GOVERNMENT NOTICE NO. 12

INSOLVENCY RULES, 2017

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SCHEDULE

IN EXERCISE of the powers conferred by section 352 of the Insolvency Act, I, ANDREW K. C. NYIRENDA, SC, Chief Justice, make the following Rules—

PART I—PRELIMINARY PROVISIONS

Citation

1. These Rules may be cited as the Insolvency Rules, 2017.

Interpretation

2. In these Rules, unless the context otherwise requires—

"business day" means any of the days from a Monday to a Friday of a working week, excluding a public holiday;

"Judge" means a Judge of the High Court and includes the Chief Justice;

"pre-company reorganization costs" means fees charged, and expenses incurred by the person who was appointed the administrator, or other person qualified to act as an insolvency practitioner, before the company entered administration but with a view to its doing so;

"proof of debt" means all debts whether payable on contingency and all claims against a debtor, present or future, certain or contingent, ascertained or sounding only in damages or a just estimate made of claims that some other reason do not bear a certain value provable against a debtor;

"proxy" is a document which is given by a creditor, member or contributory to another person ("the proxy-holder") authorising the proxy-holder to attend, and to speak and vote at, a meeting as the representative of the creditor, member or contributory, and either directs the proxy-holder to vote or abstain, or to propose resolutions, as directed, or authorises the proxy-holder to do so in accordance with the proxy-holder's discretion;

"Registrar" means the Registrar of the High Court and includes a Deputy or an Assistant Registrar of the High Court;

"seal" includes an official stamp;

"standard contents" means particulars set out in rule 12, 13, 14, 15, 16, 17, 18 or 19 of these Rules; and

"unpaid pre-administration costs" means pre-administration costs which had not been paid when the company entered administration.

Performance of functions by the Court and Registrar Cap.3:02

3.—(1) Anything to be done under or by virtue of the Act or these Rules by, to or before the Court may be done by, to or before a Judge.

(2) Subject to the Act, these Rules and the Courts Act, the Judge may direct the Registrar to carry out such functions and duties in relation to any procedure as the Judge may deem fit.

(3) The rules of civil procedure and practice shall apply to proceedings under these Rules, unless inconsistent with these Rules or expressly excluded by these Rules.

General principles

4. The Court shall, in exercise of its powers conferred under these Rules, ensure that—

(*a*) all measures are taken in the interests of the body of creditors as a whole and subject to the provisions of the Act, as to the payment of costs and preferential payments, the property of the debtor is applied *pari passu*;

(*b*)every procedure under the Act or these Rules is conducted in a cost effective manner and that such costs and expenses of the proceedings that are incurred are proportional to the tasks required to be undertaken and the value of assets; and

(*c*)every procedure is conducted expeditiously and, where possible, avoid the depreciation of assets.

Calculation of time

5. The rules of procedure that apply in the High Court in calculating time shall also be applicable under these Rules.

Determination of the beginning and end of period expressed in months, etc

6.—(1) The beginning and the end of a period expressed in months in these Rules are to be determined as follows—

(*a*) if the beginning of the period is specified, the month in which the period ends is the specified number of months after the month in which it begins, and the date in the month on which the period ends is the date corresponding to the date in the month on which it begins, or if there is no such date in the month in which it ends, the last day of that month; and

(*b*) if the end of the period is specified, the month in which the period begins is the specified number of months before the month in which it ends, and the date in the month on which the period begins is the date corresponding to the date in the month on which it ends, or if there is no such date in the month in which it begins, the last day of that month.

(2) The Court may extend or shorten the time for compliance with anything required or authorised to be done by these Rules where the interests of justice so require.

Documents required to be in writing

7. A notice or statement shall be in writing unless the Act or these Rules provide otherwise.

Standard contents of notice in *Gazette* or newspaper

8.—(1) A notice which the Act or these Rules requires to be published in the *Gazette* or in a newspaper shall contain the standard contents set out in this rule, in addition to any content specifically required by the Act or any other provision of these Rules, as follows—

(*a*) the identity of the office-holder;

(*b*) the office-holder's address and contact details;

(*c*) the office-holder's Insolvency Practitioner (IP) number;

(*d*) the name of any person, other than the office-holder, if any, who may be contacted about the proceedings;

(*e*) the date of the office-holder's appointment;

(*f*) the Court name, Registry and any number assigned to the

proceedings by the Court; and

(*g*) the reference assigned to the proceedings by the adjudicator, where applicable.

(2) Information which this rule requires to be included in the *Gazette* or newspaper notice may be omitted if it is not reasonably practicable to obtain it.

Gazette or newspaper notices relating to company

9. A notice published in the *Gazette* or a newspaper relating to liquidation of a company shall identify the company and specify—

(*a*) its registered office, or if an unregistered company, the postal address of its principal place of business;

(*b*) any principal trading address if this is different from its registered office;

(*c*) any name under which it was registered in the 12 months before the date of the commencement of the proceedings which are the subject of the *Gazette* or newspaper notice; and

(*d*) any name or style, other than its registered name, under which the company carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper notices relating to bankruptcy

10. A notice published in the *Gazette* or a newspaper relating to a bankruptcy shall identify the bankrupt and specify—

(*a*) any other place at which the bankrupt has resided in the period of 12 months preceding the making of the bankruptcy order;

(*b*) any principal trading place, if this is different from the bankrupt's residential place;

(*c*) the bankrupt's date of birth, if known;

(*d*) the bankrupt's occupation;

(*e*) any other name by which the bankrupt has been known; and

(*f*) any name or style, other than the bankrupt's own name, under which the bankrupt carried on business when any debt owed to a creditor was incurred.

Gazette or newspaper as evidence

11.—(1) A copy of the *Gazette* or any newspaper containing a notice required by the Act or these Rules to be published as such is evidence of any facts stated in the notice.

(2) Where the Act or these Rules require notice of an order of the Court to be published in the *Gazette* or in a newspaper, a copy of the *Gazette* or the newspaper containing the notice may be produced in any proceedings as conclusive evidence that the order was made on the date specified in the notice.

(3) Where an order of the Court or of an adjudicator has been varied, or any matter has been erroneously or inaccurately published in the *Gazette* or newspaper, the person whose responsibility it was to publish the order or other matter shall, as soon as it is reasonably practicable, cause the variation to be published or a further entry to be made in the *Gazette* or newspaper for the

purpose of correcting the error or inaccuracy.

Standard contents of documents to be delivered to the Registrar of Companies or the Director

12. A document to be delivered to the Registrar of Companies or the Director shall—

(*a*) identify the company;

(*b*) specify—

(i) the nature of the document;

(ii) the section of the Act, or the rule under which the document is delivered;

(iii) the date of the document;

(iv) the name and postal address of the person delivering the document; and

(v) the capacity in which that person is acting in relation to the company; and

(*c*) be signed by the person delivering the document.

Standard contents of documents relating to the office of office-holder

13. A document relating to the office of the office-holder shall identify the office-holder by name and specify—

(*a*) the date of the event of which notice is delivered;

(*b*) where the document relates to an appointment, the person, body or Court making the appointment;

(*c*) where the document relates to the termination of an appointment, the reason for that termination; and

(*d*) the contact details of the office-holder.

Standard contents of documents relating to other documents

14. A document relating to another document shall specify—

(*a*) the nature of the other document;

(*b*) the date of the other document; and

(*c*) where necessary, the period of time to which it relates.

Standard contents of documents relating to Court orders

15. A document relating to a Court order shall specify—

(*a*) the nature of the order; and

(*b*) the date of the order.

Standard contents of returns or reports of meetings

16. A return or report of a meeting shall also specify—

(*a*) the purpose of the meeting, including the section of the Act or the rule under which it took place and venue for the meeting;

(*b*) whether a required quorum was in attendance for the meeting to take place;

(*c*) if the meeting took place, the outcome of the meeting, including any resolutions passed; and

(*d*) if the meeting was adjourned, the time and place to which the meeting was adjourned.

Standard contents of returns or reports of matters considered by correspondence

17. A return or report of matters the consideration of which has been sought by correspondence shall specify—

(*a*) the purpose of the consideration; and

(*b*) the outcome of the consideration, including any resolutions passed or deemed to be passed.

Standard contents of documents relating to other events

18. A document relating to any other event shall specify—

(*a*) the nature of the event, including the section of the Act or the rule under which it took place; and

(*b*) the date on which the event occurred.

Standard contents and authentication of applications to Court

19.—(1) An application to the Court shall state—

(*a*) that the application is made under the Act or these Rules;

(*b*) the section or rule under which it is made;

(*c*) the names of the parties;

(*d*) the name of the debtor or company which is the subject of the insolvency proceedings to which the application relates;

(*e*) the Court, and where applicable, the division or district registry of the Court, in which the application is made;

(*f*) where the Court has previously allocated a number to the insolvency proceedings within which the application is made, that number;

(*g*) the nature of the remedy or order applied for or the directions sought from the Court;

(*h*) the names and addresses of the persons on whom it is intended to serve the application or that no person is intended to be served;

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

(*j*) the applicant's address for service.

(2) The application shall be signed by or on behalf of the applicant or the applicant's legal practitioner.

Delivery of documents to joint office-holders

20. Where there are joint office-holders in insolvency proceedings, delivery of a document to one of them is to be treated as delivery to all of them.

Right to copy documents

21. Where the Act or these Rules gives a person the right to inspect documents, that person has a right to be supplied on request with copies of those documents on payment of the standard fee for copies.

Right to be provided with list of creditors

22.—(1) This rule applies in the following proceedings—

(*a*) company reorganization;

(*b*) insolvent or compulsory winding-up of the company; and

(*c*) bankruptcy.

(2) A creditor has the right to require the office-holder to provide a list of the creditors and the amounts of their respective claims unless—

(*a*) a statement of affairs has been delivered to the Registrar of Companies, in a winding-up of the company or company reorganization;

(*b*) the list has been filed with the Court, in bankruptcy proceedings; or

(*c*) the information is available for inspection on the bankruptcy file.

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

(*a*) shall deliver it to the person requiring the list, as soon as it is reasonably practicable; and

(*b*) may charge the standard fee for copies for a hard copy.

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

(5) In such a case, the list shall include—

(*a*) the amount of that creditor's claim; and

(*b*) a statement that the name and address of the creditor has been omitted for that debt.

Confidentiality

23.—(1) Where an office-holder considers that a document forming part of the records of the insolvency proceedings should be treated as confidential, or is of such a nature that its disclosure would be prejudicial to the interests of creditors or the conduct of the proceedings or might reasonably be expected to lead to violence or oppressive conduct against any person, the office-holder may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

(2) The persons to whom the office-holder may refuse inspection include members of a liquidation committee.

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

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

PART II—COMPANY REORGANIZATION

Proposed administrator's statement and consent to act

24.—(1) References in this Part to "a consent to act" are to a statement by a proposed administrator headed "Proposed Administrator's Statement and Consent to Act"—

(2) A consent to act shall—

(*a*) identify the company immediately below the heading,

(*b*) certify that the proposed administrator is authorised under Part IX of the Act to act as an insolvency practitioner;

(*c*) state the proposed administrator's IP number;

(*d*) state the source of the proposed administrator's authorization being—

(i) the name of the relevant recognised professional body of which the proposed administrator is a member; or

(ii) the authority which granted the authorization held by the proposed administrator;

(*e*) state that the proposed administrator consents to act as administrator of the company;

(*f*) identify the person by whom the appointment is to be made or the applicant in the case of an application to the Court for an appointment;

(*g*) state that the proposed administrator is of the opinion that the purpose of administration is reasonably likely to be achieved in the particular case; and

(*h*) be signed and dated by the proposed administrator.

(3) Where a number of persons are proposed to be appointed to act jointly or concurrently as administrators of a company, each shall make a separate statement and consent to act.

Administrator's security

25.—(1) A person proposing an administrator under the Act shall be satisfied that the proposed person has security for the proper performance of the office.

(2) It is the duty of the creditors' committee, if established, to review from time to time the adequacy of the security.

(3) In cases where a creditors' committee has not been established, security has to be to provided to the satisfaction of the Court.

(4) The cost of the security is an expense of the administration.

Company reorganization application

26.—(1) An application for company reorganization, in relation to a company, shall—

(*a*) be headed "Company Reorganization Application";

(*b*) identify the company immediately below the heading;

(*c*) state the name and status of the applicant;

(*d*) state whether the company reorganization application is being made by—

(i) the company under section 18 (1) (*a*) of the Act;

(ii) the directors of the company under section 18 (2) (*b*) of the Act;

(iii) a single creditor under section 18 (1) (*c*) of the Act;

(iv) a creditor under section 18 (1) (*c*) of the Act on behalf of that creditor and others; or

(v) the holder of a qualifying security interest under section 20 or 22 of the Act;

(*e*) if the company reorganization application is made by a creditor on behalf of the creditor and other person, the names of the other persons;

(*f*) if the company reorganization application is made by the holder of a security interest, state details of the debt due to the holder of the security interest, the assets secured by the security interest, the date upon which it was perfected and any maximum amount for which it is enforceable;

(*g*) if the company is registered under the Companies Act, state— Cap. 46:03

(i) its nominal capital, the number of shares into which the capital is divided, the nominal value of each share and the amount of capital paid up or treated as paid up; or

(ii) that it is a company limited by guarantee; and

(iii) the principal business carried on by the company;

(*h*) except where the applicant is the holder of a qualifying security interest and is making the company reorganization application under section 20 of the Act, state that the applicant believes, for the reasons set out in the witness statement in support of the company reorganization application that the company is, or is likely to become, unable to pay its debts;

(*i*) state the name and address of the proposed administrator;

(*j*) the address for service of the applicant or the applicant's legal practitioner;

(*k*) that the applicant requests the Court to—

(i) make a company reorganization order in relation to the company;

(ii) appoint the proposed person to be administrator; and

(iii) make such ancillary order as the applicant may request, and such other order as the Court considers appropriate; and

(*l*) be signed by the applicant or the applicant's legal practitioner and dated.

