exercise any of his or her powers outside the Union.

*Disclaimer of onerous property***296 Disclaimer (general power)**

- (a) The trustee may disclaim any onerous property by the giving of a notice in the form prescribed in the Rules and may do so even if he or she has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.
- (b) The following is onerous property for the purposes of this section:
 - (i) any unprofitable contract;
 - (ii) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (c) A disclaimer under this section:
 - (i) applies to the rights, interests and liabilities of the bankrupt in or in respect of the property disclaimed as from the date of the disclaimer; and
 - (ii) discharges the trustee from all personal liability in respect of that property as from the commencement of his or her trusteeship,

but does not affect the rights or liabilities of any other person except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability.
- (d) A notice of disclaimer must not be given under this section in respect of any property that has been claimed under section 286 or section 287, except with the leave of the Court.
- (e) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

297 Notice requiring trustee's decision

- (a) Notice of disclaimer must not be given under section 296 in respect of any property if:
 - (i) a person interested in the property has applied in writing to the trustee or one of his or her predecessors as trustee requiring the trustee or that predecessor to decide whether he or she will disclaim or not; and
 - (ii) the period of 28 days beginning with the day on which that application was made has expired without a notice of disclaimer having been given under section 296 in respect of that property.
- (b) The trustee is deemed to have adopted any contract under this section which he or she is not entitled to disclaim.

298 Disclaimer of leaseholds

- (a) The disclaimer of any leasehold property does not take effect if a copy of the disclaimer has not been served on every person claiming under the bankrupt as under lessee or mortgagee.
- (b) In addition, this section does not apply if no application under section 300 is made with respect to the property within the period of 14 days beginning with the day

on which the last notice served under this subsection was served; or where such an application has been made, the Court directs that the disclaimer is to take effect.

- (c) Where the Court gives a direction under subsection (b), it may also make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease, instead of or in any order it makes under section 300.

299 Disclaimer of dwelling house

- (a) Without prejudice to section 300, the disclaimer of any property in a dwelling house does not take effect if a copy of the disclaimer has not been served on every person in occupation of, or claiming a right to occupy, the dwelling house
- (b) And if no application under section 300 is made with respect to the property within the period of 14 days beginning with the day on which the last notice served under this section was served it shall not take effect, where such an application has been made, the Court may direct that the disclaimer is to take effect.

300 Court's powers in respect of disclaimed property

- (a) This section and section 301 apply where the trustee has disclaimed property under section 296.
- (b) An application may be made to the Court under this section by:
 - (i) any person who claims an interest in the disclaimed property;
 - (ii) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer; or
 - (iii) where the disclaimed property is a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (c) On an application under this section, the Court may make an order on such terms as it thinks fit, vesting the disclaimed property in, or for its delivery to:
 - (i) a person entitled to it or a trustee for such a person;
 - (ii) a person subject to such a liability as is mentioned in paragraph (ii) subsection (b) or a trustee for such a person; or
 - (iii) where the disclaimed property is a dwelling house, any person who at the time when the bankruptcy petition was presented was in occupation of or entitled to occupy the dwelling house.
- (d) The Court must not make an order by virtue of paragraph (ii) subsection (c) except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (e) The effect of any order under this section will be taken into account in assessing for the purposes of subsection 296(e) the extent of any loss or damage sustained by any person in consequence of the disclaimer.
- (f) An order under this section vesting property in any person is deemed to be a legal transfer and need not be completed by any conveyance, assignment or transfer.

301 Court's powers in relation to disclaimer of leaseholds

- (a) The Court may not make an order under section 300 vesting leasehold property in any person, except on terms making that person:
 - (i) subject to the same liabilities and obligations as the bankrupt was subject to under the lease on the day the bankruptcy petition was presented; or
 - (ii) if the Court thinks fit, subject to the same liabilities and obligations as that person would be subject to if the lease had been assigned to him or her on that day.
- (b) For the purposes of an order under section 300 relating to only part of any property comprised in a lease, the requirements of subsection (a) apply as if the lease comprised only the property to which the order relates.
- (c) Where subsection (a) applies and no person is willing to accept an order under section 300 on the terms required by that subsection, the Court may by order under that section, vest the estate or interest of the bankrupt in the property in any person who is liable to perform the lessee's covenants in the lease, whether personally or in a representative capacity and whether alone or jointly with the bankrupt.
- (d) Under this section, the Court may vest that estate and interest in such a person, freed and discharged from all estates, encumbrances and interests created by the bankrupt.
- (e) Where subsection (a) applies and a person declines to accept any order under section 300, that person will be excluded from all interest in the property.

*Claims against and distribution of bankrupt's estate***302 Proof of debts**

- (a) A proof of any debt or claim against a bankrupt's estate by a secured or unsecured creditor of the bankrupt must be lodged and adjudicated as provided in the Rules.
- (b) Where a debt or claim bears interest, that interest is provable as part of the debt or claim except in so far as it is payable in respect of any period after the commencement of the bankruptcy.
- (c) The trustee must estimate the value of any debt or claim against the estate which does not bear a certain value by reason of its being subject to any contingency or contingencies or for any other reason.
- (d) Where the value of a debt or claim against the estate is estimated by the trustee under subsection (c), the amount provable in the bankruptcy in respect of the debt or claim is the amount of the estimate.

303 Mutual credit and set-off

- (a) This section applies where there have been mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove a debt or claim against the estate before the commencement of the bankruptcy.
- (b) An account must be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party must be set off against the sums due from the other.

- (c) Sums due from the bankrupt to another party must not be included in the account taken under subsection (b) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.
- (d) Only the balance of the account taken under subsection (b) is provable as a debt or claim against the estate or to be paid to the trustee as part of the bankrupt's estate.

304 Distribution by means of dividend

- (a) Whenever the trustee has sufficient funds in hand he or she must declare and distribute dividends among the creditors in respect of the debts or claims which they have respectively proved.
- (b) When assessing the sufficiency of funds for the purpose of subsection (a), the trustee must give priority to the sum which must be retained to meet the expenses of the bankruptcy.
- (c) The trustee must give notice of his or her intention to declare and distribute a dividend.
- (d) A notice given under subsection (c) must contain details of how it is proposed to distribute the dividend and must contain the particulars of the bankrupt's estate as prescribed.
- (e) When calculating and distributing a dividend, the trustee must make provision for:
 - (i) any debts or claims which are due to persons who may not have had sufficient time to tender and establish their proofs by reason of the distance of their place of residence;
 - (ii) any debts or claims which have not yet been determined; and
 - (iii) disputed proofs and claims.

305 Claims by unsatisfied creditors

- (a) A creditor who has not proved his or her debt or claim before the declaration of any dividend is not entitled to disturb the distribution of that dividend or any other dividend declared before his or her debt was proved, by reason that he or she has not participated in it, but:
 - (i) when he or she has proved that debt, he or she is entitled to be paid any dividend or dividends which he or she has failed to receive out of any money for the time being available for the payment of any further dividend; and
 - (ii) any dividend or dividends payable under paragraph (i) must be paid before that money is applied to the payment of any such further dividend.
- (b) No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend the Court may, if it thinks fit, order him or her to pay it and also to pay, out of his or her own money:
 - (i) interest on the dividend, at such rate as the Court thinks just, from the time it was withheld, and
 - (ii) the costs of the proceedings in which the order to pay is made.

306 Distribution of property in specie

- (a) Without prejudice to sections 302 to 305 and with the permission of the creditors' committee or the Court, the trustee may divide any property in its existing form amongst the creditors according to its estimated value, where that property cannot be readily or advantageously sold because of its peculiar nature or other special circumstances.
- (b) A permission given for the purposes of subsection (a) must not be a general permission but must relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (a) has been given.
- (c) Where the trustee has done anything without the permission required by subsection (a), the Court or the creditors' committee may ratify what the trustee has done for the purpose of enabling him or her to meet his or her expenses out of the bankrupt's estate, but the committee must not do so unless it is satisfied that the trustee acted in a case of urgency and has sought its ratification without undue delay.

307 Preferential debts

The preferential debts of a bankrupt are as follows:

- (a) the expenses of the bankruptcy;
- (b) employees' entitlements; and
- (c) other debts as may be prescribed by the Rules.

308 Priority of debts

- (a) In the distribution of the bankrupt's estate, the preferential debts of the bankrupt must be paid in priority to other debts.
- (b) Preferential debts rank equally between themselves after the expenses of the bankruptcy and must be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (c) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, must be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.
- (d) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (c) must be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.
- (e) The rate of interest payable under subsection (d) in respect of any debt is the rate applicable to that debt apart from the bankruptcy or, in the absence of evidence of such a rate, such rate as the trustee thinks reasonable having regard to the size and nature of the debt and market rates for such debts at the time.
- (f) This section and the next are without prejudice to any provision of this Law or any other law under which the payment of any debt or the making of any other payment is to have a particular priority or to be postponed in the event of bankruptcy.

309 Debts to spouse

- (a) This section applies to debts owed in respect of credit provided by a person who was the bankrupt's spouse at the commencement of the bankruptcy, whether or not he or she was the bankrupt's spouse at the time the credit was provided.
- (b) Such debts:
 - (i) rank in priority after the debts and interest required to be paid in pursuance of subsections 308(d) and 308(e) of section 308; and
 - (ii) are payable with interest at the rate specified in subsection 308(e) in respect of the period during which they have been outstanding since the commencement of the bankruptcy,

and the interest payable under paragraph (ii) of sub section(b) has the same priority as the debts on which it is payable.

310 Final distribution

- (a) When the trustee has realised all the bankrupt's estate or the trustee believes the majority of it can be realised without needlessly protracting the bankruptcy, he or she will give notice of his or her intention to declare a final dividend and no further dividend will be declared in the manner prescribed in the Rules.
- (b) The notice under subsection (a) must contain the particulars prescribed in the Rules and require claims against the bankrupt's estate to be submitted by a "final date" specified in the notice.
- (c) The Court may postpone the final date in the notice.
- (d) After the final date, the trustee must:
 - (i) pay any outstanding expenses of the bankruptcy out of the bankrupt's estate; and
 - (ii) if he or she intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved in the bankruptcy.
- (e) If a surplus remains after payment in full of all the bankrupt's creditors, including any interest entitlements, and the payment of the expenses of the bankruptcy, the bankrupt is entitled to the surplus.