(2) Where the company which is the subject of the application is registered under the Companies Act, its address for service shall be that of the company's registered office or the company's legal practitioner. Cap 46:03

(3) Once a company reorganization application has been made by the directors of the company it shall be treated for all purposes as an application by the company.

(4) A company reorganization application made by a creditor on his own behalf and on behalf of other creditors shall be treated for all purposes as an application by only that creditor.

27.—(1) Where a company reorganization application is to be made by— Sworn statement in support of company reorganization application

(*a*) the company, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the company;

(*b*) the company's directors, a sworn statement shall be made by one of the directors or the secretary of the company stating that he is making the statement on behalf of the directors;

(*c*) a single creditor, a sworn statement shall be made by the single creditor or a person acting under the single creditor's authority; or

(*d*) two or more creditors, a sworn statement shall be made by a person acting under the authority of them all, whether or not he is one of their number.

(2) In a case where a person is acting under the authority of a single creditor or two or more creditors, the sworn statement shall state the nature of the authority of the person making it and the means of that person's knowledge of the matters to which the sworn statement relates.

(3) The sworn statement shall contain—

(*a*) a statement of the company's financial position, specifying, to the best of the applicant's knowledge and belief, the company's assets and liabilities, including contingent and prospective liabilities;

(*b*) details of any security known or believed to be held by creditors of the company and whether, in any case, the security is such as to confer power on the holder to appoint a receiver or to propose an appointment of an administrator under section 20 of the Act;

(*c*) if a receiver has been appointed, a statement to that effect;

(*d*) details of any insolvency proceedings in relation to the company, including any petition that has been presented for the winding-up of the company of the company or any other application for the appointment of administrators so far as it is known to the applicant;

(*e*) a statement as to whether, in the applicant's opinion, the proceedings will be foreign main proceeding or foreign non-main proceeding under Part X of the Act and the reasons for the opinion; and

(*f*) any other matters which, in the applicant's opinion, will assist the Court in deciding whether to make such an order.

(4) Where a company reorganization application is made by the holder of a qualifying security interest under section 20 or 22 of the Act, the sworn statement shall give sufficient details to satisfy the Court that the applicant is entitled to propose the appointment of an administrator.

(5) Where a company reorganization application is made under section 22 of the Act in relation to a company in liquidation, the sworn statement shall contain—

(*a*) details of the existing insolvency proceedings, the name and address of the liquidator, the date the liquidator was appointed and by whom;

(*b*) the reasons why it has subsequently been considered appropriate that a company reorganization application should be made; and

(*c*) any other matters that would, in the applicant's opinion, assist the Court in deciding whether to make the order requested and to make

any provision in relation to matters arising in connection with the liquidation.

Filing of company reorganization application

28.—(1) The company reorganization application shall be filed with the Court together with the sworn statement and the proposed administrator's consent to act.

(2) The Court shall fix a date, time and venue for the hearing of the company reorganization application.

(3) There shall also be filed, at the same time as the company reorganization application or at any subsequent time, a sufficient number of copies of the company reorganization application.

(4) Each of the copies filed shall—

(*a*) have applied to it the seal of the Court and be endorsed with—

(i) the date and time of filing; and

(ii) the date, time and venue fixed by the Court; and

(*b*) be delivered by the Court to the applicant.

Service of company reorganization application

29.—(1) In this rule, references to the company reorganization application are to a copy of the company reorganization application and sworn statement delivered by the Court to the applicant under rule 28.

(2) Notification for the purposes of section 18 (2) of the Act shall be by service of the company reorganization application and the sworn statement.

(3) The company reorganization application shall, in addition to service on the persons referred to in section 18 (2) (*a*) and (*b*) of the Act, be served on the following—

(*a*) any receiver;

(*b*) if a petition is pending for the winding-up of the company, on—

(i) the petitioner; and

(ii) any provisional liquidator or liquidator;

(*c*) the proposed administrator; and

(*d*) the company, if the company reorganization application is made by any person other than the company.

Notice to officers charged with execution or other legal process

30. The applicant shall, as soon as it is reasonably practicable, after filing the company reorganization application deliver a notice of its being made to—

(*a*) any enforcement officer or other officer who to the knowledge of the applicant is charged with an execution or other legal process against the company; and

(*b*) any person who to the knowledge of the applicant has distrained against the company.

Notice of other insolvency proceedings

31.—(1) After the company reorganization application has been filed, it is the duty of the applicant to file with the Court notice of the existence of any insolvency proceedings in relation to the company.

(2) The applicant shall file the notice under sub-rule (1), as soon as he becomes aware of the proceedings.

Hearing

32.—(1) At the hearing of the company reorganization application, any of the following persons may appear or be represented—

(*a*) the applicant;

(*b*) the company, its liquidator or provisional liquidator;

(*c*) one or more of the directors;

(*d*) any receiver;

(*e*) any person who has presented a petition for the winding-up of the company;

(*f*) the proposed administrator;

(*g*) the holder of any qualifying security interest; or

(*h*) with the permission of the Court, any other person who appears to have an interest which justifies his appearance.

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

Order

33.—(1) Where the Court makes a company reorganization order, that order shall be headed "Company Reorganization Order" and shall—

(*a*) state the name of the Court in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) contain details of any other parties appearing and by whom represented;

(*f*) state that upon consideration of the evidence it is ordered that during the period the order is in force the affairs, business and property of the company be managed by the administrator;

(*g*) state the name of the person appointed as administrator;

(*h*) order that the person be appointed as administrator of the company; and

(*i*) state the date and time of making the order.

(2) Where two or more administrators are appointed, the order shall additionally specify—

(*a*) which functions, if any, are to be exercised by those persons acting jointly; and

(*b*) which functions, if any, are to be exercised by any or all of those persons.

(3) The Court shall deliver a sealed copy of the order to the administrator.

(4) The appointment of the administrator shall take effect from the date of the order.

(5) Where the Court makes a company reorganization order in relation to a company on an application under section 22 of the Act, the Court shall also include in the order—

(*a*) in the case of a liquidator appointed in a voluntary winding-up of the company, the removal of that liquidator from office;

(*b*) provision for payment of the expenses of the winding-up of the company; and

(*c*) such provision as the Court considers just relating to—

(i) any indemnity given to the liquidator;

(ii) the release of the liquidator;

(iii) the handling or realisation of any of the company's assets in the hands of, or under the control of, the liquidator;

(iv) other matters arising in connection with the winding-up of the company; and

(v) such other provisions, if any, as the Court considers just.

Notice of company reorganization order

34.—(1) Where the Court makes a company reorganization order, it shall, as soon as it is reasonably practicable, deliver two sealed copies of the order to the applicant.

(2) The applicant shall, as soon as it is reasonably practicable, deliver a sealed copy of the company reorganization order to the person appointed as administrator.

(3) Where the Court makes an interim order under section 19(1) (*d*) of the Act or any other order under section 19(1) (*f*) of the Act, the Court shall give directions as to the persons to whom, and how, notice of that order is to be delivered.

Publication of administrator's appointment

35.—(1) The notice of appointment under section 30 (2) (*b*) of the Act shall be published in the *Gazette* and in at least two daily newspapers of wide circulation or may be advertised in such other manner as the administrator thinks fit.

(2) In addition to the standard contents, the notice of appointment shall state—

(*a*) that an administrator has been appointed;

(*b*) the date of the appointment; and

(*c*) the nature of the business of the company.

(3) The date for the purpose of section 30 (4) and (5) of the Act shall be 7 days within the date of the company reorganization order.

(4) The administrator shall, as soon as it is reasonably practicable, after the date specified in sub-rule (3), deliver the notice of the appointment

(*a*) if a receiver has been appointed, to that person;

(*b*) if there is pending a petition for the winding-up of the company

of the company, to the petitioner, and to the provisional liquidator, if any;

(*c*) to any enforcement officer or other officer who, to the administrator's knowledge, is charged with execution or other legal process against the company; or

(*d*) to any person who, to the administrator's knowledge, has distrained against the company.

(5) Where, under the Act or these Rules, the administrator is required to deliver a notice of the appointment to any person, other than the Registrar of Companies, the notice shall be headed "Notice of Administrator's Appointment" and, in addition to the standard contents—

(*a*) state the administrator's name and address and that the administrator has been appointed as administrator of the company;

(*b*) be signed and dated by the administrator; and

(*c*) set out the administrator's IP number.

Notice of requirement to provide a statement of affairs

36.—(1) A requirement under section 31(1) of the Act for one or more relevant persons to provide the administrator with a statement of the affairs of the company shall be made by a notice delivered to each of such persons within 14 days of the administrator's appointment.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and in addition to the standard contents shall—

(*a*) require each relevant person to whom the notice is delivered to prepare and submit to the administrator a statement of the affairs of the company; and

(*b*) inform each relevant person of—

(i) the names and addresses of all other persons, if any, to whom the same notice has been delivered; and

(ii) the date by which the statement shall be delivered to the administrator.

(3) The administrator shall inform each relevant person to whom notice is delivered that a document for the preparation of the statement of affairs capable of completion can be supplied if requested.

(4) The document for preparation of the statement of affairs to be supplied under sub-rule (3) shall be in such manner as to be capable of completion.

Statement of affairs: content and submission of copy

37.—(1) The statement of the company's affairs shall—

(*a*) be headed "Statement of Affairs" and identify the company immediately below the heading;

(*b*) state that it is a statement of the affairs of the company on a specified date, being the date on which it entered company reorganization;

(*c*) contain, in addition to the matters required by section 31(2) of the Act, a summary of the assets of the company;

(*d*) state customers claiming amounts paid in advance for the supply of goods or services; and

(*e*) contain the name and address of each member of the company and the number, nominal value, if any, and other details of the shares held by each member.

(2) The summary of assets of the company referred to in sub-rule (1) (*c*) shall set out—

(*a*) the book value and the estimated realizable value of—

(i) the assets subject to a security interest;

(ii) the unencumbered assets; and

(iii) the total value of all the assets;

(*b*) a summary of the liabilities of the company, setting out—

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential debts or the surplus available after paying the preferential debts; and

(iii) the amount of secured debts;

(*c*) an estimate of the total assets available to pay secured debts;

(*d*) an estimate of the deficiency with respect to debts secured by a security interest or the surplus available after paying the debts secured by security interests;

(*e*) the amount of unsecured debts, excluding preferential debts;

(*f*) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(*g*) the issued and called-up capital or stated capital, as the case may be;

(*h*) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*i*) the amount of the debt owed to each creditor with the further particulars required by sub-rule (1) identifying all creditors with security interests.

(3) The particulars required by section 31 (2) (*d*), (*e*) and (*f*) of the Act relating to each creditor shall be given in the following order—

(*a*) the name of the creditor;

(*b*) the address of the creditor;

(*c*) the amount of the debts owed to the creditor;

(*d*) details of any security held by the creditor;

(*e*) the date on which any such security was given; and

(*f*) the value of any such security.

(4) Each person submitting a statement of affairs to the administrator shall deliver with it—

(*a*) a copy of the statement; and

(*b*) a copy of a sworn statement verifying the statement.

Statement of affairs: concurrence

38.—(1) The administrator may require a relevant person to deliver a statement of concurrence with the statement of affairs submitted by another relevant person.

(2) Where the administrator decides to resort to sub-rule (1), he shall inform the person submitting the statement of affairs that a statement of concurrence has been required from a relevant person.

(3) The person submitting the statement of affairs shall deliver a copy to every relevant person who has been required to submit a statement of concurrence.

(4) A person required to deliver a statement of concurrence shall do so before the end of the period of 5 business days or such other period as the administrator may determine beginning with the day on which that person receives the statement of affairs.

(5) A statement of concurrence—

(*a*) shall identify the company; and

(*b*) may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(i) is not in agreement with the person submitting the statement of affairs;

(ii) considers the statement of affairs to be erroneous or misleading; or

(iii) is without the direct knowledge necessary for concurring with it.

(6) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver the statement of concurrence and the statement of affairs to the administrator.

(7) A copy of the statement of concurrence and the statement of affairs shall be delivered to the administrator in duplicate.

Statement of affairs: filing

39.—(1) The administrator shall, as soon as it is reasonably practicable, deliver to the Registrar of Companies a copy of—

(*a*) the verified statement of affairs; and

(*b*) any verified statement of concurrence.

(2) The administrator shall retain the original documents as part of the records of the administration.

(3) The requirement to deliver the statement of affairs is subject to any order of the Court made under rule 23 that the statement of affairs or a specified part shall not be delivered to the Registrar of Companies.

Statement of affairs: release from requirement and extension of time

40.—(1) The power of the administrator under section 32 (2) of the Act to revoke a requirement to provide a statement of affairs or to extend the period within which it shall be submitted may be exercised upon the administrator's own initiative or at the request of the relevant person who has been required to provide it.

(2) Where a relevant person requests a revocation or extension but the administrator refuses it, the relevant person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect, and—

(*a*) if, within 5 business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall do so; and

(*b*) if the applicant does not deliver such a notice to the Court, the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed without a hearing, the Court will fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least 14 days before the hearing, deliver to the administrator a notice which states the date, time and venue of the hearing and that notice shall be accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The administrator may do one or both of the following—

(*a*) appear and be heard on the application; or

(*b*) file a report of any matters which the administrator considers ought to be drawn to the Court's attention.