311 Final meeting

- (a) This section applies where:
 - (i) it appears to the trustee that the administration of the bankrupt's estate in accordance with this Part is for practical purposes complete; and
 - (ii) the trustee is not the Official Receiver.
- (b) The trustee must summon a final general meeting of the bankrupt's creditors which will:
 - (i) receive the trustee's report of his or her administration of the bankrupt's estate; and
 - (ii) determine whether the trustee should cease his or her duties under section 279.

- (c) The trustee may give the notice summoning the final general meeting at the same time as giving notice under subsection 310(a); but, if the creditors' final meeting is summoned for an earlier date, that meeting must be adjourned until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.
- (d) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the final meeting of creditors.

312 Saving for bankrupt's home

- (a) This section applies where:
 - (i) there is comprised in the bankrupt's estate property consisting of an interest in a dwelling house which is occupied by the bankrupt or by his spouse or former spouse; and
 - (ii) the trustee has been unable to realise that property for any reason.
- (b) The trustee must not summon a final meeting of creditors under section 311 unless either:
 - (i) the Court has made an order under section 293 imposing a charge on that property for the benefit of the bankrupt's estate; or
 - (ii) the Court has declined, on an application under section 294, to make such an order.

Supplemental provisions

313 Duties of bankrupt in relation to trustee

- (a) The bankrupt must:
 - (i) give to the trustee such information as to his or her affairs;
 - (ii) give assistance to the trustee during the bankruptcy process; and
 - (iii) do all such other things,

as the trustee may for the purposes of carrying out his or her functions under any of this Part reasonably require.
- (b) Where at any time after the commencement of the bankruptcy, any property is acquired by, or devolves on, the bankrupt or there is an increase of the bankrupt's income, the bankrupt must give the trustee notice of that event within 5 business days.
- (c) Subsection (a) applies to a bankrupt after his or her discharge.
- (d) If the bankrupt fails to comply with any obligation imposed by this section without reasonable excuse, he or she is guilty of a contempt of court and liable to a penalty under this Law.

314 Stay of distribution in case of second bankruptcy

- (a) This section and section 315 apply where a bankruptcy order is made against an undischarged bankrupt, and in both sections:
 - (i) "the later bankruptcy" means the bankruptcy arising from the abovementioned order;

- (ii) "the earlier bankruptcy" means the bankruptcy from which the bankrupt has not been discharged at the commencement of the later bankruptcy; and
 - (iii) "the existing trustee" means the trustee of the bankrupt's estate for the purposes of the earlier bankruptcy.
- (b) Without prejudice to section 270, after the existing trustee has been given notice of the presentation of the petition of the later bankruptcy, any distribution or other disposition by him or her of anything to which the next subsection applies is void if made after the giving of the notice, except to the extent that it was made with the consent of the Court or is or was subsequently ratified by the Court.
- (c) This subsection applies to:
- (i) any property which is vested in the existing trustee under section 286(c);
 - (ii) any money paid to the existing trustee in pursuance of an income payments order under section 289; and
 - (iii) any property or money which is or represents the proceeds of sale or the application of property or money falling within paragraph (i) or (ii) of this subsection.

315 Adjustment between earlier and later bankruptcy estates

- (a) With effect from the commencement of the later bankruptcy, any assets or money to which section 314(c) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate, is to be treated as comprised in the bankrupt's estate.
- (b) Any sums which in pursuance of an income payments order under section 289 are payable after the commencement of the later bankruptcy to the existing trustee will form part of the bankrupt's estate for the purposes of the later bankruptcy, and the Court may give such consequential directions for the modification of the order as it thinks fit.
- (c) In distributing anything comprised in a bankrupt's estate by virtue of subsection (a) or (b) any bankruptcy expenses incurred by the existing trustee in relation to the earlier bankruptcy must be paid in priority.
- (d) Except as provided above and in section 314, property which is, or by virtue of section 287 is capable of being comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, must not be comprised in his or her estate for the purposes of the later bankruptcy.
- (e) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier one, are not to be creditors of the bankrupt in the later bankruptcy in respect of the same debts, but the existing trustee may prove in the later bankruptcy for:
 - (i) the unsatisfied balance of the debts provable against the bankrupt's estate in the earlier bankruptcy, including any debt under this subsection;
 - (ii) any interest payable on that balance; and
 - (iii) any unpaid expenses of the earlier bankruptcy.
- (f) Any amount provable under subsection (e) may only be paid after all the other debts provable in the later bankruptcy and after interest on those debts have first been paid in full.

DIVISION 6 COMPOSITION OR ARRANGEMENT WITH CREDITORS

316 Proposal for composition or arrangement

Where a bankrupt desires to make a proposal to his or her creditors for a composition in satisfaction of his or her debts or an arrangement of his or her affairs, he or she may provide to the trustee, a proposal in writing signed by him or her, setting out the terms of the proposed composition or arrangement and particulars of any guarantors or securities forming part of the proposal.

317 Trustee to report on proposal

- (a) A proposal lodged with a trustee under section 316 must set out sufficient detail for the trustee to assess whether the proposal would be beneficial for the bankrupt and his or her creditors and include such details as may be required by the Rules.
- (b) On receiving a proposal under section 316, the trustee must prepare a report stating his or her view that a composition or arrangement based on the proposal would or would not be beneficial for the bankrupt and his or her creditors and whether the proposal is likely to be approved at a meeting of the creditors of the bankrupt.

318 Application in respect of the proposed composition or arrangement

- (a) If satisfied that the proposal complies with the requirements of this Division and the Rules, the trustee must file with the Court:
 - (i) the proposed composition or arrangement;
 - (ii) the report prepared by him or her under subsection 317(b);
 - (iii) an application for an order to call a meeting of creditors to consider the proposal.
- (b) On hearing an application filed under subsection (a), the Court must make orders and give directions for the calling of a meeting of the bankrupt's creditors if it is satisfied that the proposal would be beneficial to the bankrupt and his or her creditors and has reasonable prospects of being approved at a creditors' meeting.

319 Creditors' meeting

- (a) Unless otherwise ordered or directed by the Court:
 - (i) the trustee must convene a meeting ordered under section 318 within 21 days from the date of the order; and
 - (ii) the meeting must be convened and conducted in accordance with the Rules and this section.
- (b) The trustee will chair the creditors' meeting.
- (c) The bankrupt must attend the creditors' meeting.
- (d) The proposed composition or arrangement will be approved by the meeting if a resolution to that effect is voted for by creditors present personally or by proxy and having not less than 75 per cent of the total value of debts or claims which can proven against the bankrupt's estate.
- (e) The meeting may approve a proposed composition or arrangement with modifications, but only if the bankrupt has consented to such modifications.

- (f) Where any proposal or any modification adversely affects certain creditors, including secured creditors, it must be approved by the votes of creditors who have at least 75 percent of the total amount of the debts or claims and who are present, personally or by proxy.

320 Report to the Court

- (a) The trustee must make a report of the result of the creditors' meeting and submit it to the Court, along with an application for orders and directions in respect of the proposed composition or arrangement.
- (b) The trustee must serve a copy of the application and report filed under subsection (a) on the bankrupt and on the creditors who were entitled to be given notice of the creditors' meeting.
- (c) Where the creditors' meeting convened under section 319 declined to approve the proposal, the Court must dismiss the application filed under subsection (a).
- (d) Where the creditors' meeting convened under section 319 approved the proposal and the Court considers that the proposal or amended proposal would be beneficial to the bankrupt and his or her creditors, it may approve the composition or arrangement and give such orders or directions as may be necessary and appropriate for its implementation.
- (e) Any of the parties served with the application and report under subsection (b) may attend and object to orders in Court on the grounds that:
 - (i) the composition or arrangement unfairly prejudices his or her interests or those of any other creditors; or
 - (ii) there has been a material irregularity in the convening and conduct of the creditors' meeting.
- (f) The Court may make orders or give directions for the convening of a further creditors' meeting if it thinks fit.

321 Effect of Approval

- (a) The composition or arrangement approved under section 320 binds the bankrupt and every creditor with a provable debt.
- (b) The approval of a composition or arrangement under section 320 does not:
 - (i) except with the consent of the creditors to whom the debt is due, release the bankrupt from a provable debt that would not be released by his or her discharge from bankruptcy; or
 - (ii) release any other person from any liability from which he or she would not be released by the discharge of the bankrupt.
- (c) If the composition or arrangement is approved by creditors at a meeting convened under section 319 and by order of the Court under subsection 320(f) the bankruptcy will be annulled on the date of the making of the order.

DIVISION 7

EFFECT OF BANKRUPTCY ON CERTAIN RIGHTS, TRANSACTIONS, ETC.

Rights under trusts of land

322 Rights under trusts of land

- (a) Any application by a trustee for an order for the sale of land that is the subject of a trust must be made to the Court having jurisdiction.

- (b) On such an application under subsection (a), the Court must make such order as it thinks just and reasonable having regard to:
 - (i) the interests of the creditors;
 - (ii) where the application is made in respect of land which includes a dwelling house which is the home of the bankrupt or the bankrupt's spouse or former spouse:
 - (A) the conduct of the spouse or former spouse so far as it has contributed to the bankruptcy;
 - (B) the needs and financial resources of the spouse or former spouse;
 - (C) the needs of any children; and
 - (iii) all the circumstances of the case other than the needs of the bankrupt.
- (c) Where such an application is made after the end of the period of one year beginning with the first vesting under this Part of the bankrupt's estate in a trustee, the Court must give priority to the interests of the bankrupt's creditors over all other considerations, unless the circumstances of the case are exceptional.

Rights of occupation

323 Rights of occupation of bankrupt's spouse

- (a) On any application by a bankrupt's spouse or former spouse in respect of occupation of the bankrupt's property, the Court hearing the application must have regard to:
 - (i) the interests of the creditors;
 - (ii) the conduct of the spouse or former spouse so far as it has contributed to the bankruptcy;
 - (iii) the needs and financial resources of the spouse or former spouse;
 - (iv) the needs of any children; and
 - (v) all the circumstances of the case other than the needs of the bankrupt.
- (b) Where such an application is made after the end of the period of one year beginning with the first vesting under this Part of the bankrupt's estate in a trustee, the Court must give priority to the interests of the bankrupt's creditors over all other considerations unless the circumstances of the case are exceptional.