(7) Where the administrator files a report, then the administrator shall deliver a copy of it to the applicant not later than 5 business days before the hearing.

(8) Sealed copies of any order made on the application will be delivered by the Court to the applicant and the administrator.

(9) Subject to sub-rule 10, the applicant's costs shall be paid by the applicant in any event.

(10) The Court may order that an allowance towards the applicant's costs be made as an expense of the administration.

(11) For purposes of section 32(1) of the Act, the prescribed period shall be 8 weeks.

Statement of affairs: expenses

41.—(1) The expenses of a relevant person which the administrator considers to have been reasonably incurred in making a statement of affairs or statement of concurrence shall be paid by the administrator as an expense of the administration.

(2) A decision by the administrator that expenses were not reasonably incurred, and shall not be payable as an expense of the administration, may be appealed to the Court.

Administrator 's proposals: additional content

42. (1) A statement of proposals made under section 33 of the Act shall identify the proceedings and, in addition to the matters set out in section 33 of the Act, include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment;

(ii) the person making the application or appointment; and

(iii) where a number of persons have been appointed as administrators, details of matters set out in relation to the exercise of their functions;

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

(*d*) an account of the circumstances giving rise to the appointment of the administrator;

(*e*) if a statement of the company's affairs has been submitted—

(i) a copy or summary of it, except so far as an order under rule 23 limits its disclosure;

(ii) any comments which the administrator may have upon the statement of affairs;

(iii) if an order under rule 23 has been made, a statement of that fact and the date of the order; and

(iv) details of who provided the statement of affairs;

(*f*) where no statement of affairs has been submitted—

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

(ii) an explanation as to why there is no statement of affairs;

(*g*) a full list of the company's creditors, with their names and addresses and details of their debts, including if no statement of affairs has been submitted or, a statement of affairs has been submitted but it does not include such a list, or includes such a list but it is less than full, any security held;

(*h*) a statement of—

(i) how it is envisaged the purpose of the administration will be achieved; and

(ii) how it is proposed that the administration will end, including, where it is proposed that the administration will end by the company moving to a creditors' voluntary winding-up of the company, details of the proposed liquidator and a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator;

(*i*) whether the administrator has decided to seek approval for the proposals by correspondence or by calling a meeting of creditors;

(*j*) the manner in which the affairs and business of the company—

(i) have, since the date of the administrator's appointment, been managed and financed, including, where any assets have been

disposed of, the reasons for the disposal and the terms upon which the disposal was made; and

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

(*k*) whether the proceedings are foreign main proceeding or foreign non-main proceeding; and

(*l*) any other information that the administrator thinks necessary to enable creditors to decide whether or not to vote for the adoption of the proposals.

(2) The document containing the statement of proposals shall also include, but not as part of the proposals—

(*a*) the basis on which it is proposed that the administrator's remuneration shall be fixed under the Insolvency (Practitioners) Regulations; and

(*b*) a statement of any pre-company reorganization costs charged or incurred by the administrator or, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner.

Administrator's proposals: statement of pre-company reorganization costs

43. A statement of pre-company reorganization costs shall include—

(*a*) details of any agreement under which the fees were charged and expenses incurred, including the parties to the agreement and the date on which the agreement was made;

(*b*) details of the work done for which the fees were charged and expenses incurred;

(*c*)an explanation of why the work was done before the company entered administration and how it had been intended to further the achievement of an objective in section 14 (1) of the Act in accordance with sub-sections (2) to (4) of the section;

(*d*) a statement of the amount of the pre-company reorganization costs, setting out separately—

(i) the fees charged by the administrator;

(ii) the expenses incurred by the administrator;

(iii) the fees charged, to the administrator's knowledge, by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately; and

(iv) the expenses incurred to the administrator's knowledge by any other person qualified to act as an insolvency practitioner and, if more than one, by each separately;

(*e*) a statement of the amounts of pre-company reorganization costs which have already been paid;

(*f*) the identity of the person who made the payment or, if more than one person made the payment, the identity of each such person and of the amounts paid by each such person set out separately as under paragraph (*d*);

(*g*) a statement of the amounts of unpaid pre-company reorganiza-

tion costs, set out separately as under paragraph (*d*); and

(*h*) a statement that the payment of unpaid pre-company reorganization costs as an expense of the administration is—

(i) subject to approval in accordance with Insolvency (Practitioners) Regulations; and

(ii) not part of the proposals subject to approval under section 36 of the Act.

Administrator's proposals: ancillary provisions about delivery

44.—(1) Where upon an application by the administrator under section 72 of the Act, the Court orders an extension of the period in section 33 (5) (*b*) of the Act, the administrator shall, as soon as it is reasonably practicable, after the making of the order, deliver a notice of the extension containing the standard contents to—

(*a*) every creditor of the company;

(*b*) every member of the company whose address the administrator is aware of;

(*c*) the Registrar of Companies; and

(*d*) the Director.

(2) The notice shall identify the company.

(3) The administrator is deemed to have complied with sub-rule (1) (*b*) if the administrator publishes a notice complying with sub-rule (4).

(4) A notice under section 33 (6) of the Act or under sub-rule (1) shall—

(*a*) be published by advertisement;

(*b*) contain the standard contents;

(*c*) state—

(i) that members can request in writing for a copy of the statement of proposals or notice of the extension; and

(ii) the address to which the request may be sent, in writing; and

(*d*) subject to sub-rule (5), be published, as soon as it is reasonably practicable, after the administrator has delivered the statement of proposals or notice of the extension to the company's creditors.

(5) In the case of the statement of proposals, publication shall be not later than 12 weeks or such other period as may be agreed by the creditors or as the Court may order from the date on which the company entered reorganization.

Approval of administrator's proposals

45.—(1) The administrator shall seek approval of the statement of proposals made under section 36 of the Act or a statement of revised proposals made under section 37 of the Act by convening a meeting of creditors or under section 41 of the Act by correspondence.

(2) Where the administrator is seeking approval by correspondence, the statement of proposals sent out shall be accompanied by a notice to the creditors that the proposals will be deemed to have been approved in the absence of objections by 10% or more of the creditors by number or by value.

(3) The notice to creditors under sub-rule (2) shall state—

(*a*) that a creditor who wishes to object to the proposals shall deliver a notice of that objection to the administrator;

(*b*) that the notice of objection shall be accompanied by details of the creditor's claim;

(*c*) the deadline for objections and the accompanying details of the creditor's claim to be delivered to the administrator;

(*d*) the administrator's contact details; and

(*e*) that, unless objections are received from 10% or more of the creditors by number or by value by the deadline date, the proposals will be deemed to be approved on that date.

(4) Where the administrator has delivered a notice to creditors under sub-rule (2) and has not received objections from 10% or more of the creditors by number or by value by the deadline date, the administrator's statement of proposals or statement of revised proposals is deemed to have been approved on that date.

(5) Where the administrator has received objections from 10% or more of the creditors by number or by value, and the statement of proposals or statement of revised proposals is deemed as not approved, the administrator may convene a meeting of creditors to seek their approval or seek approval of a revised statement by correspondence.

(6) A notice of the meeting of creditors shall be sent to all creditors.

(7) Nominations for membership of the creditors' committee shall be delivered to the administrator with details of each creditor's claim by a deadline date.

(8) The deadline date shall be at least 14 days after the date on which the administrator delivers the notice.

(9) A revised statement of proposals shall include a revised statement of proposals which is further revised.

(10) The costs of a meeting of the creditors shall be part of the expenses of the administration.

Notice of deemed approval of administrator's proposals or revised proposals

46.—(1) As soon as it is reasonably practicable, after the date on which the administrator's statement of proposals or statement of revised proposals is deemed approved under rule 45 the administrator shall deliver a notice that the proposals or revised proposals were deemed to be approved on that date to—

(*a*) the Registrar of Companies;

(*b*) the Court;

(*c*) the Director; and

(*d*) the creditors.

(2) A copy of the statement of proposals shall accompany the notices to the Court and to any creditor who has not previously received the proposals.

Notice of result of creditors' meeting to consider proposals

47.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies and the Director as required by section 36 (4) of the Act, deliver notice of the result of the meeting to every creditor and to every other person who received a copy of the statement of proposals.

(2) The administrator shall file with the Court a copy of the statement of proposals considered at the meeting.

(3) The notice under section 36 (4) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notices delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of the statement of proposals to any creditor who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Administrator's proposals: revision

48.—(1) Where section 37 of the Act applies, the statement of the proposed revision which is required to be sent to creditors and members shall identify the proceedings and include—

(*a*) any other trading names of the company;

(*b*) details of the administrator's appointment, including—

(i) the date of appointment; and

(ii) the person making the application or appointment;

(*c*) the names of the directors and secretary of the company and details of any shareholding in the company which they have;

(*d*) a summary of the original proposals and the reason(s) for proposing a revision;

(*e*) details of the proposed revision, including details of the administrator's assessment of the likely impact of the proposed revision upon creditors generally or upon each class of creditors;

(*f*) where the proposed revision relates to the ending of the company reorganization by a creditors' voluntary winding-up of the company and the nomination of a person to be the proposed liquidator of the company—

(i) details of the proposed liquidator;

(ii) where applicable, the declaration required by the Act; and

(iii) a statement that the creditors may, before the proposals are approved, nominate a different person as liquidator; and

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

(2) As soon as it is reasonably practicable, after sending the statement of the proposed revisions to the creditors, the administrators shall deliver a copy of the statement to the Registrar of Companies.

(3) Subject to section 37 (3) of the Act, the period within which the administrator shall send a copy of the statement to every member of the company whose address the administrator is aware of shall be 5 business days after sending the statement of the proposed revision to each creditor.

(4) A notice under section 37 (3) and (4) of the Act shall—

(*a*) be published by advertisement, as soon as it is reasonably practicable, after the administrator has sent the statement to the creditors;

(*b*) contain the standard contents; and

(*c*) state that members can request, in writing, for a copy of the statement of proposed revision with the address to which to send the request, in writing.

Notice of result of creditors' meeting to consider revised proposals

49.—(1) As soon as it is reasonably practicable, after the conclusion of a meeting of creditors to consider the statement of the administrator's revised proposals, the administrator shall, in addition to reporting to the Court and the Registrar of Companies, as required by section 37 (6) of the Act, deliver a notice of the result of the meeting to every creditor and to every other person who received a copy of the original proposals.

(2) The administrator shall file with the Court a copy of the statement of revised proposals considered at the meeting.

(3) The notices under section 37 (6) of the Act or under this rule shall contain details of any modifications to the proposals which were approved at the meeting, in addition to the standard contents required for notice delivered to the Registrar of Companies or to other persons.

(4) The administrator shall also deliver a copy of both the original and the revised statement of proposals to any creditors who did not receive notice of the meeting but whose claim the administrator has subsequently become aware of.

Disposal of charged property

50.—(1) The administrator may apply to the Court under section 47 of the Act for authority to dispose of property of the company which—

(*a*) is subject to a security interest; or

(*b*) consists of goods in the possession of the company under a lease.

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

(3) As soon as it is reasonably practicable, after the Court has fixed the date, time and venue of hearing under sub-rule (2), the administrator shall deliver notice of the date, time and venue to the holder of the security or the owner of the goods.

(4) Where an order is made under section 47 of the Act, the Court shall deliver two sealed copies of that order to the administrator.

(5) The administrator shall deliver—

(*a*) one of the sealed copies to the holder of the security interest or the owner of the goods; and

(*b*) a copy of the sealed order to the Registrar of Companies.

Expenses

51. All fees, costs, charges and other expenses incurred in the course of the company reorganization are to be treated as part of the expenses of the company reorganization.

Order of priority

52.—(1) Subject to an order of the Court under sub-rule (2), the expenses of company reorganization are payable in the following order of priority—

(*a*) expenses properly incurred by the administrator in performing the administrator's functions;

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

(*c*) the costs of the applicant and any person appearing on the hearing of the application for a company reorganization order;

(*d*) any amount payable to a person in respect of assistance in the preparation of a statement of affairs or statement of concurrence;

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

(*f*) any necessary disbursements by the administrator in the course of the company reorganization, including any expenses incurred by members of the creditors' committee or their representatives and allowed for by the administrator, but not including any payment of tax in circumstances referred to in paragraph (i);

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

(*h*) the administrator's remuneration the basis of which has been fixed under the Insolvency (Practitioners) Regulations and unpaid pre-company reorganization costs;

(*i*) the amount of any tax on chargeable gains accruing on the realisation of any asset of the company, irrespective of the person by whom the realisation is effected.

(2) Where the assets are insufficient to satisfy the liabilities, the Court may make an order as to the payment out of the assets of the expenses incurred in the company reorganization in such order of priority as the Court considers just.

(3) The former administrator's remuneration and expenses comprise all the items in sub-rule (1).

53.—(1) Where the administrator has made a statement of pre-company reorganization costs, the creditors' committee may determine whether and to what extent the unpaid pre-company reorganization costs set out in the statement are approved for payment.

(2) Sub-rule (3) applies where—

(*a*) there is no creditors' committee;

(*b*) there is a creditors' committee but it does not make the necessary determination; or

(*c*) the creditors' committee makes the necessary determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(3) Where this rule applies, determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment shall be—

(*a*) by resolution of a meeting of creditors other than in a case falling in paragraph (*b*); or

(*b*) in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act—

(i) by the approval of each secured creditor of the company; or

(ii) if the administrator has made, or intends to make, a distribution to preferential creditors, by the approval of each—

(AA) secured creditor of the company; and

(BB) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

(4) The administrator shall call a meeting of the creditors' committee or of creditors if so requested for the purposes of rules (1), (2) and (3) by another insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs and the administrator shall deliver notice of the meeting within 28 days of receipt of the request.

(5) The administrator, where the fees were charged or expenses incurred by the administrator, or other insolvency practitioner ,where the fees were charged or expenses incurred by that practitioner, may apply to the Court for a determination of whether and to what extent the unpaid pre-company reorganization costs are approved for payment if—

(*a*) there is no determination under sub-rule (1) or (3); or

(*b*) there is such a determination but the administrator or other insolvency practitioner who has charged fees or incurred expenses as pre-company reorganization costs considers the amount determined to be insufficient.

(6) The administrator or other insolvency practitioner shall deliver at least 14 days' notice of the application to the members of the creditors' committee and the committee may nominate one or more members to appear, or be represented, and to be heard on the application.

(7) Where there is no creditors' committee, notice of the application shall be delivered to such one or more of the company's creditors as the Court may direct, and those creditors may nominate one or more of their number to appear or be represented.

(8) The Court may, if it appears to be a proper case, order the costs of the application, including the costs of any member of the creditors' committee appearing or being represented on it, or of any creditor so appearing or being represented, to be paid as an expense of the company reorganization.

(9) Where the administrator fails to call a meeting of the creditors' committee or of creditors in accordance with sub-rule (4), the other insolvency practitioner may apply to the Court for an order requiring the administrator to do so.

Final progress reports

54. "Final progress report" means a progress report which includes a summary of—

(*a*) the administrator's original proposals;

(*b*) any revised proposals;

(*c*) the steps taken during the company reorganization; and

(*d*) the outcome.

Application to extend a company reorganization and extension by consent

55.—(1) Where the administrator applies to Court for an order to, or requests the consent of creditors to, extend the administrator's term of office under section 51(2) of the Act, the application or request shall be accompanied by a progress report for the period since—

(*a*) the last progress report, if any; or

(*b*) if there has been no previous progress report, the date on which the company entered company reorganization.

(2) Where the Court makes an order extending the administrator's term of office, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the order together with a copy of the progress report which accompanied the application to the Court.

(3) Where the administrator's term of office has been extended with the consent of creditors, the administrator shall, as soon as it is reasonably practicable, deliver to the creditors notice of the extension.

Notice of automatic end of company reorganization (s.51 of the Act)

56.—(1) This rule applies where—

(*a*) the appointment of an administrator has ceased to have effect; and

(*b*) the administrator is not required by any other rule to give notice of that fact.

(2) The administrator shall, as soon as it is reasonably practicable, and in any event within 5 business days of the date on which the appointment has ceased, file with the Court a notice accompanied by a final progress report.

(3) The notice shall—

(*a*) be headed "Notice of Automatic End of Company Reorganization " and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the appointment has ceased to have effect;

(vi) the date on which the appointment ceased to have effect;

(vii) that a copy of the final progress report accompanies the notice; and

(viii) be signed by the administrator and dated.

(4) A copy of the notice and an accompanying final progress report shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

(5) An administrator who fails to comply with this rule commits an offence and shall be liable to a fine of—

(*a*) K50,000 and to imprisonment for 6 months; and

(*b*) K25,000 for every day during which the default continues.

Notice of end of company reorganization when purposes achieved (s. 53 (1) of the Act)

57.—(1) Where an administrator who was appointed under section 18 or 20 of the Act thinks that the purpose of company reorganization has been sufficiently achieved, he may file with the Court a notice ("Notice of End of Company Reorganization ") under section 53 of the Act which shall—

(*a*) be headed "Notice of End of Company Reorganization" and identify the company immediately below the heading;

(*b*) state—

(i) the administrator's name and address;

(ii) that that person has been appointed administrator of the company;

(iii) the date of the appointment;

(iv) the name of the person who made the appointment or the company reorganization application, as the case may be;

(v) that the administrator thinks that the purpose of the administration has been sufficiently achieved;

(vi) that a copy of the final progress report accompanies the notice;

(vii) that the administrator is filing the notice with the Registrar of Companies; and

(viii) be signed by the administrator and dated.

(2) The notice of end of company reorganization shall be accompanied

by a final progress report.

(3) The notice of end of company reorganization filed with the Court shall also be accompanied by a copy of the notice.

(4) The Court shall endorse the notice and the copy of the notice with the date and time of filing, seal the copy and deliver it to the administrator.

(5) The period within which the administrator shall, under section 53 (3) of the Act, send a copy of the notice to every creditor of whose name and address the administrator is aware of is 5 business days.

(6) The copy notice sent to creditors shall be accompanied by the final progress report.

(7) The administrator shall also, within 5 business days, deliver a copy of the notice and the accompanying report to—

(*a*) the Director;

(*b*) the directors of the company; and

(*c*) all other persons, other than the creditors, members and the Registrar of Companies, to whom notice of the administrator's appointment was delivered.

(8) The administrator shall be deemed to have complied with section 53 (3) of the Act if, within 5 business days of filing with the Court the notice of end of company reorganization , the administrator publishes in the *Gazette*, a notice which—

(*a*) contains the standard contents;

(*b*) states—

(i) that the company reorganization has ended;

(ii) the date on which the company reorganization ended;

(iii) undertakes that the administrator will provide a copy of the notice of end of company reorganization to any creditor or member of the company who applies in writing; and

(iv) specifies the address to which to write to.

(9) The notice published in the *Gazette* under this rule shall also be advertised in such other manner as the administrator thinks fit.

Administrator's application for order ending company reorganization

58.—(1) An application to Court by the administrator under section 52 of the Act for an order ending a company reorganization shall be accompanied by—

(*a*) a progress report for the period since the last progress report, if any, or if there has been no previous progress report, the date on which the company entered company reorganization ;

(*b*) a statement indicating what the administrator thinks should be the next steps for the company, if applicable; and

(*c*) where the administrator makes the application because of a requirement by a creditors' meeting, a statement indicating with reasons whether or not the administrator agrees with the requirement.

(2) Where the application is made other than because of a requirement by a creditors' meeting—

(*a*) the administrator shall, at least 5 business days before the application is made, deliver a notice of the administrator's intention to apply to Court to the person who applied for the company reorganization and the creditors; and

(*b*) the application shall be accompanied by—

(i) a statement that a notice has been delivered to the creditors; and

(ii) copies of any response from creditors to that notice.

(3) Where the application is in conjunction with a petition under section 107 of the Act for an order to wind-up the company, the administrator shall, at least 5 business days before the application is made, deliver a notice to the creditors as to whether the administrator intends to seek appointment as liquidator.

Notice by administrator of Court order

59. Where the Court makes an order ending the company reorganization, the administrator shall, as soon as it is reasonably practicable, deliver a copy of the order and of the final progress report to—

(*a*) the Registrar of Companies;

(*b*) the Director;

(*c*) the directors of the company; and

(*d*) all other persons to whom notice of the administrator's appointment was delivered.

Grounds for resignation

60.—(1) The administrator may resign—

(*a*) on grounds of his ill health;

(*b*) if he intends to cease to practise as an insolvency practitioner; or

(*c*) if there is a conflict of interest, or a change of personal circumstances, which in either case prevents or makes the further discharge of the duties of administrator impracticable.

(2) The administrator may, with the permission of the Court, resign on other grounds.

Notice of intention to resign

61.—(1) The administrator shall give at least 5 business days' notice of intention to resign in a case falling within rule 60 (1), or to apply for the Court's permission to resign in a case falling within rule 60 (2).

(2) The notice shall be delivered to—

(*a*) the continuing administrator of the company, if any;

(*b*) the creditors' committee, if any;

(*c*) the company and the company's creditors, if there is neither a continuing administrator nor a creditors' committee; and

(*d*) the Director.

Notice of resignation

62.—(1) A notice of resignation shall be effected by filing the notice with the Court.

(2) A resigning administrator shall, within 5 business days of delivering notice, file a copy of the notice with the Court, and deliver a copy of it to—

(*a*) the Registrar of Companies;

(*b*) the Director; and

(*c*) all persons, other than the person who made the appointment, to whom notice of intention to resign was delivered.

(3) The notice shall—

(*a*) identify the company; and

(*b*) state—

(i) the date from which the resignation is to have effect; and

(ii) where the resignation is with the permission of the Court, the date on which permission was given.

Application to Court to remove administrator from office

63.—(1) An application for an order that the administrator be removed from office shall state the grounds on which the order is sought.

(2) A copy of the application shall be delivered, not less than 5 business days before the date fixed for the hearing, to—

(*a*) the administrator;

(*b*) the person who made the application for the company reorganization order;

(*c*) the creditors' committee, if any;

(*d*) any other administrator appointed to act jointly or concurrently;

(*e*) the Director; and

(*f*) the company and all the creditors, where there is neither a creditors' committee nor another administrator appointed to act jointly or concurrently.

(3) The Court shall deliver to the applicant a copy of an order removing the administrator.

(4) The applicant shall, as soon as it is reasonably practicable, and in any event within 5 business days of the copy of the order being delivered, deliver a copy of the order to—

(*a*) the administrator;

(*b*) all other persons to whom notice of the application was delivered;

(*c*) the Registrar of Companies; and

(*d*) the Director.

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

64. An administrator who has ceased to be qualified to act as an insolvency practitioner in relation to the company shall give notice to the Director and the Registrar of Companies.

65.—(1) Whenever an administrator dies, a notice of the fact and date of death shall be filed with the Court. Deceased administrator

(2) The notice shall be filed, as soon as it is reasonably practicable, by one of the following persons—

(*a*) a partner in the deceased administrator's firm, where the deceased administrator was a partner in, or an employee of, the firm; or

(*b*) a personal representative of the deceased administrator.

(3) Where a notice has not been filed within 28 days following the administrator's death, then any other person may file the notice.

(4) The person who files the notice shall also deliver a notice containing the fact and date of death and the standard contents to the Registrar of Companies.

66.—**(1)** Where an application to Court is made to appoint a replacement administrator, the application shall be accompanied by the proposed replacement administrator's consent to act. Application to replace an administrator

(2) A copy of the application shall be delivered to—

(*a*) the person who made the application for the company reorganization order;

(*b*) any person who has appointed a receiver of the company;

(*c*) any person who is or may be entitled to appoint a receiver of the company;

(*d*) the petitioner and any provisional liquidator, if there is a pending petition for the winding-up of the company;

(*e*) the company, if the application is made by anyone other than the company; and

(*f*) the proposed administrator.

67.—(1)Where a replacement administrator is appointed or an additional administrator is appointed to act jointly or concurrently, the replacement or additional administrator shall deliver a notice of the appointment to the Registrar of Companies. Appointment of replacement or additional administrator

(2) All documents subsequent to the delivery of the notice of appointment under sub-rule (1) shall clearly state the appointment of a person as that of a replacement administrator or an additional administrator appointed to act jointly or concurrently.

PART III—RECEIVERSHIP

68.—(1) This Part applies where a secured party's interest— Receivers or managers: acceptance of appointment (s. 77 of the Act)

(*a*) relates to the whole or substantially the whole of the debtor's property;

(*b*) by a number of security interests which together relate to the whole or substantially the whole of the debtor's property; or

(*c*) by charges and other forms of security interest which together relate to the whole or substantially the whole of the debtor's property.

(2) Where two or more persons are appointed as joint receivers or managers of a company's property under powers contained in an instrument—

(*a*) each of them shall accept the appointment in accordance with section 75 of the Act as if each were a sole appointee;

(*b*) the joint appointment takes effect only when all of them have accepted the appointment; and

(*c*) the joint appointment is deemed to have been made at the time at which the instrument of appointment was received by or on behalf of each of them.

(3) A person who is appointed as the sole or joint receiver or manager of a company's property under powers contained in an instrument and accepts the appointment, but not in writing, shall confirm the acceptance in writing to the person making the appointment within 5 business days.

(4) The confirmation shall state the time and date of—

(*a*) receipt of the instrument of appointment; and

(*b*) the acceptance of the appointment.

(5) Acceptance or confirmation of acceptance of appointment as a receiver or manager of a company's property, whether under the Act or these Rules, may be given by any person, including, in the case of a joint appointment, any joint appointee duly authorised for that purpose on behalf of the receiver or manager.

Receiver's security

69.—(1) A person appointing a receiver shall be satisfied that the appointee has security for the proper performance of the office.

(2) The creditors' committee shall review the adequacy of the security from time to time.

(3) The cost of the security shall be an expense of the receivership.

Publication of appointment of receiver

70.—(1) The notice which a receiver is required by section 79 of the Act to send to the company, Registrar of Companies, the Director and creditors on being appointed, shall identify the company within 7 days of appointment and state—

(*a*) any other registered name of the company in the 12 months preceding the date of the appointment;

(*b*) any name under which the company has traded at any time in those 12 months, if substantially different from its then registered name;

(*c*) the name and address of the person appointed;

(*d*) the date of the appointment;

(*e*) the name of the person who made the appointment; and

(*f*) the date of the instrument conferring the power under which the appointment was made and a brief description of—

(i) the instrument itself; and

(ii) any assets of the company in relation to which the appointment is not made.