324 Rights of occupation of bankrupt

- (a) This section applies where:
 - (i) a person who is beneficially entitled to occupy a dwelling house is adjudged bankrupt; and
 - (ii) any persons under the age of 18 with whom that person had at some time occupied that dwelling house had their home with that person at the time when the bankruptcy petition was presented and at the commencement of the bankruptcy.

- (b) The bankrupt has the following rights:
 - (i) if in occupation, a right not to be evicted or excluded from the dwelling house or any part of it, except with the leave of the Court; and
 - (ii) if not in occupation, a right to enter into and occupy the dwelling house with the leave of the Court.
- (c) On such an application, the Court must make such order as it thinks just and reasonable having regard to the interests of the creditors, to the bankrupt's financial resources, to the needs of the children and to all the circumstances of the case other than the needs of the bankrupt.
- (d) Where such an application is made after the end of the period of one year beginning with the first vesting under this Part of the bankrupt's estate in a trustee, the Court must give priority to the interests of the bankrupt's creditors over all other considerations unless the circumstances of the case are exceptional.

Adjustment of certain prior transactions, etc.

325 Avoidance of general assignment of book debts

- (a) This section applies where a person engaged in any business repays to another person of his or her existing or future book debts, or any class of them, and is subsequently adjudged bankrupt.
- (b) The assignment of book debts which were not paid before the presentation of the bankruptcy petition is void.
- (c) For the purposes of subsections (a) and (b):
 - (i) "assignment" includes an assignment by way of security or charge on book debts; and
 - (ii) "general assignment" does not include:
 - (A) an assignment of book debts from specified debtors or of debts becoming due under specified contracts; or
 - (B) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

326. Contracts to which the bankrupt is a party

- (a) The following Section applies where a contract has been made with a person who is subsequently adjudged bankrupt.
- (b) On the application of any other party to the contract, the Court may make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.
- (c) Any damages payable by the bankrupt by virtue of an order of the Court under this section are provable as a debt or claim against the bankrupt's estate.
- (d) Where an undischarged bankrupt is a party to any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

327 Enforcement procedures

- (a) Where the creditor of any person who is adjudged bankrupt has, before the commencement of the bankruptcy:
 - (i) issued execution against the goods or land of the bankrupt; or
 - (ii) attached a debt due to the bankrupt from another person,

that creditor is not entitled to retain the benefit of the execution or attachment, or any sums paid to avoid it, as against the Official Receiver or trustee of the bankrupt's estate if the execution or attachment was not completed, or the sums were not paid.
- (b) Where any goods of a person have been taken in execution and notice is given to the officer charged with the execution before the completion of the execution by the person that that person has been adjudged bankrupt, then the officer charged with the execution must deliver the goods and any money seized or recovered in part satisfaction of the execution to the Official Receiver or trustee of the bankrupt's estate.
- (c) The costs of the execution will be a first charge or lien on the goods or money so delivered and the Official Receiver or trustee may sell the goods for the purpose of satisfying that charge or lien.
- (d) Where under an execution in respect of a judgment, the goods of any person are sold or money is paid in order to avoid a sale and before the end of the period of 14 days beginning with the day of the sale or payment, the officer charged with the execution is given notice that a bankruptcy petition has been presented in relation to that person and a bankruptcy order is or has been made on that petition, the proceeds of sale or money paid, after deducting the costs of execution, will be comprised in the bankrupt's estate in priority to the claim of the execution creditor.
- (e) In the case of the sum set out in subsection **Error! Reference source not found.** exceeding the sum for which judgement has been subject to an execution, the officer charged with the execution:
 - (i) must not dispose of the balance at any time within the period of 14 days so mentioned or while there is pending a bankruptcy petition of which he or she has been given notice under that subsection **Error! Reference source not found.**; and
 - (ii) must pay that balance where it is comprised in the bankrupt's estate to the Official Receiver or to the trustee of that estate.
- (f) The rights conferred by subsections (a) to (d) on the Official Receiver or the trustee may be set aside by the Court in favour of the creditor who has issued the execution or attached the debt to such extent and on such terms as it thinks fit.
- (g) Nothing in this section entitles the trustee of a bankrupt's estate to claim goods from a person who has acquired them in good faith under a sale by an officer charged with an execution.
- (h) Neither subsection (b) nor subsection (d) applies in relation to any execution against property which has been acquired by or has devolved upon the bankrupt since the commencement of the bankruptcy. However, those subsections apply if after the execution is issued and before it is completed:
 - (i) the property has been or is claimed for the bankrupt's estate under section 286; and

- (ii) a copy of the notice given under section 286 has been or is served on the officer charged with the execution.

328 Claim for rent

A landlord or other person to whom rent is payable may prove for rent due to him or her from the bankrupt's estate, but only for 6 months' rent accrued before the commencement of the bankruptcy.

329 Apprenticeships

- (a) This section applies where:
 - (i) a bankruptcy order is made in respect of an individual to whom another individual was an apprentice at the time when the petition on which the order was made was presented; and
 - (ii) the bankrupt or the apprentice gives notice to the trustee terminating the apprenticeship.
- (b) The indenture of apprenticeship will be discharged with effect from the commencement of the bankruptcy.

330 Unenforceability of liens on books

- (a) An execution against any of the books, papers or other records of a bankrupt by an officer in charge of execution is unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the Official Receiver or the trustee of the bankrupt's estate.
- (b) Subsection (a) does not apply to documents which give title to property and are held as such.

331 Arbitration agreements to which bankrupt is party

- (a) This section applies where a bankrupt had become party to a contract containing an arbitration agreement before the commencement of his or her bankruptcy.
- (b) If the trustee adopts the contract, the arbitration agreement is enforceable by or against the trustee.
- (c) Even where the trustee in bankruptcy does not adopt the contract, the creditors' committee, the trustee with the consent of the creditors' committee, or any other party to the agreement, may apply to the Court which may order that the matter be referred to arbitration in accordance with the arbitration agreement. :

DIVISION 8 BANKRUPTCY OFFENCES

Preliminary

332 Scheme of this Division

- (a) This Division applies where the Court has made a bankruptcy order on a bankruptcy petition.
- (b) This Division applies whether or not the bankruptcy order is annulled.
- (c) Without prejudice to his or her liability in respect of a subsequent bankruptcy, the bankrupt is not guilty of an offence under this Division in respect of anything done after his or her discharge, but nothing in this Part prevents the institution

of proceedings against a discharged bankrupt for an offence committed before his or her discharge.

- (d) It is not a defence in proceedings for an offence under this Division that that offence was done outside the Union.
- (e) Any person guilty of any offence under this Division is liable to imprisonment of up to 7 years and in addition, a pecuniary penalty of up to 5,000,000 kyats.
- (f) In this Division:
 - (i) references to property comprised in the bankrupt's estate or to property possession of which is required to be delivered up to the Official Receiver or the trustee include any property in respect of which a notice has been given under section 286 or section 287;
 - (ii) "the initial period" means the period between the presentation of the bankruptcy petition and the commencement of the bankruptcy.

333 Defence of innocent intention

Where in the case of an offence under any provision of this Division, a person is deemed not to be guilty of the offence under this section if he or she proves that he or she had no intent to defraud or to conceal his or her affairs.

Wrongdoing by the bankrupt before and after bankruptcy

334 Non-disclosure

- (a) The bankrupt is guilty of an offence if he or she omits to do any of the following and section 333 shall apply:
 - (i) disclose all the property comprised in his or her estate to the Official Receiver or the trustee to the best of his or her knowledge and belief; or
 - (ii) inform the Official Receiver or the trustee of any disposal of any property comprised in his or her estate, stating how, when, to whom and for what consideration the property was disposed of.
- (b) Paragraph (ii) at subsection (a) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his or her family.

335 Concealment of property

- (a) The bankrupt is guilty of an offence if he or she does any of the following and section 333 shall apply:
 - (i) he or she does not deliver up possession to the Official Receiver or trustee or as the Official Receiver or trustee may direct, such part of the property comprised in his or her estate as is in his or her possession or under his or her control;
 - (ii) he or she conceals any debt due to or from him or her or conceals any property the value of which is not less than the amount prescribed in the Rules or retains possession of any property which he or she is required to deliver up to the Official Receiver or trustee; or
 - (iii) in the 12 months before petition, or in the initial period, he or she did anything which would have been an offence under paragraph (ii) above after the bankruptcy order had been made.

- (b) The bankrupt is guilty of an offence if in the initial period, he or she removes, or removed, any property the value of which was not less than the amount prescribed in the Rules and possession of which he or she has or would have been required to deliver up to the Official Receiver or the trustee and section 333 applies to this offence.
- (c) If the Official Receiver, the trustee or the Court require the bankrupt to:
 - (i) account for the loss of any substantial part of his or her property incurred in the 12 months before petition or in the initial period; or
 - (ii) give a satisfactory explanation of the loss incurred,
 and the bankrupt fails to comply with such requirement without reasonable excuse, he or she is guilty of an offence.

336 Concealment of books and papers; falsification

- (a) The bankrupt is guilty of an offence if he or she does not deliver up to the Official Receiver or the trustee or as the Official Receiver or trustee may direct, all books, papers and other records of which he or she has possession or control and which relate to his or her estate or his or her affairs and section 333 applies to this offence.
- (b) The bankrupt is guilty of an offence if he or she does any of the following and section 333 shall apply:
 - (i) he or she prevents, or in the initial period prevented, the production of any books, papers or records relating to his or her estate or affairs;
 - (ii) he or she conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any books, papers or other records relating to his or her estate or affairs;
 - (iii) he or she makes, or causes or permits the making of, any false entries in any book, document or record relating to his or her estate or affairs; or
 - (iv) in the 12 months before petition, or in the initial period, he or she did anything which would have been an offence under paragraph (ii) or (iii) above after the bankruptcy order had been made.
- (c) The bankrupt is guilty of an offence if he or she does any of the following and section 333 shall apply:
 - (i) he or she disposes of, or alters, or causes or permits the disposal, or altering of, any book, document or record relating to his or her estate or affairs; or
 - (ii) in the 12 months before petition, or in the initial period, he or she did anything which would have been an offence under paragraph (i) after the bankruptcy order had been made.
- (d) In their application to a trading record subsections (b)(iv) and (c)(ii) will have effect as if the reference to 12 months were a reference to 2 years.
- (e) In subsection (d) "trading record" means a book, document or record which shows or explains the transactions or financial position of a person's business, including:
 - (i) a periodic record of cash paid and received;
 - (ii) a statement of periodic stock-taking; and

- (iii) except in the case of goods sold by way of retail trade, a record of goods sold and purchased which identifies the buyer and seller or enables them to be identified.

337 False statements

- (a) The bankrupt is guilty of an offence if he or she makes or has made any material omission in any statement made under any provision in this Part or in relation to his or her affairs and section 333 applies to this offence.
- (b) The bankrupt is guilty of an offence if:
 - (i) knowing or believing that a false debt has been proved by any person under the bankruptcy, he or she fails to inform the trustee as soon as practicable; or
 - (ii) he or she attempts to account for any part of his or her property by fictitious losses or expenses; or
 - (iii) at any meeting of his or her creditors in the 12 months before petition or at any time in the initial period, he or she did anything which would have been an offence under paragraph (ii); or
 - (iv) he or she has made any false representation or other fraud for the purpose of obtaining the consent of his or her creditors, or any of them, to an agreement with reference to his or her affairs or to his or her bankruptcy.

338 Fraudulent disposal of property

- (a) The bankrupt is guilty of an offence and section 333 shall apply if he or she makes or causes to be made, or has in the period of 5 years ending with the commencement of the bankruptcy made or caused to be made, any gift or transfer of, or any charge on, his or her property.
- (b) The reference to making a transfer of, or charge on, any property includes causing or conniving the disposal of that property.
- (c) The bankrupt is guilty of an offence and section 333 shall apply if he or she conceals or removes, or has at any time before the commencement of the bankruptcy concealed or removed, any part of his or her property after, or within 2 months before the date on which a judgment or order for the payment of money has been obtained against him or her, so that the judgment or order cannot be satisfied.

339 Absconding

The bankrupt is guilty of an offence if he or she does any of the following and section 333 shall apply:

- (a) he or she leaves, or attempts, or makes preparations to leave the Union with any property the value of which is not less than the amount prescribed in the Rules

and possession of which he or she is required to deliver up to the Official Receiver or the trustee; or

- (b) in the 6 months before petition, or in the initial period, he or she did anything which would have been an offence under subsection (a).

340 Fraudulent dealing with property obtained on credit

- (a) A bankrupt is guilty of an offence and section 333 shall apply if, in the 12 months prior to the petition or in the initial period, he or she disposed of any property which he or she had obtained on credit.
- (b) A person is guilty of an offence if, in the 12 months before petition or in the initial period, he or she acquired or received property from the bankrupt knowing or believing:
 - (i) that the bankrupt owed money in respect of the property; and
 - (ii) that the bankrupt did not intend, or was unlikely to be able, to pay the money he or she owed in respect of it.
- (c) A person is not guilty of an offence under subsection (a) or (b) if the disposal, acquisition or receipt of the property was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.
- (d) In determining for the purposes of this section or whether any property is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had to the price paid for the property.
- (e) In this section references to disposing of property include pawning or pledging it; and references to acquiring or receiving property must be read accordingly.

341 Obtaining credit; engaging in business

- (a) A bankrupt is guilty of an offence if:
 - (i) either alone or jointly with any other person, he or she obtains credit without giving the person from whom he or she obtains it the relevant information about his or her status; or
 - (ii) he or she engages in any business under a name other than that in which he or she was adjudged bankrupt without disclosing it to all persons with whom he or she enters into any business transaction.
- (b) The reference to the bankrupt obtaining credit includes the following cases:
 - (i) a hire-purchase agreement or a conditional sale agreement; and
 - (ii) where he or she is paid in advance for the supply of goods or services, whether in money or otherwise.

- (c) For the purposes of subsection (a)(i), the relevant information about the status of the person in question is the information that he or she is an undischarged bankrupt.
- (d) This section applies to the bankrupt after discharge while a bankruptcy restrictions order is in force in respect of him or her.

DIVISION 9 POWERS OF COURT IN BANKRUPTCY

342 Power of arrest

- (a) The Court's power to issue a warrant under subsection (b) include the following circumstances:
 - (i) for the arrest of a debtor or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered under this Part; and
 - (ii) for the seizure of any books, papers, records, money or goods in the possession of a person arrested under the warrant.

In addition, the Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held until such time as the Court may order.

- (b) The powers conferred by subsection (a) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the presentation of the bankruptcy petition or after the issue of a bankruptcy order, it appears to the Court that:
 - (i) there are reasonable grounds for believing that he or she has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his or her debts or his or her appearance to a bankruptcy petition or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or her or any examination of his or her affairs; or
 - (ii) that he or she is about to remove goods with a view to preventing or delaying possession being taken of them by the Official Receiver or the trustee; or
 - (iii) that there are reasonable grounds for believing that he or she has concealed or destroyed, or is about to conceal or destroy, any goods or any books, papers or records which might be of use to his or her creditors in the course of his or her bankruptcy or in connection with the administration of his or her estate; or
 - (iv) that he or she has, without the leave of the Official Receiver or the trustee, removed any goods in his or her possession which exceed in value such sums as may be prescribed in the Rules; or
 - (v) that he or she has failed, without reasonable excuse, to attend any examination ordered by the Court.

343 Seizure of bankrupt's property

- (a) On the application of the Official Receiver or the trustee of a bankrupt's estate at any time after a bankruptcy order has been made, the Court may issue a warrant authorising the person to whom it is directed to seize:
 - (i) any property comprised in the bankrupt's estate which is in the possession or under the control of the bankrupt or any other person who

is required to deliver that property to the Official Receiver or the trustee;
or

- (ii) any books, papers or records relating to the bankrupt's estate which are in the possession or under the control of the bankrupt or any other person who is required to deliver those books, papers or records to the Official Receiver or the trustee.
- (b) Any person executing a warrant under this section may, for the purpose of seizing any property comprised in the bankrupt's estate or any books, papers or records relating to the bankrupt's estate or affairs, break open any premises where the bankrupt, or anything that may be seized under the warrant, is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.
- (c) If, after a bankruptcy order has been made, the Court is satisfied that:
 - (i) any property comprised in the bankrupt's estate is; or
 - (ii) any books, papers or records relating to the bankrupt's estate or affairs are,

concealed in a person's premises, it may issue a warrant authorising any constable or officer of the Court to search those premises for the property, books, papers or records.

344 Inquiry into bankrupt's dealings and property

- (a) At any time after a bankruptcy order has been made, on the application of the Official Receiver or the trustee, the Court may summon to appear before it:
 - (i) the bankrupt or the bankrupt's spouse or former spouse;
 - (ii) any person known or believed to have any property comprised in the bankrupt's estate in his or her possession or to be indebted to the bankrupt;
 - (iii) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property.
- (b) The Court may require any such person as is mentioned in paragraph (ii) or (iii) of subsection (a) to submit a witness statement verified by affidavit to the Court containing an account of his or her dealings with the bankrupt or to produce any documents in his or her possession or under his or her control relating to the bankrupt or the bankrupt's dealings, affairs or property.
- (c) Without prejudice to section 342, this section applies in the following cases where:
 - (i) a person fails to appear before the Court when summoned to do so under this section without reasonable excuse; or
 - (ii) there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding an appearance before the Court under this section.
- (d) For the purpose of bringing that person prescribed in subsection (c) and anything in his or her possession before the Court, the Court may cause a warrant to be issued to a constable or an officer of the Court:
 - (i) for the arrest of that person; and

- (ii) for the seizure of any books, papers, records, money or goods in that person's possession.
- (e) The Court may authorise a person arrested under such a warrant to be kept in custody and anything seized under such a warrant to be held until that person is brought before the Court under the warrant or until such other time as the Court may order the constable or officer of the Court.

345 Court's enforcement powers under section 344

- (a) If, on consideration of any evidence obtained under section 344 or this section, it appears to the Court that any person has in his or her possession any property comprised in the bankrupt's estate, the Court may, on the application of the Official Receiver or the trustee of the bankrupt's estate, order that person to deliver the whole or any part of the property to the Official Receiver or the trustee at such time, in such manner and on such terms as the Court thinks fit.
- (b) If, on consideration of any evidence obtained under section 344 or this section, it appears to the Court that any person is indebted to the bankrupt, the Court may, on the application of the Official Receiver or the trustee of the bankrupt's estate, order that person to pay to the Official Receiver or the trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, as the Court thinks fit.
- (c) The Court may order that any person who would be liable to be summoned to appear before it under section 344 if he or she were within the jurisdiction of the Court, will be examined in any part of the Union irrespective of whether he or she is in or outside the Union.
- (d) Any person who appears or is brought before the Court under section 344 or this section may be examined on oath, either orally or by interrogatories, concerning the bankrupt or the bankrupt's dealings, affairs and property.

346 Where interim receiver is appointed

Sections 344 and 345 apply where an interim receiver has been appointed under section 272 as they apply where a bankruptcy order has been made, as if:

- (a) references to the Official Receiver or the trustee include the interim receiver; and
- (b) references to the bankrupt and to his or her estate include the debtor and his or her property respectively.

347 Power to appoint special manager

- (a) The Court may appoint any person to be the special manager:
 - (i) For matters relevant to a bankrupt's estate: or
 - (ii) For matters relevant to the business of an undischarged bankrupt; or
 - (iii) For matters relevant to the property or business of a debtor where the Official Receiver has been appointed interim receiver under section 272.
- (b) An application under this section may be made by the Official Receiver or the trustee of the bankrupt's estate in any case where it appears to the Official Receiver or trustee that the nature of the estate, property or business, or the

interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

- (c) A special manager shall have such powers as may be entrusted to him or her by the Court.
- (d) In entrusting powers to a special manager under subsection (c), the Court may direct that the special manager shall have the same powers as the Official Receiver, interim receiver or trustee and any act of the special manager will have effect in the same way.
- (e) A special manager appointed under this section must:
 - (i) give such security as may be prescribed in the Rules; and
 - (ii) prepare and keep such accounts as may be prescribed in the Rules.