(2) The notice which a receiver is required to give under section 79 of the Act—

(*a*) shall be published in the *Gazette*;

(*b*) may be advertised in such other manner as the receiver thinks fit; and

(*c*) shall state, in addition to the standard contents—

(i) that a receiver or receiver and manager has been appointed;

(ii) the date of the appointment;

(iii) the name of the person who made the appointment; and

(iv) the nature of the business of the company.

Requirement to provide a statement of affairs

71.—(1) A requirement under section 84 (1) of the Act for a nominated person to provide the receiver with a statement of affairs of the company shall be made by a notice delivered to such a person within 14 days after the appointment of the receiver.

(2) The notice shall be headed "Notice Requiring Statement of Affairs" and shall—

(*a*) identify the company immediately below the heading;

(*b*) require the recipient to prepare and submit to the receiver a statement of affairs of the company; and

(*c*) inform each recipient of—

(i) the name and address of any other nominated person to whom a notice has been delivered; and

(ii) the date by which the statement shall be delivered to the receiver.

(3) The receiver shall inform each nominated person that a document for the preparation of the statement of affairs capable of completion may be supplied, if requested.

Statement of affairs: concurrence and retention by receiver

72.—(1) The receiver may require any of the persons mentioned in section 84 (1) of the Act to deliver a statement of concurrence.

(2) A statement of concurrence may be qualified in relation to matters dealt with in the statement of affairs where the maker of the statement of concurrence—

(*a*) is not in agreement with the nominated person submitting the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with it.

(3) A person who makes a statement of concurrence shall—

(*a*) verify it by a sworn statement; and

(*b*) deliver both the statement of concurrence and the statement of affairs to the receiver together with copy of them.

(4) The receiver shall retain the verified statement of affairs and each statement of concurrence as part of the records of the receivership.

Statement of affairs: release from requirement and extension of time

73.—(1) The receiver may, on his own initiative or at the request of any nominated person, exercise the powers under section 84 (1) of the Act to—

(*a*) release a person from an obligation imposed under section 84 (1) or (2) of the Act; or

(*b*) concur in an application to Court seeking to extend the period for submitting a statement of affairs.

(2) Where a nominated person requests a release or extension, the nominated person may apply to the Court.

(3) Where the Court considers that no sufficient cause is shown for the application, it shall deliver to the applicant a notice to that effect and where—

(*a*) within 5 business days of delivery of that notice, the applicant applies to the Court to fix a date, time and venue for a hearing, without notice to any other party, as to whether sufficient cause is shown, the Court shall fix the date, time and venue of the hearing; and

(*b*) the applicant does not deliver notice in accordance with paragraph (*a*), the Court may dismiss the application without a hearing.

(4) Unless the application is dismissed under sub-rule (3), the Court shall fix a date, time and venue for it to be heard, and deliver notice to the applicant accordingly.

(5) The applicant shall, at least 14 days before the hearing, deliver to the receiver a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(6) The receiver may—

(*a*) appear and be heard on the application;

(*b*) file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention; or

(*c*) appear and be heard on the application and file a report of any matters which the receiver considers that they ought to be drawn to the Court's attention.

(7) Where a report is filed, the receiver shall deliver a copy of it to the applicant not later than 5 business days before the hearing.

(8) Sealed copies of any order made on the application shall be delivered by the Court to the applicant and the receiver.

(9) On any application under this rule, the applicant's costs shall be paid by the applicant in any event, however, the Court may order that allowance towards them may be made out of the assets under the receiver's control.

Limited disclosure

74.—(1) Where the receiver thinks that disclosure of the whole or part of the statement of affairs may likely prejudice the conduct of the receivership or might reasonably be expected to lead to violence against any person, the receiver may apply to the Court for an order that the statement of affairs or any specified part of it may not be open to inspection, except with permission of the Court.

(2) The Court order referred to in sub-rule (1), may include directions regarding the delivery of documents to the Registrar of Companies and the disclosure of relevant information to other persons.

Report delivered to Registrar of Companies and the Director

75.—(1) The report which under section 91 (4) of the Act a receiver is required to send or deliver to the Registrar of Companies and the Director shall be accompanied by a copy of any statement of affairs under section 84(1) (*c*) of the Act.

(2) The duty to send a copy of the report to the Registrar of Companies and the Director is subject to any order for limited disclosure made under rule 74.

(3) Where a statement of affairs is submitted or statement of concurrence is delivered to the receiver after the report is sent to the Registrar of Companies and the Director, the receiver shall, as soon as it is reasonably practicable after its receipt, deliver a copy of it to the Registrar of Companies and the Director.

(4) The report under section 88 (1) of the Act shall state, to the best of the receiver's knowledge and belief, and in addition to the matters required by section 88 (1) of the Act, an estimate of the value of the company's net property.

(5) The receiver may exclude, from the estimates under sub-rule (3), information the disclosure of which could seriously prejudice the commercial interests of the company, but in that case, the estimates shall be accompanied by a statement to that effect.

Copy of report for unsecured creditors

76. A notice stating an address to which unsecured creditors shall request in writing for copies of a receiver's report may be advertised in such manner as the receiver considers fit.

Invitation by correspondence to creditors to form a creditors' committee

77.—(1) A receiver who decides not to convene a creditors' meeting shall deliver to the creditors a notice inviting the creditors to vote on whether a creditors' committee should be established if sufficient creditors are willing to be members of the committee.

(2) The notice shall state that votes and nominations for membership of a creditors' committee shall be—

(*a*) delivered to the receiver with details of the creditor's claim by the deadline; and

(*b*) accepted if accompanied by such details.

(3) The deadline shall be at least 14 days after the date on which the receiver delivers the notice.

(4) The notice under sub-rule (1) shall be accompanied by the report under section 88 (1) of the Act.

Summary of receipts and payments

78.—(1) The receiver shall deliver a summary of receipts and payments as receiver to the Registrar of Companies, the Director, the company and to the person who made the appointment, and to each member of the creditors' committee.

(2) The summary shall be delivered to the persons mentioned in sub-rule (1) within 2 months after the following—

(*a*) the period of 6 months from the date of being appointed;

(*b*) the end of every subsequent period of 6 months; and

(*c*) ceasing to act as receiver.

(3) The summary shall show receipts and payments—

(*a*) during the relevant period of 12 months; or

(*b*) where the receiver has ceased to act, during the period—

(i) from the end of the last 6-month period to the time when the receiver so ceased; or

(ii) if there has been no previous summary, since being appointed.

(4) This rule is without prejudice to the receiver's duty to produce proper accounts otherwise than as stated in sub-rules (1), (2) and (3).

Resignation of receiver

79.—(1) A receiver shall deliver a notice of intention to resign, at least 5 business days before the date the resignation is intended to take effect, to—

(*a*) the person by whom the appointment was made;

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

(*c*) the members of the creditors' committee.

(2) The notice given under sub-rule (1) shall specify the date on which the receiver intends the resignation to take effect.

Deceased receiver

80.—(1) Where the receiver dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the person by whom the appointment was made;

(*b*) the Registrar of Companies;

(*c*) the Director;

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

(*e*) the creditors' committee or a member of that committee.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased receiver's firm ,if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased receiver.

(3) Where the notice has not been delivered within 28 days following the receiver's death, then any other person may deliver the notice.

81. A receiver, on vacating office on completion of the receivership, or in consequence of ceasing to be qualified as an insolvency practitioner, shall, as soon as it is reasonably practicable, deliver notice of doing so to— Vacation of office in other cases

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

(*b*) the members of the creditors' committee.

PART IV—WINDING-UP OF THE COMPANY

Division I—Winding-up of the Company by the Court

82. This Division applies to winding-up of the company by the Court whether the petition for winding-up of the company is presented under the Act or under any written law enabling the presentation of a winding-up of the company petition. Application of this Division

83.—(1) A statutory demand shall— Statutory demand (s.184 of the Act)

(*a*) identify the company;

(*b*) state the registered office of the company;

(*c*) state the name and address of the creditor;

(*d*) specify the section of the Act under which it is made;

(*e*) state the amount of the debt and the consideration for it, or, if there is no consideration, the nature of the claim;

(*f*) give details of the judgment or order, if the demand is founded on a judgment or order of a Court;

(g) details of the original creditor and any intermediary assignees, if the creditor is entitled to the debt by way of assignment; and

(*h*) be dated, and signed by the creditor or a person authorised to make the demand on the creditor's behalf.

(2) A demand which is signed by an authorised person shall state that—

(*a*) that person is authorised to make the demand on the creditor's behalf; and

(*b*) person's relationship to the creditor.

(3) Where the amount claimed in the demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the company as included in its liability; or

(*b*) any other charge accruing from time to time, the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(4) The amount claimed for charges mentioned in sub-rule (3) shall be limited to the amount which has accrued and due at the date of the demand.

84.—(1) The petition shall— Contents of petition

(*a*) contain the name of the Court and the Registry;

(*b*) state the name and postal address of the petitioner;

(*c*) identify the company which is the subject of the petition;

(*d*) state the date on which the company was incorporated;

(*e*) state the nominal capital of the company, if applicable;

(*f*) state the number of shares the capital of the company is divided into and the value of each share;

(*g*) state the amount of capital of the company;

(*h*) state the principal objects for which the company was established or the nature of the company's business, if known;

(*i*) provide details of any other objects stated in the company's articles of association;

(*j*) state the grounds on which the winding-up of the company order is sought;

(*k*) state whether the company is limited by guarantee;

(*l*) state whether, in the opinion of the person making the statement, the proceedings will be foreign main proceedings or foreign non-main proceedings under Part X of the Act and that the reasons are given in the sworn statement;

(*m*) state that in the circumstances it is just and reasonable that the company be wound-up;

(*n*) state that the petitioner applies for an order that the company be wound-up by the Court under the Act, or that such other order be made as the Court considers just;

(*o*) state the name and postal address of any person on whom the petitioner intends to serve the petition; and

(*p*) state the contact details of the petitioner's legal practitioners, if any.

(2) A petition filed by an administrator of a company under company reorganization shall—

(*a*) be expressed to be the petition of the company by its administrator;

(*b*) state the name of the administrator, the Court case number and the date that the company entered company reorganization; and

(*c*) where applicable, requesting that the appointment of the administrator should cease to have effect.

(3) The petition shall also contain space for the Court to complete with the details for hearing the petition.

Request to appoint administrator or receiver as liquidator

85.—(1) This rule applies where a petition requests the appointment of an administrator or a receiver as liquidator.

(2) The person whose appointment is sought ("the appointee") shall, not less than 2 business days before the date appointed for hearing the petition, file with the Court a report including particulars of—

(*a*) the date on which the appointee delivered notice to creditors of the company, either in writing or at a meeting of creditors, of the intention to seek that person's appointment as liquidator, such date to be at least 7 business days before the day on which the report is filed; and

(*b*) details of any response from creditors to that notice, including any objections to the proposed appointment.

Verification of petition

86.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition is in respect of debts due to different creditors, then the debt to each creditor shall be verified separately.

(3) A sworn statement which is not contained in or endorsed upon the petition shall identify the petition and shall—

(*a*) identify the company;

(*b*) state the name of the petitioner; and

(*c*) state the name of the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be signed and dated—

(*a*) by the petitioner, or if there are two or more petitioners, any one of them;

(*b*) by some person such as a director, company secretary or similar company officer, or a legal practitioner, who has been involved in the matters giving rise to the presentation of the petition; or

(*c*) by some responsible person who is duly authorised to sign the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the sworn statement shall state—

(*a*) the name and postal address of the person making the statement;

(*b*) the capacity in which, and the authority by which, that person signs the statement; and

(*c*) the means of that person's knowledge of the matters verified in the sworn statement.

(6) A sworn statement verifying more than one petition shall—

(*a*) include, in its title, the names of the companies to which it relates; and

(*b*) set out, in relation to each company, the statements relied on by the petitioner, and a clear and legible photocopy of the sworn statement shall be filed with each petition which it verifies.

(7) The sworn statement shall give the reasons why the person making the statement considers the proceedings will be foreign main proceedings or foreign non-main proceeding under Part X of the Act.

Copies of petition to be served on company or delivered to other persons

87.—(1) Where this rule requires the petitioner to serve a copy of the petition on the company or deliver a copy to another person the petitioner shall, when filing the petition with the Court, file an additional copy with the Court for each such person.

(2) Where to the petitioner's knowledge—

(*a*) the company is in the course of being wound-up voluntarily, the petitioner shall deliver a copy of the petition to the liquidator; or

(*b*) a receiver has been appointed in relation to the company, or the company is in company reorganization, the petitioner shall deliver a copy of the petition to the receiver or the administrator.

(3) Where the Act or this rule requires the petitioner to deliver a copy of the petition, the copy shall be delivered within 3 business days after the day on which the petition is served on the company.

Notice of petition

88.—(1) Unless the Court otherwise directs, the petitioner shall give notice of the petition.

(2) In addition to the standard contents for a notice to be published in the *Gazette*, the notice shall state—

(*a*) that a petition has been presented for the winding-up of the company;

(*b*) in the case of a foreign company, the address at which service of the petition was effected;

(*c*) the name and address of the petitioner;

(*d*) the date on which the petition was presented;

(*e*) the date, time and venue fixed for the hearing of the petition;

(*f*) the name and address of the petitioner's legal practitioner, if any; and

(*g*) that any person intending to appear at the hearing, whether to support or oppose the petition, shall give notice of that intention.

(3) The notice shall be published in at least 2 daily newspapers of wide circulation.

(4) The notice shall be made to appear—

(*a*) if the petitioner is the company itself, not less than 7 business days before the day appointed for the hearing; and

(*b*) otherwise, not less than 7 business days after service of the petition on the company, nor less than 7 business days before the day so appointed.