348 Re-direction of bankrupt's letters, etc

- (a) In making a bankruptcy order, the Court may, on the application of the Official Receiver or the trustee, order the re-direction of a bankrupt's post to be sent or delivered to the Official Receiver or trustee or otherwise to such place as may be specified in the order.
- (b) An order under this section has effect for such period as may be specified in the order, but not exceeding 3 months from the date of the order.

349 Time limits

Where the time for taking any action is limited by any provision in this Part or by the Rules, the Court may extend the time, either before or after it has expired, as it thinks fit.

350 Formal defects

The acts of a trustee of a bankrupt's estate or a special manager, and the acts of the creditors' committee, are valid even where there is a defect in the appointment, election or qualifications of the trustee or manager or, as the case may be, of any member of the committee.

351 Exemption from stamp duty

Stamp duty must not be charged on any document entered into by or on behalf of, or for the benefit of, the bankrupt for which the bankrupt is liable to stamp duty under the Stamp Act. However, the provisions of this Part shall not apply to any matter after a bankrupt has been discharged.

PART IX - OFFICE HOLDERS AND ADJUSTMENTS TO PRIOR TRANSACTIONS

DIVISION 1 MANAGEMENT BY REHABILITATION MANAGERS, LIQUIDATORS, ETC.

352 Appointment to of 2 or more insolvency practitioners

If 2 or more insolvency practitioners are appointed to any of the roles referred to in section 7, a function or power of the role may be performed or exercised by any one of them, or by any 2 or more of them together, except so far as the resolution, instrument or Court order appointing them otherwise provides.

353 Getting in the company's property

- (a) In this Division, reference to "office-holder" of a company is limited to the rehabilitation manager, rehabilitation advisor, plan supervisor, receiver, liquidator or provisional liquidator appointed to a company. This section applies in the case of a company where:
 - (i) the company enters rehabilitation under Part V or Part VI;
 - (ii) a receiver is appointed; or
 - (iii) the company is in liquidation; or
 - (iv) a provisional liquidator is appointed.
- (b) Where any person has in his or her possession or control, any property, books, papers or records to which the company appears to be entitled, the Court may require that person to pay, deliver, convey, surrender or transfer the property, books, papers or records to the office-holder.
- (c) An office-holder:
 - (i) who seizes or disposes of any property which is not property of the company and believes, or has reasonable grounds for believing, that he or she is entitled to seize or dispose of that property is not liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by the office-holder's own negligence; and
 - (ii) has a lien on the property, or the proceeds of its sale, for any expenses as were incurred in connection with the seizure or disposal.

354 Duty to co-operate with office-holder

- (a) Each of the persons mentioned in subsection (b) must:
 - (i) give to the office-holder any information concerning the formation, business, dealings, affairs or property of the company as the officeholder may at any time reasonably require; and
 - (ii) meet with the office-holder at such times as the office-holder may reasonably require.
- (b) The persons referred to in subsection (a) are:
 - (i) those who are or have officers of the company;
 - (ii) those who have taken part in the formation of the company at any time within one year before the effective date;

- (iii) those in the employ of the company, or who have been in its employ within a relevant year and are, in the office-holder's opinion, capable of giving information which the office-holder requires; and
 - (iv) in the case of a company being wound up, any person who has earlier acted as an office-holder of the company.
- (c) If a person without reasonable excuse fails to comply with any obligation imposed by this section, he or she is liable to a fine by the Registrar of an amount not exceeding 2,500,000 kyats.

355 Inquiry into company's dealings, etc.

- (a) The Court may, on the application of the office-holder, summon to appear before it:
 - (i) any officer of the company;
 - (ii) any person known or suspected to have in his or her possession any property of the company or supposed to be indebted to the company; or
 - (iii) any person who the Court thinks capable of giving information concerning the formation, business, dealings, affairs or property of the company.
- (b) The Court may require any such person as is mentioned in subsection (a) to submit to the Court an account of his or her dealings with the company or to produce any books, papers or other records in his or her possession or under his or her control relating to the company or the matters mentioned in paragraph (iii) of subsection (a), or to submit to an examination by the Court as to such matters.
- (c) An account submitted to the Court under subsection (b) must be contained in an affidavit.
- (d) Subsections (e) and (f) apply in a case where:
 - (i) a person without reasonable excuse fails to appear before the Court when that person is summoned to do so under this section; or
 - (ii) there are reasonable grounds for believing that a person has absconded, or is about to abscond, for the purposes of avoiding that person's appearance before the Court under this section.
- (e) The Court may, for the purpose of bringing that person and anything in his or her possession before the Court, cause a warrant to be issued:
 - (i) for the arrest of that person; and
 - (ii) for the seizure of any books, papers, records, money or goods in that person's possession.
- (f) The Court may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held until that person is brought before the Court under the warrant or until a time ordered by the Court.

356 Court's enforcement powers under section 355

If it appears to the Court, on consideration of any evidence obtained under section 355 or this section, that any person has in his or her possession any property of the company, the Court may, on the application of the office-holder, order that person to deliver the whole or any part of the property to the office-holder at such time, in such manner and on such terms as the Court thinks fit.

DIVISION 2
REMUNERATION OF INSOLVENCY PRACTITIONERS APPOINTED UNDER THIS LAW

357 Application of Division

This Division applies to all officer-holders except a receiver.

358 Remuneration Determination

- (a) An office-holder is entitled to receive reasonable remuneration for work properly performed by him or her.
- (b) The remuneration of an office-holder must be determined:
 - (i) by resolution of the committee of creditors;
 - (ii) if there is no committee of creditors, by resolution of the insolvent entity's creditors.
- (c) If a determination cannot be reached by resolution under paragraph (i) or (ii), or if the remuneration determination reached by these means is unacceptable to the office-holder, by the Court on the application of the office-holder, or by such other means as may be set out in the Rules.
- (d) A determination of an officer-holder's remuneration may be made in one of the following ways:
 - (i) a fixed sum for work performed or to be performed;
 - (ii) calculated as a percentage of distributions to creditors;
 - (iii) the calculation of remuneration for work performed or to be performed by the fixing of an hourly rate or rates to be charged on a time-cost basis; or
 - (iv) any other means as agreed by the office-holder or ordered by the Court.
- (e) The Registrar may intervene in any application to the Court by an office-holder appointed to a company for a determination of remuneration and the Court may issue an order as it thinks fit; or
- (f) The Rules may make provision for a remuneration determination under this section and the methods of fixing of remuneration under subsection (d).

DIVISION 3
ADJUSTMENT OF PRIOR TRANSACTIONS
(REHABILITATION, LIQUIDATION AND BANKRUPTCY)

359 Date of Application

- (a) For this Division and Division(4) the "review date" of an insolvent entity means any of the following:
 - (i) the "review date" of a company rehabilitation proceeding under Part V is the date the appointment of its rehabilitation manager took effect in accordance with section 47, or if that appointment was followed by liquidation, the date that winding up was taken to have commenced in accordance with section 150;
 - (ii) the "review date" of a Part VI rehabilitation proceeding, subject to the limitations set out in this Division, is the date the appointment of its rehabilitation advisor took effect in accordance with section 101;

- (iii) a company in liquidation, and its “review date” is the date the winding up commenced in accordance with section 150; or
 - (iv) a bankrupt, and his or her “review date” is the date on which the petition on which the bankruptcy order was filed, or if that appointment was immediately preceded by a Part VI Process, the date that the appointment of the rehabilitation advisor took effect in accordance with section 101.
- (b) References to transactions of an insolvent entity are to such transactions entered into prior to that entity entering into its insolvency process.

360 Transactions at an undervalue

- (a) The office-holder may apply to the Court for an order under this section where an insolvent entity at a relevant time:
- (i) makes a gift to a person or otherwise enters into a transaction with that person where no consideration is received; or
 - (ii) enters into a transaction with a person for a consideration the value of which is significantly less than the current value of the consideration provided by the insolvent entity.
- (b) Subject to subsection (c), the Court must make an order restoring the insolvent entity’s position to what it would have been had the transaction not been entered into if one of the following circumstances exist:
- (i) it is satisfied that the insolvent entity was insolvent at the time of the transaction or became insolvent as a consequence of the transaction mentioned in subsection (a); or
 - (ii) the transaction occurred less than 2 months prior to the review date and the person with whom the insolvent entity entered into the transaction was connected with an associate of the insolvent entity.
- (c) The Court must not make an order under this section in respect of a transaction at an undervalue if it is satisfied that:
- (i) the insolvent entity which entered into the transaction did so in good faith, and at the time it did so there were reasonable grounds for believing that the transaction would benefit the insolvent entity; or
 - (ii) the insolvent entity is subject to a Part VI Process and the beneficiary of the transaction was not connected with an associate of the insolvent entity.
- (d) For the purposes of this section, the references to a “relevant time” is a reference to:
- (i) the period of 2 years ending with the review date, unless paragraphs (ii) or (iii) apply; or
 - (ii) the period of 4 years ending with the review date where the beneficiary of the transaction was a person who is connected with an associate of the insolvent entity, unless paragraph (iii) applies; or
 - (iii) the period of 5 years ending with the review date where the office-holder proves that the transaction was entered into with an intent to defeat, hinder or delay creditors from being paid their respective claims.

361 Avoidance of prior transactions

- (a) The office-holder may apply to the Court for an order under this section where an insolvent entity has at a relevant time entered into a transaction with a creditor that results in the creditor receiving from the insolvent entity, in respect of an unsecured debt that is owed to the creditor, more than the creditor would receive from the insolvent entity in respect of the debt if the transaction were set aside and the creditor were to prove for the debt.
- (b) Subject to subsection (d), the Court must make an order for restoring the position to what it would have been if the insolvent entity had not entered into the transaction if it is satisfied that:
 - (i) the insolvent entity was insolvent at the time it entered into the transaction or became insolvent as a consequence of entering into the transaction; or
 - (ii) the transaction occurred less than 2 months prior to the relevant date and the person who received the benefit of the preference was an associate of the insolvent entity.
- (c) The fact that something has been done under the order of a Court does not prevent it from constituting a transaction to which this section applies that may arise from an option given by the order.
- (d) The Court must not make an order under this section in respect of a prior transaction if it is satisfied that:
 - (i) the person received the benefit in good faith and at that time:
 - (A) the person had no reasonable grounds for suspecting that the insolvent entity was insolvent at that time; and
 - (B) a reasonable person in the person's circumstances would have had no such grounds for so suspecting; or
 - (ii) the insolvent entity is subject to a Part VI Process and the beneficiary of the prior transaction was not an associate connected with the insolvent entity.
- (e) For the purposes of this section, the references to a "relevant time" is a reference to:
 - (i) the period of 6 months ending with the review date, unless paragraph (ii) applies; or
 - (ii) the period of 4 years ending with the review date where the beneficiary of the transaction was an associate of is a person who is connected with the insolvent entity.

362 Orders under sections 360 or 361

Without contradicting sections 360(b) and 361(b), a Court may make one of the following orders with respect to a transaction entered into by an insolvent entity under section 360 or 361:

- (a) an order for any property transferred by or as part of the transaction to be vested in the company or trustee in bankruptcy;
- (b) an order to require any property subject to an application to be so vested if it represents in any person's hands the proceeds of sale of property so transferred or of money so transferred;

- (c) an order to release or discharge in whole or in part any security given by the insolvent entity;
- (d) an order to require any person to pay any sums received by him or her by way of benefit from the insolvent entity to the office-holder as the Court may direct;
- (e) an order to provide for any guarantor whose obligations to any person were released or discharged in whole or in part under the transaction, to be under such new or revived obligations as the Court thinks appropriate;
- (f) an order that security be provided for the discharge of any obligation imposed by or arising under the order, and for the security or charge to have the same priority as a security or charge released or discharged in whole or in part under the transaction; and
- (g) in respect of any person:
 - (i) whose property is vested in the company by the order; or
 - (ii) whose property is vested in a trustee in bankruptcy by the order; or
 - (iii) on whom obligations are imposed by the order,

an order that provides for the extent to which that person is to be able to prove in the winding up of the company or bankruptcy of the bankrupt for debts or other liabilities which were released or discharged in whole or in part under or by the transaction.

363 Extortionate credit transactions

- (a) This section applies where the insolvent entity is, or has been a party to a transaction for, or involving the provision of credit to the insolvent entity.
- (b) On the application of the office-holder, the Court may make an order with respect to the provision of credit if the transaction is or was extortionate and was entered into in the period of 3 years ending with the review date.
- (c) For the purposes of this section, having regard to market rates and risk accepted by the person providing the credit, the following transactions must be taken to be an extortionate transaction unless the contrary is proved:
 - (i) exorbitant payments were to be made in respect of the provision of the credit, whether unconditionally or in certain contingencies; or
 - (ii) provision of credit grossly contravened ordinary principles of fair dealing.
- (d) Where money is paid to a bankruptcy trustee by reason of orders made under this section, that money will be comprised in the personal bankrupt's estate.
- (e) An order under this section with respect to any provision of credit as mentioned above may contain one of the following, that is to say:
 - (i) provision setting aside the whole or part of any obligation created by the transaction;
 - (ii) provision otherwise varying all or part of the terms on which any security for the purposes of the transaction is held;
 - (iii) provision requiring any person who is or was a party to the provision of credit to pay to the office-holder any sums received by that person from the insolvent entity;

- (iv) provision requiring any person to surrender to the office-holder any property held by him or her as security for the purposes of the provision of credit;
- (v) provision directing accounts to be taken between any persons in respect of the provision of credit.

364 Avoidance of certain floating charges granted by a company

- (a) A floating charge on a company's undertaking or property created at a relevant time as specified in this Law is invalid except to the extent:
 - (i) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge;
 - (ii) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, and any debt of the company; and
 - (iii) the amount of such interest as is payable on the amount falling within paragraph (i) or (ii).
- (b) The time at which a floating charge is created by a company is a relevant time for the purposes of this section if:
 - (i) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 4 years prior to the review date; or
 - (ii) in the case of a charge which is created in favour of any other person, at a time in the period of 6 months prior to the review date.
- (c) The Court may only make an order in respect of a charge created at a time mentioned in subsection (b)(ii) where it is satisfied that the company was insolvent at the time of the transaction or became insolvent as a consequence of the transaction.
- (d) For the purposes of subsection (a)(i) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which they were supplied to the company.

**DIVISION 4
FURTHER MATTERS**

365 Unenforceability of liens on books, etc.

- (a) This section applies in the case of a company where:
 - (i) the company enters a rehabilitation proceeding under Part V or Part VI;
 - (ii) the company goes into liquidation; or
 - (iii) a provisional liquidator is appointed.

- (b) A lien or other right to retain possession of any of the books, papers or other records of the company is unenforceable to the extent that its enforcement would deny to the office-holder reasonable access to those items.

366 Remote attendance at meetings

The Rules may make provision for remote attendance at:

- (a) any meeting of the creditors, of a debtor, bankrupt or company summoned under this Law or the Rules; or
- (b) any meeting of the members or contributories of a company summoned by the office-holder under this Law or the Rules.

367 Use of websites

The Rules may make provision for any obligation to give, deliver or send any notice, document or information which is imposed on an office-holder by a provision of this Law or the Rules to be satisfied by making the notice, document or information available on a website or other electronic noticeboard or medium.

PART X - CROSS BORDER INSOLVENCY

DIVISION 1 PRELIMINARY

368 Objectives

The objectives of this Part are:

- (a) providing effective mechanisms for dealing with cases of cross-border insolvency in accordance with the model law;
- (b) cooperation between the courts and other competent authorities involved in cases of cross-border insolvency;
- (c) certainty in the legal framework for trade and investment;
- (d) fair and efficient administration of the interests of creditors, debtors and other interested persons;
- (e) protection and maximization of the value of the debtor's assets;
- (f) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

DIVISION 2 GENERAL PROVISIONS

369 Definitions

For the purposes of the provisions of this Part, the following items shall have effect as defined below:

- (a) **"Foreign proceeding"** means a judicial or administrative proceeding in the interests of all or a majority of the creditors in a foreign State, including an interim proceeding, under a law relating to insolvency. This definition includes proceedings in respect of the assets and affairs of the debtor which are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.
- (b) **"Foreign main proceeding"** means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.
- (c) **"Foreign non main proceeding"** means a proceeding, other than a foreign main proceeding, taking place where the debtor has an establishment within the meaning of subsection (f).
- (d) **"Foreign representative"** means a person or body appointed to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding. This term includes a person or entity appointed on an interim basis.
- (e) **"Foreign court"** means a judicial or other authority competent to control or supervise a foreign proceeding.
- (f) **"Establishment"** means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

370 Application of this Part

- (a) This Part applies where:
- (i) assistance is sought by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (ii) assistance is sought in a foreign State in connection with an insolvency proceeding under this Law; or
 - (iii) a foreign proceeding and an insolvency proceeding under this Law in respect of the same debtor are taking place concurrently; or
 - (iv) creditors or other interested persons in a foreign State have an interest in requesting participation in an insolvency proceeding under this Law.
- (b) The provisions of this Part do not apply to a proceeding concerning banks, financial institutions or insurance businesses and any other businesses or entities that the President may prescribe by notification from time to time.

371 International obligations of the Union

If the provisions of this Part conflict with an obligation of the Union arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

372 Competent court or authority

The functions referred to in this Part relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Supreme Court of the Union or any Court to which it may delegate its authority. Authorization of insolvency practitioners registered under this Law to act in a foreign State.

373 An official receiver or insolvency practitioner registered under Part III of this Law is authorized to act in a foreign State on behalf of a proceeding under this Law, as permitted by the applicable foreign law.

374 Public policy exception

A Court which has jurisdiction under this Part may refuse an application if it would be contrary to the public policy of the Union.

375 Additional assistance under other laws

Nothing in this Part limits the power of a Court or an insolvency practitioner to provide additional assistance to a foreign representative under other prevailing laws of the Union.

376 Interpretation

In the interpretation of the provisions of this Part, regard is to be had to its international origins and to the need to promote uniformity in application and the observance of good faith.

**DIVISION 3
ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS
TO COURTS**

377 Right of direct access

A foreign representative is entitled to apply directly to a Court which has jurisdiction under this Part.

378 Limited jurisdiction

The sole fact that an application pursuant to this Part is made to a Court which has jurisdiction under this Part by a foreign representative does not subject the foreign assets and affairs of the debtor to the jurisdiction of the Courts of the Union for any purpose other than the application.

379 Application by a foreign representative to commence a proceeding under this Law

A foreign representative is entitled to apply to commence an insolvency proceeding under this Law if specified conditions are met.

380 Participation of a foreign representative in a proceeding under this Law

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Law.

381 Access of foreign creditors to a proceeding under this Law

- (a) Subject to subsection (b), foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Law as creditors in the Union.
- (b) Subsection (a) does not affect the ranking of claims in a proceeding under this Law, or the exclusion of foreign taxes, social security claims and penalties from such a proceeding. However, with the exception of claims for foreign taxes, social security claims and penalties, claims of foreign creditors shall not be ranked lower than general non-preference claims under this Law.

382 Notification to foreign creditors of a proceeding under this Law

- (a) Whenever under this Law notification is to be given to creditors in the Union, such notification shall also be given to the creditors that do not have addresses in the Union. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (b) Such notification shall be made to the foreign creditors individually, unless the court considers that, under special circumstances, some other form of notification would be more appropriate. No rogatory letters or other similar formality is required.
- (c) A notification of commencement of an insolvency proceeding shall include the following:
 - (i) indicate a reasonable time period and specify the place for filing claims;
 - (ii) indicate whether or not secured creditors need to file their secured claims;
 - (iii) contain any other information required to be included in such a notification pursuant to the existing laws and the orders of the court.