(5) The Court may adjourn the hearing of the petition or dismiss the petition if notice of the hearing is not given in accordance with this rule.

Persons entitled to request a copy of petition

89. Where a director, contributory or creditor requests a copy of the petition from the legal practitioner for the petitioner, or the petitioner, if acting in person, and pays the prescribed fee for copies, the legal practitioner or petitioner shall deliver the copy within 2 business days.

Certificate of compliance

90.—(1) The petitioner or the petitioner's legal practitioner shall, at least 5 business days before the hearing of the petition, file with the Court a certificate of compliance relating to service and notice of the petition.

(2) The certificate shall be signed and dated by the petitioner or the petitioner's legal practitioner and shall state—

(*a*) the date of presentation of the petition;

(*b*) the date fixed for the hearing; and

(*c*) the date or dates on which the petition was served and notice of it was given in compliance with these Rules.

(3) Subject to sub-rule (4), a copy of any notice given shall be filed with the Court with the certificate.

(4) Where it is not reasonably practicable to file a copy of the notice, a statement of the content of the notice shall be filed with the Court with the certificate.

(5) The Court may, if it considers just, adjourn the hearing of the petition or dismiss the petition if this rule is not complied with.

Permission for the petitioner to withdraw

91.—(1) Where at least 5 business days before the hearing the petitioner, on an application without notice to any other party, satisfies the Court that—

(*a*) notice of the petition has not been given as required by rule 88;

(*b*) no notices in support or in opposition to the petition have been received by the petitioner; and

(*c*) the company consents to an order being made under this rule,

the Court may allow the petitioner to withdraw the petition on such terms as to costs.

(2) The order shall—

(*a*) state the date on which the petition for the winding-up of the company was presented;

(*b*) state the name and postal address of the applicant;

(*c*) identify the company;

(*d*) state, that upon the application without notice to any other party by the applicant named in the order and upon considering the evidence the Court is satisfied that—

(i) the notice of the petition has not been given;

(ii) no notices in support of or in opposition to the petition have been received by the petitioner; and

(iii) the company consents to this order.

Notice by persons intending to appear

92.—(1) A creditor or contributory who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and address of the creditor or contributory, and any telephone number and reference which may be required for

communication with that person or with any other person, also to be specified in the notice, authorised to speak or act on the creditor's or contributory's behalf;

(*b*) the date of the presentation of the petition and a statement that the notice relates to the matter of that petition;

(*c*) the date of the hearing of the petition;

(*d*) for a creditor the amount and nature of the debt due from the company to the creditor;

(*e*) for a contributory, the number of shares held in the company;

(*f*) whether the creditor or contributory intends to support or oppose the petition;

(*g*) where the creditor or contributory is represented by a legal practitioner or other agent, the name, postal address, telephone number and any contact detail of that person and details of that person's position with, or relationship to, the creditor or contributory; and

(*h*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or the petitioner's legal practitioner at the address shown in the Court records, or in the notice of the petition required by rule 88.

(5) The notice shall be delivered so as to reach the petitioner, or the petitioner's legal practitioner, not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

93.—(1) The petitioner shall prepare for the Court a list of the creditors and contributories who have given notice under rule 88.

(2) The list of the creditors and contributories shall contain—

(*a*) the date of the presentation of the petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors and contributories listed have delivered notice that they intend to appear at the hearing of the petition;

(*d*) their names and addresses;

(*e*) the amount owed to each creditor;

(*f*) the number of shares held by each contributory;

(*g*) the name and postal address of any legal practitioner for a person listed; and

(*h*) whether each person listed intends to support or oppose the petition.

(3) On the day appointed for the hearing of the petition, a copy of the list

of the creditors and contributories shall be filed with the Court before the hearing commences.

(4) Where the Court gives a person permission to appear, then the petitioner shall add the person to the list of the creditors and contributories and complete in respect of the person the particulars in sub-rule (2).

Sworn statement in opposition

94.—(1) Where the company intends to oppose the petition, it shall not later than 5 business days before the date fixed for the hearing—

(*a*) file with the Court, a sworn statement in opposition; and

(*b*) deliver a copy of the sworn statement to the petitioner or his legal practitioner.

(2) The sworn statement shall—

(*a*) identify the proceedings;

(*b*) state that the company intends to oppose the winding-up of the company petition; and

(*c*) state the grounds on which the company opposes the petition.

Substitution of creditor or contributory for petitioner

95.—(1) This rule applies where the petitioner—

(*a*) is subsequently found not to have been entitled to present the petition;

(*b*) fails to give notice of the petition in accordance with rule 88;

(*c*) consents to withdraw the petition, or to allow it to be dismissed, consents to an adjournment, or fails to appear in support of the petition when it is called in Court on the day originally fixed for the hearing, or on a day to which it is adjourned; or

(*d*) appears, but does not apply for an order in the terms of the prayer in the petition.

(2) The Court may, on such terms as it considers just, substitute as petitioner any creditor or contributory who, in its opinion, would have a right to present a petition and who wishes to prosecute it.

Order for substitution

96.—(1) An order for substitution of a petitioner shall identify the proceedings and contain—

(*a*) date of hearing of the petition;

(*b*) name of the original petitioning creditor;

(*c*) name of the creditor or member who is willing to be substituted as petitioner;

(*d*) statement that the evidence has been considered;

(*e*) the following orders—

(i) that the named creditor be substituted for the original petitioning creditor and that the named creditor may amend the petition accordingly;

(ii) that the named creditor shall within 5 business days from the date of the order file a sworn statement in the petition;

(iii) that, at least 14 days before the date of the adjourned

hearing of the petition, the substituted petitioner shall serve a sealed copy of the amended petition on the company and deliver a copy to any other person to whom the original petition was delivered;

(iv) that the hearing of the amended petition be adjourned to the date, time and venue specified in the order; and

(v) that the question of the costs of the original petitioning creditor be reserved until the final determination of the amended petition;

(*f*) the date, time and venue of the adjourned hearing; and

(*g*) the date of the making of the order

Adjournment of hearing of petition

97.—(1) Where the Court adjourns the hearing of the petition, the petitioner shall, as soon as it is reasonably practicable, deliver notice of the making of the order of adjournment and of the date, time and venue for the adjourned hearing to—

(*a*) the company; and

(*b*) any creditor or contributory who has given notice under rule 88 but was not present at the hearing.

(2) The notice shall identify the proceedings.

(3) The requirement to deliver such notices applies unless the Court otherwise directs.

Order for winding-up by the Court

98.—(1) An order for winding-up of the company by the Court shall—

(*a*) identify the company;

(*b*) state the name and postal address of the petitioner;

(*c*) state that the petitioner is—

(i) the company;

(ii) a creditor of the company; or

(iii) a contributory of the company;

(*d*) state the date of presentation of the petition;

(*e*) state, that upon consideration of the evidence, it is ordered that the company be wound-up by the Court under the Act;

(*f*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act;

(*g*) order that the costs of certain persons specified in the order of the petition be paid out of the assets of the company; and

(*h*) state the date of the making of the order.

(2) The order may contain such additional terms concerning costs as the Court considers just.

Order for winding-up by the Court following the cessation of the appointment of an administrator

99.—(1) An order for winding-up of the company by the Court following the cessation of the appointment of an administrator shall—

(*a*) identify the company;

(*b*) state the name and postal address of the administrator of the company;

(*c*) state the date of the administrator's appointment;

(*d*) state the date of presentation of the petition by the administrator;

(*e*) order that upon consideration of the evidence—

(i) the appointment of the administrator ceases to have effect; and

(ii) the company is wound up by the Court under the Act;

(*f*) state the name and postal address of the person to be appointed as liquidator of the company, if applicable;

(*g*) order, if applicable, that the person specified in the order is appointed liquidator of the company;

(*h*) state whether the proceedings are foreign main proceedings or foreign non-main proceedings under Part X of the Act; and

(*i*) state the date of the making of the order.

(2) The order may contain such additional terms as the Court considers just.

Notice to Official Receiver of winding-up order

100.—(1) When a winding-up of the company order has been made, the Court shall, as soon as it is reasonably practicable, deliver a notice to that effect to the Official Receiver.

(2) The notice shall be headed "Notice to Official Receiver of Winding-up of the Company Order" and shall—

(*a*) identify the company the subject of the order;

(*b*) state the date of presentation of the petition;

(*c*) state the date of the winding-up of the company order; and

(*d*) state the name and postal address of the petitioner or the petitioner's legal practitioner.

Division II—Shareholders' Voluntary Winding-up of the Company

Statutory declaration of solvency

101.—(1) The statutory declaration of solvency required by section 143 of the Act shall identify the company and state the name and postal address of each director making the declaration—

(*a*) that all of the directors, or a majority of the directors, have made a full inquiry into the affairs of the company and have formed the opinion that the company will be able to pay its debts in full together with interest within a specified period, which shall not exceed 12 months, from the commencement of the winding-up of the company;

(*b*) that the declaration is accompanied by a statement of the company's assets and liabilities as at a given date; and

(*c*) of that date, which shall be the latest practicable date, before the making of the declaration.

(2) The statement of the company's assets and liabilities shall contain—

(*a*) the date of the statement;

(*b*) a statement that the statement shows the assets of the company at estimated realisable values and liabilities of the company expected to rank as at the date referred to in paragraph (*a*);

(*c*) the estimated realisable value of each of the following assets of the company—

(i) balance at bank;

(ii) cash in hand;

(iii) marketable securities;

(iv) bills receivable;

(v) trade debtors;

(vi) loans and advances;

(vii) unpaid calls;

(viii) stock in trade;

(ix) work in progress;

(x) freehold property;

(xi) leasehold property;

(xii) machinery, plant and equipment;

(xiii) furniture, fittings and utensils;

(xiv) patents, trademarks and any other intellectual property;

(xv) investments other than marketable securities; and

(xvi) any other property;

(*d*) the total of the estimated realisable value of the company's assets;

(*e*) the value of each secured liability;

(*f*) the estimated costs of the winding-up of the company and other expenses including interest accruing until payment of debts in full;

(g) the value of unsecured liabilities of the company divided among—

(i) trade accounts;

(ii) bills payable;

(iii) accrued expenses;

(iv) other liabilities; and

(v) contingent liabilities; and

(*h*) the value of the estimated surplus after paying debts, costs and interest in full.

Division III—Liquidators

102.—(1) This rule applies where the liquidator is appointed by a meeting of the company. Appointment of liquidator by the company

(2) The chairperson of the meeting shall certify the appointment when—

(*a*) the appointee has provided the chairperson with a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act such as; and

(*b*) the chairperson is satisfied that the appointee has security for the proper performance of the office.

(3) The cost of the security is an expense of the liquidation.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the appointee—

(i) provided a statement of his being qualified to act as an insolvency practitioner in relation to the company under the Act;

(ii) consented to act; and

(iii) was appointed as liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also specify—

(*a*) which functions are to be exercised jointly; and

(*b*) which may be exercised by any of them.

(6) The chairperson shall deliver the certificate, as soon as it is reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) Not later than 28 days from the liquidator's appointment, the liquidator shall deliver notice of the appointment to all creditors of the company.

103.—(1) This rule applies where the liquidator is appointed by the Court under section 151 of the Act. Appointment of liquidator by the Court

(2) The Court's order shall not be issued until the appointee has filed with the Court a statement to the effect that the appointee is an insolvency practitioner qualified under the Act to be the liquidator and consents to act as such.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(*e*) state the capacity in which the applicant is making the application;

(*f*) identify the liquidator;

(*g*) state, that upon consideration of the evidence, it is ordered that the liquidator, having filed a statement of being qualified to act as an insolvency practitioner in relation to the company under the Act and of consenting to act as such, is appointed liquidator of the company; and

(*h*) state the date of the making of the order.

(4) Where two or more liquidators are appointed, the order shall also specify—

(*a*) which functions are to be exercised jointly; and

(*b*) which may be exercised by any of them .

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) The liquidator shall deliver the notice of the appointment to all creditors of the company, not later than 28 days from the appointment.

Authentication of liquidator's appointment

104. A copy of the certificate of the liquidator's appointment, or a sealed copy of the Court's order appointing the liquidator, may be provided in any proceedings as proof that the person appointed is authorised to exercise the powers and perform the duties of liquidator in the company's winding-up of the company.

Liquidator's resignation

105.—(1) A liquidator may resign—

(*a*) on grounds of his ill health;

(*b*) if he ceases to practise as an insolvency practitioner;

(*c*) if there is some conflict of interest or change of personal circumstances which precludes or makes it impracticable for him to further discharge the duties of a liquidator; or

(*d*) where two or more persons are acting as liquidator jointly and it is the opinion of both or all of them that it is no longer expedient that there should continue to be that number of joint liquidators.

(2) Before the liquidator resigns, he shall deliver a notice to the members of the company either inviting them to consider by correspondence or calling a meeting for them to consider whether a replacement should be appointed.

(3) The notice—

(*a*) shall state the liquidator's intention to resign;

(*b*) shall state the purpose of the notice; and

(*c*) may suggest the name of a replacement liquidator.

(4) The notice shall be accompanied by an account of the liquidator's administration of the winding-up of the company, including a progress report

for the period—

(*a*) commencing with the later of the date of the liquidator's appointment, and the day after the end of the period of the last progress report; and

(*b*) ending with the day of the deadline for voting by correspondence or the date of the meeting.