DIVISION 4
RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

383 Application for recognition of a foreign proceeding

- (a) A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

- (b) An application under subsection (a) shall be accompanied by:
 - (i) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (ii) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (iii) in the absence of evidence referred to in paragraphs (i) and (ii), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (c) An application under subsection (a) shall also be accompanied by a statement identifying:
 - (i) all proceedings under this Law in respect of the debtor that are known to the foreign representative; and
 - (ii) all foreign proceedings in respect of the debtor that are known to the foreign representative.
- (d) The documents supplied to the Court must be accompanied by Myanmar language translations of the documents.

384 Presumptions concerning recognition

- (a) If the decision or certificate referred to in subsection 383(b) indicates that the foreign proceeding is a proceeding within the meaning of subsection 369(a) and that the foreign representative is a foreign representative within the meaning of subsection 369(d), the court is entitled to so presume.
- (b) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.
- (c) In the absence of proof to the contrary, the debtor's registered office, or actual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

385 Decision to recognize a foreign proceeding

- (a) Subject to section 374, a foreign proceeding shall be recognized if:
 - (i) the foreign proceeding is a proceeding within the meaning of subsection 369(a);
 - (ii) the foreign representative applying for recognition is a person or body within the meaning of subsection 369(d);
 - (iii) the application meets the requirements of subsection 383(b);
 - (iv) the application has been submitted to the court referred to in section 372.
- (b) The foreign proceeding shall be recognized:
 - (i) a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (ii) as a foreign non main proceeding, if the debtor has an establishment within the meaning of subsection 369(f).

- (c) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (d) The provisions of section 383, 384, 385 and 386 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

386 Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative must immediately inform the Court if the following occurs:

- (a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment;
- (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative;

387 Relief that may be granted upon application for recognition of a foreign proceeding

- (a) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
 - (i) staying execution against the debtor's assets;
 - (ii) entrusting the administration or realization of all or part of the debtor's assets which are located in the Union and are, by their nature perishable, susceptible to devaluation or otherwise in jeopardy, to the foreign representative or another person designated by the court;
 - (iii) any relief mentioned in subsection 389(a)(iii), 389(a)(iv) and 389(a)(vii) of section 389 below.
- (b) Any notice sent under this Law must comply with the provisions of the Rules and other prevailing laws.
- (c) Unless extended under subsection 389(a)(vi), the relief granted under this section terminates when the application for recognition is decided upon.
- (d) The Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

388 Effects of recognition of a foreign main proceeding

- (a) Upon recognition of a foreign main proceeding:
 - (i) commencement or continuation of other actions or insolvency proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (ii) execution against the debtor's assets is stayed;
 - (iii) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (b) The scope, and the modification or termination, of the stay and suspension referred to in subsection (a) are the same as would apply if the stay or suspension arose under this Law.

- (c) Paragraph (a)(i) of subsection (a) does not affect the right to commence other actions or insolvency proceedings except to the extent necessary to preserve a claim against the debtor.
- (d) Subsection (a) does not affect the right to request the commencement of a proceeding under this Law or the right to file claims in such a proceeding.

389 Relief that may be granted upon recognition of a foreign proceeding

- (a) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:
 - (i) staying the commencement or continuation of other actions or insolvency proceedings concerning the debtor's assets, rights, obligations or liabilities, if they have not been stayed under paragraph (i) of subsection 388(a);
 - (ii) staying execution against the debtor's assets which have not been stayed under paragraph (ii) of subsection 388(a);
 - (iii) suspending the transfer, encumbrance or disposal by other means of any assets of the debtor which has not been suspended under paragraph (iii) of subsection 388(a);
 - (iv) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights or obligations;
 - (v) entrusting the administration or realization of all or part of the debtor's assets located in the Union to another person designated by the court or the foreign representative;
 - (vi) extending the period of relief granted under paragraph(i) of subsection 387(a);
 - (vii) granting any additional relief that may be available to an insolvency practitioner under the existing laws of the Union.
- (b) Upon recognition of a foreign proceeding, whether main or non-main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Union to the foreign representative or another person designated by the court, if the court is satisfied that the interests of creditors in the Union are adequately protected.
- (c) In granting relief under this section to a representative of a foreign non main proceeding, the court must be satisfied that the relief relates to assets that, under this Law, should be administered in the foreign non main proceeding or administration of information required in that proceeding.

390 Protection of creditors and other interested persons

- (a) In granting or denying relief under section 387 or 389, or in modifying or terminating relief under subsection (c), the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (b) The court may subject relief granted under section 387 or 389 to conditions it considers appropriate.

- (c) The court may, at the request of the foreign representative or a person affected by relief granted under section 387 or 389, or at its own motion, modify or terminate such relief.

391 Actions to avoid acts detrimental to creditors

- (a) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate actions or make applications to the Court under the provisions of this Law to avoid or otherwise render ineffective acts detrimental to creditors that are available to an insolvency practitioner appointed under this Law.
- (b) When the foreign proceeding is a foreign non main proceeding, the court must be satisfied that the action relates to assets that, under this Law, should be administered in the foreign non main proceeding.

392 Intervention by a foreign representative in proceedings in the Union

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of the Union are met, intervene in any insolvency proceedings in which the debtor is a party.

**DIVISION 5
COOPERATION WITH FOREIGN COURTS AND
FOREIGN REPRESENTATIVES**

393 Cooperation and direct communication between the Court and foreign courts or foreign representatives

- (a) In matters referred to in section 370, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an Insolvency Practitioner appointed under this Law.
- (b) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

394 Cooperation and direct communication between the insolvency practitioner and foreign courts or foreign representatives

- (a) In matters referred to in section 370, a registered insolvency practitioner shall, in the exercise of his or her functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.
- (b) In matters referred to in section 370, a registered insolvency practitioner is entitled, in the exercise of his or her functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

395 Forms of cooperation

Cooperation referred to in section 393 and 394 may be implemented by any of the following appropriate means:

- (a) appointment of a person or body to act at the direction of the court;
- (b) communication of information by any means considered appropriate by the court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings;

- (e) coordination of concurrent proceedings regarding the same debtor;
- (f) cooperation in the manner prescribed by the Supreme Court of the Union from time to time.

DIVISION 6

CONCURRENT INSOLVENCY PROCEEDINGS

396 Commencement of a proceeding under this Law after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under this Law may be commenced only if the debtor has assets in the Union; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the Union and, to the extent necessary to implement cooperation and coordination under sections 393, 394 and 395, to other assets of the debtor that, under this Law, should be administered in that proceeding.

397 Coordination of a proceeding under this Law and a foreign proceeding

Where a foreign proceeding and an insolvency proceeding under this Law are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 393, 394 and 395, and the following shall apply:

- (a) When the proceeding in the Union is taking place at the time the application for recognition of the foreign proceeding is filed:
 - (i) any relief granted under section 387 or 389 must not be inconsistent with the proceeding in the Union;
 - (ii) if the foreign proceeding is recognized in the Union as a foreign main proceeding, section 388 does not apply;
- (b) When the proceeding in the Union commences after recognition, or after the filing of the application for recognition, of the foreign proceeding:
 - (i) any relief in effect under section 387 or 389 shall be reviewed and shall be modified or terminated if inconsistent with the proceeding in the Union;
 - (ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in subsection 388(a) shall be modified or terminated pursuant to subsection 388(b) if inconsistent with the proceeding in the Union;
- (c) In granting, extending or modifying relief granted to a representative of a foreign non main proceeding under this Law, the Court must be satisfied that the relief relates to assets that, under this Law, should be administered in the foreign non main proceeding or administration of information required in that proceeding.

398 Coordination of more than one foreign proceeding

In matters referred to in section 370, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under sections 393, 394, 395 and 396, and the following shall apply:

- (a) any relief granted under section 387 or 389 to a representative of a foreign non main proceeding after recognition of a foreign main proceeding must not be inconsistent with the foreign main proceeding;
- (b) if a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non main proceeding, any relief in

effect under section 387 or 389 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding;

- (c) if, after recognition of a foreign non main proceeding, another foreign non main proceeding is recognized, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

399 Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, for the purposes of commencing a proceeding under this Law, the recognition of a foreign main proceeding shall be taken to be proof that the debtor is insolvent.

400 Manner of payment in concurrent proceedings

Without prejudice to secured claims or rights over property, a creditor who has received, in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State, payment which is proportionately more than the other creditors of the same class, may not receive payment for the same claim in a proceeding under this Law regarding the same debtor.

PART XI – MISCELLANEOUS PROVISIONS

DIVISION 1 JURISDICTION

401 Jurisdiction of the Courts

The Regional or State High Courts shall have jurisdiction under this Law. However, the Supreme Court of the Union may confer jurisdiction on any District court.

402 Offences non-cognizable

Every criminal matter in this Law will be deemed to be non-cognizable offences.

403 Appeals and jurisdiction for appeals

- (a) Any person aggrieved by an order of a court under this Law may file an appeal to the relevant Court within 30 business days from the receipt of such an order.
- (b) The relevant court may allow an appeal to be filed after the expiry of the said period if it is satisfied that there was sufficient cause for not filing the appeal within time, provided that the extended period must not exceed 30 business days.

DIVISION 2 PROCEEDINGS

404 Power of Court to grant relief in certain cases

- (a) If, in any proceeding for negligence, default, contravention (including in respect of an obligation under this Law), breach of duty against a person to whom this section applies or breach of trust, it appears to the Court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he or she has acted honestly and reasonably, including those connected with his or her appointment, he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the Court may relieve him or her, either wholly or partly, from his or her liability on such terms as the Court may think fit.
- (b) Where any person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, contravention (including in respect of an obligation under this Law), breach of duty or breach of trust, that person may apply to the Court for relief, and the Court on any such application will have the same power to relieve him or her as under this section.
- (c) The persons to whom this section applies are the following:
 - (i) the directors of a company;
 - (ii) any other officers of a company;
 - (iii) a bankrupt;
 - (iv) any receiver of property of a company or bankrupt; and
 - (v) any insolvency practitioner appointed to carry out duties under this Law.

405 Time for instituting proceedings

Despite anything in any other applicable law, proceedings for an offence under this Law, may be instituted within the period of 6 years after the act or omission alleged to constitute the offence.

406 Penalty notices

- (a) Where the Registrar has reason to believe that a person has committed an offence under this Law for which the penalty is expressly prescribed, in other words which shall be known thereafter as a prescribed offence under this Section the Registrar may give the person a notice in the prescribed form:
 - (i) setting out the allegation and the prescribed particulars in relation to the prescribed offence;
 - (ii) setting out the penalty determined by the Registrar in respect of the prescribed offence;
 - (iii) specifying that the payment of the stated penalty must be made within 21 days; and
 - (iv) including such other information or statements as may be prescribed in the Rules.
- (b) Subsection (a) does not empower the Registrar:
 - (i) to give an offender more than one notice under subsection (a); or
 - (ii) to give an offender a notice under subsection (a) in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 407.
- (c) A notice under subsection (a) may be given to a natural person either personally, by post or by electronic means.
- (d) Where a notice under subsection (a) is given to a person for an alleged failure to do a particular act or thing:
 - (i) if, within the period specified in the notice, the person pays the stated penalty to the Registrar and does the act or thing, no proceedings may be instituted against the person in respect of the prescribed offence;
 - (ii) if, at the end of the period specified in the notice, the person has paid the stated penalty to the Registrar but has not done the act or thing, no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues;
 - (iii) if, at the end of the period specified in the notice, the person has not paid the stated penalty to the Registrar, proceedings may be instituted against the person in respect of the alleged offence, notwithstanding that after service of the notice, he or she did the act or thing; or
- (e) Where a notice under subsection (a) is given to a person in relation to a prescribed offence, which is not based on an alleged failure to do a particular act or thing:
 - (i) if, within the period specified in the notice, the person pays the stated penalty to the Registrar, no proceedings may be instituted against the person in respect of the prescribed offence; or

- (ii) if, at the end of the period specified in the notice, the person has not paid the stated penalty to the Registrar, proceedings may be instituted against the person in respect of the prescribed offence.
- (f) Where a notice under subsection (a) is given to a person and the person denies that he or she has committed the offence as alleged in the notice or is otherwise not liable to pay the penalty set out in the notice, nothing in this section will prevent him or her from defending any proceeding or prosecution that may be subsequently commenced against the person by the Registrar or seeking the benefit of any entitlement that he or she may have under section 404 or under sections 4144 and 4155.
- (g) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence is not taken to be an admission by that person of the alleged commission of the prescribed offence.
- (h) Except for the prescribed penalties set out in subsections (d)(i) and (ii) and (e)(i), this section does not affect the operation of any provision of this Law or any other applicable law in relation to the institution of proceedings.

DIVISION 3 DECLARATIONS, ORDERS AND INJUNCTIONS

407 Application of Division

This Division applies where a civil action in respect of a specified act or omission under this Law is referred to the Registrar.

408 Declarations of contravention in respect of duties

- (a) If the Court is satisfied that there are grounds to believe that a person has contravened a provision of this Law, it may make a declaration of contravention under this section and:
 - (i) make an order to pay a penalty to the Registrar under section 409; or
 - (ii) make a compensation order under section 410.
- (b) The Registrar may apply the Court to make an order under subsection (a).
- (c) The liquidator of a company may apply for a compensation order for the company, its members and creditors, if the Registrar has not done so under subsection (b).
- (d) Proceedings for an order to be made under subsection (a) may be started no later than 6 years after the contravention.

409 Order to pay penalty to the Registrar

- (a) On the application of the Registrar, a Court may order a person to pay a penalty of up to 10,000,000 kyats if:
 - (i) a declaration of contravention by the person has been made under section 408; and
 - (ii) the contravention materially prejudices the interests of the company, its members or creditors.

- (b) The penalty is a civil debt payable to the Registrar on the Union's behalf. If payment is not made, the Registrar may seek payment as if it were an income tax debt.

410 Compensation orders

- (a) On the application of a liquidator, a Court may order a person to compensate a company for damage suffered by the company if:
 - (i) a declaration of contravention by the person has been made under section 408; and
 - (ii) the damage resulted from the contravention.
- (b) The order must specify the amount of the compensation.
- (c) In determining the damage suffered by the company for the purposes of making a compensation order, the Court may have regard to profits made by any person resulting from the contravention or the offence.
- (d) A compensation order may be enforced as if it were a judgment of the Court.

411 Powers to grant injunctions

- (a) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
 - (i) a contravention of this Law;
 - (ii) attempting to contravene this Law;
 - (iii) aiding, abetting, counselling or procuring a person to contravene this Law;
 - (iv) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Law;
 - (v) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention of this Law; or
 - (vi) conspiring with others to contravene this Law;

on the application of the trustee of a bankrupt's estate, a liquidator, provisional liquidator, rehabilitation manager or rehabilitation advisor appointed under this Law, the Court may grant an injunction of such kind and on such terms as the Court thinks appropriate, restraining the first mentioned person from engaging in the conduct and requiring that person to do any act or thing that the Court considers desirable.
- (b) Where a person has refused or failed, is refusing or failing, or is likely to refuse or fail, to do an act or thing that the person is required by this Law to do, the Court may, on the application of the trustee of a bankrupt's estate, a liquidator, provisional liquidator, rehabilitation manager or rehabilitation advisor appointed under this Law, issue a direction on such terms as the Court thinks appropriate, requiring the first mentioned person to do that act or thing.
- (c) Where an application for an injunction under subsection (a) or (b) has been made, the Court may grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

- (d) The Court may discharge or vary an order granted under subsection (a), (b) or (c).
- (e) Where an application is made to the Court for the grant of an order under this section, the Court may require the applicant or any other person to give an undertaking as to damages which may be caused by granting such injunction.
- (f) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct or requiring a person to do a particular act or thing, the Court may order that person to pay damages to any other person who suffered damages. In calculating the damages, the actual loss as well as damages may be included.

412 No limitation on Court's other powers

Nothing in this Division affects the powers that the Court has apart from this Law.

DIVISION 4 OFFENCES AND DEFENCES

413 General penalty provisions

- (a) A person, including a company, who:
 - (i) does an act or thing that the person is forbidden to do by or under a provision of this Law;
 - (ii) does not do an act or thing that the person is required or directed to do by or under a provision of this Law; or
 - (iii) otherwise contravenes a provision of this Law;
 is guilty of an offence under this subsection, if a provision of this Law does not provide that the person is or is not guilty of an offence.
- (b) Any company or person guilty of an offence under sub section (a) shall be liable of a fine of 500,000 kyats up to 1,000,000 kyats.

Defences and relief

414 Defence by director or officer of a company

- (a) Without limiting section 404, it is a defence for a director or officer of a company charged with an offence in relation to a duty imposed under this Law on a director or officer, if he or she proves that:
 - (i) he or she took all reasonable and proper steps to comply with the requirements of this Law;
 - (ii) the circumstances were such that he or she could not reasonably have been expected to take steps to ensure that the requirements imposed on him or her were complied with.
- (b) Without limiting section 404, it is a defence for a director or officer of a company charged with an offence in relation to a duty imposed on the company if the director or officer proves that:
 - (i) the company took all reasonable and proper steps; or
 - (ii) the director or officer ensured that the company took all reasonable steps; or

- (iii) in the circumstances, the director or officer could not have been expected to ensure that the company took reasonable steps.

415 Relief from liability following declaration of contravention

- (a) Without limiting section 404, if proceedings are brought against a person under this Part and in the proceedings it appears to the Court that the person has, or may have, contravened a provision of this Law but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a company, the person ought to be excused for the contravention,

the Court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (b) If a person thinks that proceedings will or may be begun against him or her under this Part in respect of a possible contravention of a provision of this Law, he or she may apply to the Court for relief under subsection (a).
- (c) On an application under subsection (b), the Court may grant relief under subsection (a) as if the proceedings had been begun in the Court.
- (d) This section does not limit any other powers the Court may have to grant relief.

**DIVISION 5
MISCELLANEOUS**

416 Power to issue rules, regulations, notifications and guidelines

- (a) The Supreme Court of the Union may issue rules, regulations, notifications, orders, directives and procedures for the effective implementation of this Law.
- (b) Every rule, regulation, notification, order, directive and procedure issued under subsection (a) must be published in the Gazette.

417 Power to confer special judicial powers and to establish specialist courts

The Supreme Court of the Union may for the effective implementation of this Law, confer on a competent court, the jurisdiction regarding applications for supervision of Insolvency Practitioners, insolvency cases and to establish commercial courts.

418 Application of this Law

- (a) On the commencement of this Law, the winding up of companies, incorporated MSME's and partnerships and unincorporated MSME's must be carried out under this Law, notwithstanding Part V of the Myanmar Companies Law.
- (b) This Law shall not be relevant to the Financial Institutions Law 2016.

419 Saving of pending proceedings for winding up

The provisions of this Law will not apply to the winding up of any company or partnership or bankruptcy of an individual which commenced before the commencement of this Law. The winding up of such companies or partnerships or bankruptcy of an individual must be carried out in accordance with the previous law.

420 Saving of documents

Every instrument of transfer or other document made before the commencement of this Law will remain in full force as before.

421 Applications in process

- (a) An application for the winding up of a company or other entity made under the previous law, but not completed before the commencement of this Law will be, unless withdrawn by the applicant, taken to be an application made under this Law.
- (b) The applicant may request changes to the application referred to in subsection (a) to meet the requirements under this Law.

422 Things done under corresponding provisions continue to have effect

Without limiting any other provisions of this Division, any of the following matters will continue to have effect and continue to apply after the commencement of this Law:

- (a) anything was done before the commencement of this Law by or under a provision of the previous law that is similar to a provision of this Law; and
- (b) was being carried out as at the date of commencement of this Law.

423 Preservation of accrued rights

Without limiting any other provisions of this Division, before the commencement of this Law, a right or liability of a person under a provision of this Law other than under a court order, will be taken to be a right or liability under a similar provision of this Law.

424 References to previous law in instruments

A reference to the previous law, or a provision or term of the previous law, that relates to a provision or term of this Law is taken to apply following the commencement of this Law, unless the Rules provide that they shall not apply.

425 Repeal of previous laws

The Yangon Insolvency Act (INDIA Act III, 1909) and the Myanmar Insolvency Act (INDIA Act V, 1920) are repealed by, and upon the enactment of, this Law.

Signed in accordance with the Constitution of the Republic of the Union of Myanmar,

Signed
(Win Myint)
President
Republic of the Union of Myanmar