(5) The date of the deadline or the meeting shall be not more than 5 business days before the date on which the liquidator intends to give notice.

(6) A new liquidator appointed in place of the liquidator who has resigned shall, in delivering the notice of appointment, also state that the previous liquidator has resigned.

(7) The liquidator who has resigned shall deliver the notice of resignation to the Registrar of Companies and the Director.

(8) The release of the liquidator who has resigned shall be effective from the date on which the liquidator delivers the notice of resignation to the Registrar of Companies and the Director.

Removal of liquidator by the Court

106.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing a liquidator to summon a company meeting for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon the delivery of the notice under sub-rule (2), the applicant may, by notice, within 5 business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under sub-rule (3), the Court may dismiss the application without a hearing.

(5) Unless the application is dismissed, the Court shall fix a date, time and venue for it to be heard.

(6) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(7) The applicant shall, at least 14 days before the hearing, deliver to the liquidator a notice stating the date, time and venue and accompanied by a copy of the application and of any evidence which the applicant intends to provide in support of it.

(8) The costs of the application shall not be payable as an expense of the winding-up of the company unless the Court orders otherwise.

(9) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the liquidator;

(*f*) identify the company;

(*g*) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(10) The order of the Court may include such provision as the Court considers just relating to matters arising in connection with the removal.

(11) Where the Court removes the liquidator—

(*a*) it shall deliver three copies of the order of removal to the former liquidator; and

(*b*) the former liquidator shall, as soon as reasonably practicable, deliver one copy of the order to the Registrar of Companies and the Director.

(12) Where the Court appoints a new liquidator, the provisions of rule 103 shall apply, *mutatis mutandis*.

Removal of liquidator by company meeting

107. A liquidator removed by a meeting of the company shall, as soon as it is reasonably practicable, deliver the notice of the removal to the Registrar of Companies and the Director.

Vacation of office of liquidator on completion of winding-up

108.—(1) The liquidator shall not deliver a notice under section 155 (3) of the Act to the Director, the Official Receiver and the Registrar of Companies until at least 8 weeks after the final report on the winding-up of the company and the notice of the liquidator's intention to vacate office has been delivered to the members of the company.

(2) In addition to the standard contents, the notice shall state—

(*a*) that the liquidator has delivered the notice of intention to vacate office and the copy of the final report to all members; and

(*b*) the date of that notice.

(3) The notice shall be signed and dated by the liquidator.

(4) The notice to the Director, the Official Receiver and the Registrar of Companies shall be accompanied by the copy of the final report.

(5) Where a member has applied to the Court under rule 106 and delivered a copy of the application to the liquidator, the liquidator shall not deliver the notice of vacation of office under section 155 (3) of the Act until the application, including any appeal, has been disposed of and the liquidator

has complied with any order of the Court.

Deceased liquidator

109.—(1) Where the liquidator dies, a notice of the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) one of the company's directors; and

(*b*) the Director, the Official Receiver and the Registrar of Companies.

(2) The notice shall be delivered by one of the following—

(*a*) a partner in the deceased liquidator's firm if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased liquidator.

(3) Where the notice has not been delivered within 28 days following the liquidator's death, then any other person may deliver the notice.

Liquidator's loss of qualification as insolvency practitioner

110.—(1) This rule applies where the liquidator vacates office on ceasing to be qualified to act as an insolvency practitioner.

(2) The liquidator shall, upon ceasing to be qualified to act as an insolvency practitioner, or as soon as it is reasonably practicable, give notice to vacate the office of the liquidator of a company to the Director, the Official Receiver and the Registrar of Companies.

(3) The notice shall—

(*a*) identify and provide contact details for the former liquidator;

(*b*) identify the company;

(*c*) state that the former liquidator ceased to be a qualified insolvency practitioner with effect from the date stated in the notice; and

(*d*) be signed and dated by the former liquidator.

Power of the Court to set aside certain transactions entered into by liquidator

111.—(1) Where in dealing with a company a liquidator enters into any transaction with a person who is his associate, the Court may, on the application of any person interested, set the transaction aside and order the liquidator to compensate the company for any loss suffered in consequence of it.

(2) Sub-rule (1) does not apply if the transaction was entered into with the prior approval of the Court.

(3) Nothing in this rule shall be taken as the proscription of any written law, common law or principles of equity relating to a liquidator's dealings with trust property or the fiduciary obligations of any person.

Rule against solicitation by, or on behalf of, liquidator

112.—(1) Where the Court is satisfied that any improper solicitation has been used by, or on behalf of, the liquidator in obtaining proxies or procuring the liquidator's appointment, it may order that no remuneration be allowed as an expense of the winding-up of the company to any person by whom, or on whose behalf, the solicitation was exercised.

(2) An order of the Court under this rule overrides any resolution of the members, or any other provision of these Rules relating to the liquidator's remuneration.

Disclaimer

113.—(1) The liquidator may, by the giving of a notice to interested parties, disclaim any onerous property and may do so notwithstanding that—

(*a*) he has taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property of the company which is un-saleable, not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in, or in respect of, the property disclaimed; and

(*b*) does not, except as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this rule in respect of any property if—

(*a*) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not; and

(*b*) the period of 28 days beginning with the day on which that application was made, or such longer period as the Court may allow, has expired without a notice of disclaimer having been given under this rule in respect of that property.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this rule shall be deemed a creditor of the company to the extent of the loss or damage and accordingly may prove the loss or damage in the winding-up of the company.

Notice of disclaimer

114.—(1) A liquidator's notice of disclaimer of property under rule 113 shall be headed "Notice of Disclaimer under Rule 113 of the Insolvency Rules" and shall—

(*a*) identify the company;

(*b*) contain such particulars of the property disclaimed as to enable it to be easily identified;

(*c*) identify and provide contact details for the liquidator;

(*d*) state that the liquidator of the company disclaims all the company's interest in the property; and

(*e*) be signed and dated by the liquidator.

(2) Where the property consists of land or buildings, the nature of the

interest shall be stated in the notice.

(3) Where the property consists of land under the Registered Land Act, the notice shall state the registered title number and the registration area. Cap. 58:01

(4) The liquidator shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer, deliver a copy of the notice to—

(*a*) the Registrar of Companies; and

(*b*) the Chief Land Registrar or the Deeds Registrar, as the case may be, in the case of land.

Communication of disclaimer to interested persons

115.—(1) The liquidator shall serve any copies of a notice of disclaimer in respect of any interest in land within 7 business days after the date of the notice of disclaimer.

(2) The liquidator shall, within 7 business days after the date of a notice of disclaimer, deliver copies of the notice to every person who, to the liquidator's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer; or

(*c*) is a party to an unprofitable contract or has an interest under it and the disclaimer relates to such contract.

(3) Where it subsequently comes to the liquidator's knowledge that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the liquidator shall deliver a copy of the notice to that person, as soon as it is reasonably practicable.

(4) The liquidator is not required to deliver a copy of the notice under sub-rule (3) in the following circumstances—

(*a*) if the liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) if the Court, on the liquidator's application, orders that delivery of a copy of the notice is not required in that particular case.

Powers of the Court

116.—(1) An application under this rule may be made to the Court by—

(*a*) any person who claims an interest in the disclaimed property; or

(*b*) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(2) Subject to sub-rules (3), (4) and (5) , the Court may on the application make an order, on such terms as it considers fit, for the vesting of the disclaimed property in, or for, its delivery to—

(*a*) a person entitled to it or a trustee for such a person; or

(*b*) a person subject to such a liability as is mentioned in sub-rule (1) (*b*) or a trustee for such a person.

(3) The Court shall not make an order under sub-rule (2) (*b*) 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.

(4) The effect of any order under this rule shall be taken into account in assessing for the purpose of rule 113 (5) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

(5) An order under this rule vesting property in any person confers on that person interest in the property in equity pending the completion of a conveyance, an assignment or a transfer.

Application for exercise of the Court's powers under r. 116

117.—(1) Where a person becomes aware of a liquidator's notice of disclaimer or upon receiving a copy of the notice, he shall make an application under rule 116 within 3 months of becoming aware of, or receiving, the notice, whichever is the earlier.

(2) The applicant shall file with the application a sworn statement stating—

(*a*) whether the application is made as a claim of interest in the property or liability not discharged;

(*b*) the date on which the applicant received a copy of the liquidator's notice of disclaimer, or otherwise became aware of the disclaimer; and

(*c*) the grounds of the application and the order sought.

(3) On hearing the application, the Court may give directions as to any other persons to whom notice of the application and the grounds on which it is made should be delivered.

(4) The Court shall deliver sealed copies of any order made on the application to the applicant and the liquidator.

Application for, and appointment of, special manager

118.—(1) An application by the liquidator under section 132 of the Act for the appointment of a special manager shall be supported by a report setting out the reasons for the application verified by a sworn statement.

(2) The report shall include the applicant's estimate of the value of the business or property in relation to which the special manager is to be appointed.

(3) The Court's order appointing a special manager shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state the name and postal address of the appointee as special manager;

(*d*) state that the evidence has been considered;

(*e*) order that the appointee is appointed as special manager of the company;

(*f*) give details of the special manager's responsibility over the company's business or property;

(*g*) specify the powers to be entrusted to the special manager;

(*h*) specify the time allowed for the special manager to give the required security for the appointment;

(*i*) state the duration of the special manager's appointment, being one of the following—

(i) for a fixed period stated in the order;

(ii) until the occurrence of a specified event; or

(iii) until the Court makes a further order;

(*j*) specify the special manager's remuneration; and

(*k*) state the date of the making of the order.

(4) The appointment of the special manager may be renewed or varied by order of the Court.

(5) The special manager's remuneration shall be fixed from time to time by the Court.

(6) The acts of the special manager shall be valid notwithstanding any defect in the special manager's appointment or qualifications.

(7) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Security

119.—(1) The appointment of the special manager shall not take effect until the person appointed has given, or if the Court allows undertaken to give, security to the applicant for the appointment.

(2) A person appointed as special manager may give security specifically for a particular winding-up of the company or generally for any winding-up of the company in relation to which that person may be appointed as special manager.

(3) The amount of the security—

(*a*) shall be not less than the value of the business or property in relation to which the special manager is appointed, as estimated in the applicant's report which accompanied the application for appointment; and

(*b*) may need to be varied in the course of the special manager's appointment, depending on the value of the assets under management.

(4) When the special manager has given security to the applicant, the applicant shall file with the Court a certificate as to the adequacy of the security.

(5) The cost of providing the security shall be paid in the first instance by the special manager, but the special manager is entitled to be reimbursed as an expense of the winding-up of the company, in the prescribed order of priority.

(6) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Failure to give, or keep up, security

120.—(1) Where the special manager fails to give the required security within the time stated in the order of appointment, or any extension of the time that may be allowed, the liquidator shall report the failure to the Court,

which may discharge the order appointing the special manager.

(2) Where the special manager fails to keep up the security, the liquidator shall report the failure to the Court, which may remove the special manager, and make such an order as to costs, as it considers just.

(3) Where the Court discharges the order appointing the special manager, or makes an order removing the special manager, the Court shall give directions as to whether any, and if so what, steps shall be taken for the appointment of another special manager.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Special manager's accounts

121.—(1) The special manager shall produce accounts, containing details of the special manager's receipts and payments, for the approval of the liquidator.

(2) The accounts shall be for—

(*a*) each 3 month period for the duration of the special manager's appointment; or

(*b*) any shorter period ending with the termination of the special manager's appointment.

(3) When the accounts have been approved, the special manager's receipts and payments shall be added to those of the liquidator.

(4) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Termination of appointment of special manager

122.—(1) Where the liquidator thinks that the appointment of the special manager is no longer necessary or beneficial, the liquidator shall apply to the Court for directions, and the Court may order the special manager's appointment to be terminated.

(2) The liquidator shall also make such an application if the creditors pass a resolution requesting that the appointment of the special manager be terminated.

(3) This rule shall apply, *mutatis mutandis*, to voluntary winding-up of the company.

Arrangements under s. 153 of the Act

123.—(1) Where there has been an arrangement under section 153 of the Act and a distribution to members has taken place, the liquidator shall comply with sub-rule (2) in relation to any account or report to the company which the liquidator is required to prepare.

(2) In any account or summary of receipts and payments which is required to be included in the account or report, the liquidator shall—

(*a*) state the estimated value of the following during the period to which the account or report relates—

(i) the property transferred to the transferee;

(ii) the property received from the transferee; and

(iii) the property distributed to members; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

(3) For the purposes of section 153 (2) of the Act, the prescribed period shall be 14 days.

Other distributions to members

124.—(1) Where there has been a distribution of property to members in its existing form other than under an arrangement under section 153 of the Act, the liquidator shall comply with sub-rule (2) in relation to any account or report which the liquidator is required to prepare.

(2) The liquidator shall in any account or summary of receipts and payments which is required to be included in the account or report—

(*a*) state the estimated value of the property distributed amongst the members of the company during the period to which the account or report relates; and

(*b*) provide details of the basis of the valuation as a note to the account or summary of receipts and payments.

Division IV—Creditors' Voluntary Winding-up of the Company

Statement of affairs made out by the liquidator under s. 145 (1) of the Act

125.—(1) This rule applies to the statement of affairs made by the liquidator under section 145 (1) of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a date which is stated, being the date of the opinion formed by the liquidator under section 145 (1) of the Act;

(*c*) state that as at that date, the liquidator formed the opinion that the company would be unable to pay its debts in full, together with interest, within the period stated in the directors' declaration of solvency made under section 143 of the Act; and

(*d*) be verified by a sworn statement made by the liquidator and dated.

(3) The statement of affairs shall be delivered by the liquidator to the Director, the Official Receiver and the Registrar of Companies within 5 business days after the meeting of creditors summoned under section 145 (1) (*a*) of the Act, or if there is no meeting, as soon as it is reasonably practicable.

Statement of affairs made by the directors under s. 143 of the Act

126.—(1) This rule applies to the statement of affairs made by the directors under section 143 of the Act.

(2) The statement of affairs shall be headed "Statement of Affairs" and shall—

(*a*) identify the company;

(*b*) state that it is a statement of the affairs of the company on a

specified date, being a date not more than 14 days before the date of the resolution for winding-up of the company; and

(*c*) be verified by a sworn statement by the directors and dated.

(3) The directors shall deliver the statement of affairs to the liquidator at the company meeting at which the liquidator was appointed or as soon as it is reasonably practicable.

(4) The liquidator shall deliver the statement of affairs to the Director, the Official Receiver and the Registrar of Companies within 5 business days after the meeting of creditors under section 146 of the Act, or if there is no meeting as soon as it is reasonably practicable.

(5) The liquidator may require a director to deliver to the liquidator a statement of concurrence, verified by a sworn statement, stating that the director concurs with the statement of affairs.

(6) The director may make a qualified statement of concurrence where the director—

(*a*) is not in agreement with the statement of affairs;

(*b*) considers the statement to be erroneous or misleading; or

(*c*) is without the direct knowledge necessary for concurring with the statement.

(7) The liquidator shall deliver a copy of any statement of concurrence to the Director, the Official Receiver and the Registrar of Companies.

Additional requirements as to statements of affairs

127.—A statement of affairs under section 143 or 145 of the Act shall also contain—

(*a*) a list of the company's shareholders, with the following details about each shareholder—

(i) name and postal address;

(ii) the type of shares held;

(iii)the nominal amount of the shares held, if any;

(iv) the number of shares held;

(v) the amount per share called up;

(vi) the total amount of shares called up; and

(vii) the total amount of shares held by all shareholders;

(*b*) a summary of the assets of the company, setting out the book value and estimated realisable value of each of—

(i) the surplus of assets subject to a security interest over the amount required to discharge the security interest;

(ii) the uncharged assets; and

(iii) the total value of all the assets available for preferential creditors;

(*c*) a summary of the liabilities of the company, setting out:

(i) the amount of preferential debts;

(ii) an estimate of the deficiency with respect to preferential

debts or the surplus available after paying the preferential debts;

(iii) the amount of debts secured by a security interest to the extent that the value of the security is insufficient to discharge the security interest;

(iv) the amount of unsecured debts, excluding preferential debts;

(v) an estimate of the deficiency with respect to unsecured debts or the surplus available after paying unsecured debts;

(vi) issued and called up capital; and

(vii) an estimate of the deficiency with respect to, or surplus available to, members of the company; and

(*d*) a list of the company's creditors under a security interest, with the following details about each listed creditor—

(i) name and postal address of the creditor;

(ii) amount of the debt owed to the creditor;

(iii) details of any security held by the creditor;

(iv) the date the security interest was perfected; and

(v) the value of the security held by the creditor.

Expenses of statement of affairs

128.—(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 143 of the Act may be paid out of the company's assets, before or after the commencement of the winding-up of the company, as an expense or the winding-up of the company.

(2) Where the payment is made before the commencement of the winding-up of the company, the director presiding at the meeting of creditors held under section 146 of the Act shall inform the meeting of the amount of the payment and the identity of the person to whom it was made.

(3) The liquidator appointed under section 151 of the Act may make such a payment, but if there is a creditors' committee, the liquidator shall deliver to the committee at least 5 business days' notice of the intention to make it.

(4) A payment shall not be made to the liquidator, or to any associate of the liquidator, otherwise than with the approval of the creditors' committee, the creditors, or the Court.

(5) Sub-rules (1), (2), (3) and (4) are without prejudice to the Court's powers under voluntary winding-up of the company followed by winding-up of the company by the Court.

Expenses for assistance in preparing accounts

129.—(1) Where the liquidator requires a person to deliver accounts, the liquidator may, with the approval of the creditors' committee, if there is one, and as an expense of the winding-up of the company, employ someone to assist that person in the preparation of the accounts.

(2) The person who is required to deliver accounts may request an allowance towards the expenses to be incurred in employing others to assist in preparing the accounts.

(3) A request for an allowance shall be accompanied by an estimate of the expenses involved.

(4) The liquidator may, with the approval of the creditors' committee, if there is one, authorise such an allowance, payable as an expense of the winding-up of the company.

Notice to creditors in a creditors' voluntary winding-up of company

130.—(1) A liquidator who decides not to convene a creditors' meeting under section 146 of the Act, shall deliver a notice to all the creditors within 14 days of being appointed by the company.

(2) The notice shall inform the creditors that the liquidator will remain in office unless 10% or more in value or in number of creditors vote against the liquidator continuing in office.

(3) The notice may also seek nominations for members of a creditors' committee.

(4) The deadline for voting shall be at least 14 days after the date of the notice.

(5) The notice shall be accompanied by a copy of the statement of affairs or a summary and a statement by the liquidator of any material transactions relating to the company occurring between the date of the making of the statement of affairs and the date of the notice.

(6) The expenses of calling a meeting shall be expenses of the liquidation.

Information to creditors and contributories

131.—(1) The liquidator shall deliver to all the creditors and contributories within 28 days of the deadline of a meeting of creditors, a notice which, in addition to the standard contents, shall—

(*a*) be accompanied by a statement of affairs or a summary when the notice is delivered to any creditor or contributory; and

(*b*) contain particulars of any objections to the liquidator remaining in office received in response to the notice under rule 130 and a report of the proceedings at any meeting which took place under section 146 of the Act.

(2) The liquidator may exclude from the estimates information the disclosure of which could seriously prejudice the commercial interests of the company.

(3) Where such information is excluded, then the estimates shall be accompanied by a statement to that effect.

Report by director, etc.

132.—(1) At a meeting held under section 146 of the Act, where the statement of affairs laid before the meeting does not state the company's affairs as at the date of the meeting, the directors of the company shall cause a report, written or oral, to be made to the meeting on any material transactions relating to the company occurring between the date of the making of the statement of affairs and the date of the meeting.

(2) The report shall be made by the director presiding at the meeting or by another person with knowledge of the relevant matters.

Resolutions in respect of appointment of liquidator

133.—(1) In the case of a resolution for the appointment of a liquidator—

(*a*) if on any vote there are two nominees for appointment, the person who obtains the most votes is appointed;

(*b*) if there are three or more nominees, and one of them has a clear majority over both or all the others together, that person is appointed; and

(*c*) in any other case, the chairperson of the meeting shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson of the meeting may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of liquidator by creditors or by the company

134.—(1) This rule applies where a person is appointed as liquidator by a meeting of creditors or by a meeting of the company.

(2) The chairperson of the meeting shall only certify the appointment of the liquidator, where —

(*a*) the proposed liquidator ("the appointee") has provided the chairperson with evidence that he qualifies as an insolvency practitioner under the Act and he consents to act as the liquidator; and

(*b*) the appointee has provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The liquidator's appointment shall take effect upon the passing of a resolution for his appointment by the meeting of creditors or the meeting of the company.

(4) The certificate shall be signed and dated by the chairperson and shall—

(*a*) identify the company;

(*b*) identify and provide contact details for the person appointed as liquidator;

(*c*) state the date of the meeting of the company when the liquidator was appointed; and

(*d*) state that at the meeting, the proposed liquidator, having provided evidence that he qualifies as an insolvency practitioner under the Act to be the liquidator of the company and having consented to act such, was appointed liquidator of the company.

(5) Where two or more liquidators are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as the liquidator; and

(*b*) specify the circumstances, if any, in which the joint liquidators shall act together.

(6) The chairperson shall deliver the certificate, as soon as it is

reasonably practicable, to the liquidator, who shall keep it as part of the records of the winding-up of the company.

(7) It shall be the duty of the creditors' committee to review from time to time the adequacy of the liquidator's security for the proper performance of the office.

(8) The cost of the liquidator's security shall be an expense of the liquidation.

Appointment of liquidator by the Court

135.—(1) This rule applies where the liquidator is appointed by the Court under section 151(1) and (2) of the Act.

(2) The Court shall only make an order where the proposed liquidator has filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator.

(3) The order of the Court shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the date on which it is made;

(*c*) identify the company;

(*d*) state the name and postal address of the applicant;

(e) state the capacity in which the applicant is making the application;

(*f*) identify the proposed liquidator; and

(*g*) state that, upon consideration of the evidence, it is ordered that the proposed liquidator, having filed with the Court evidence that he is a qualified insolvency practitioner under the Act and he consents to act as the liquidator, is appointed liquidator of the company.

(4) Where two or more liquidators are appointed, the order shall additionally specify the circumstances, if any, in which the joint liquidators shall act together.

(5) The Court shall deliver a sealed copy of the order to the liquidator, whose appointment takes effect from the date of the order.

(6) Within 28 days from appointment, the liquidator shall—

(*a*) deliver the notice of appointment to all creditors of the company; or

(*b*) advertise the notice of appointment in accordance with any directions given by the Court.

Authentication of the liquidator's appointment

136. The following may be provided as proof in any proceedings that the person appointed is duly authorised to exercise the powers and perform the duties of a liquidator in the company's winding-up of the company—

(*a*) a copy of the certificate of the liquidator's appointment; or

(*b*) a sealed copy of the Court's order.

Appointment of liquidator to be advertised

137.—(1) A liquidator appointed in a voluntary winding-up of the company, in addition to giving notice of the appointment in accordance with section 161 of the Act, may advertise the notice in such other manner as the liquidator thinks fit.

(2) In addition to the standard contents, the notice shall state—

(*a*) that a liquidator has been appointed; and

(*b*) the date of the appointment.

(3) The liquidator shall initially bear the expense of giving the notice under this rule and shall be entitled to be reimbursed for the expenditure as an expense of the winding-up of the company.

Liquidator's resignation and replacement

138.—(1) Where a liquidator intends to resign, rule 105 shall apply, *mutatis mutandis*, to his intention to resign.

(2) The date of the deadline or of the meeting under sub-rule (1) shall be not more than 5 business days before the date on which the liquidator intends to give notice to the Director, and a copy of the notice to the Registrar of Companies and the Official Receiver as required under section 161 of the Act.

(3) The resigning liquidator's release is effective from the date of delivery of the notice of resignation to the Director, and a copy of that notice to the Registrar of Companies and the Official Receiver.

Removal of liquidator by creditors' meeting

139.—(1) Where a creditors' meeting resolves that the liquidator be removed, the chairperson of the meeting shall, as soon as it is reasonably practicable, deliver the certificate of the liquidator's removal—

(*a*) to the new liquidator; or

(*b*) to the Director, the Official Receiver and the Registrar of Companies if another liquidator was not appointed at the meeting.

(2) The new liquidator shall deliver the certificate to the Director, the Official Receiver and the Registrar General, as soon as it is reasonably practicable.

Advertisement of resignation or removal of liquidator

140. A new liquidator, who is appointed in place of the person who has resigned or been removed, shall, in giving notice of the appointment, state whether the liquidator's predecessor has resigned or been removed and, if it be the case, has been released.

Removal of liquidator by the Court

141.—(1) This rule applies where an application is made to the Court for the removal of a liquidator, or for an order directing the liquidator to summon a meeting of creditors for the purpose of removing the liquidator.

(2) Where the Court considers that no sufficient cause is shown for the application, it shall deliver a notice to that effect to the applicant.

(3) Upon delivery of the notice under sub-rule (2), the applicant may, by notice, within 5 business days of delivery of the Court's notice, request for a date, time and venue to be fixed for a hearing as to whether sufficient cause is shown, and the Court shall do so without notice to any other party.

(4) Where the applicant gives no notice under sub-rule (3), the Court may dismiss the application without a hearing.

(5) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the liquidator on the application.

(6) The applicant shall, at least 14 days before the hearing, deliver to the liquidator a notice stating the date, time and venue and with a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(7) The costs of the application are not payable as an expense of the winding-up of the company, unless the Court orders otherwise.

(8) On a successful application, the Court's order shall—

(*a*) state the name of the Court and the Registry in which the order is made;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the liquidator;

(*f*) identify the company; and

(g) state that, upon consideration of the evidence, it is ordered that—

(i) the liquidator be removed from office; or

(ii) the liquidator shall summon a meeting of the company's creditors on or before a date stated in the order for the purpose of considering the liquidator's removal from office; and

(*h*) state the date the order is made.

(9) The Court shall deliver two sealed copies of the order to the liquidator.

Deceased liquidator

142.—(1) Where a liquidator dies, a notice to the fact and date of death shall be delivered, as soon as it is reasonably practicable, to—

(*a*) the creditors' committee or a member of that committee; and

(*b*) the Director,

(*c*) the Official Receiver; and

(*d*) the Registrar of Companies.

(2) The notice shall be delivered by one of the following persons—

(*a*) a partner in the deceased liquidator's firm, if the deceased was a partner in, or an employee of, a firm;

(*b*) a personal representative of the deceased liquidator.

(3) Where such a notice has not been delivered within 28 days following the liquidator's death, then any other person may deliver the notice.

Liquidator's duties on vacating office

143. A liquidator who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner shall, as soon as it is reasonably practicable, deliver to the successor liquidator—

(*a*) the assets, after deduction of any expenses properly incurred and distributions made by the previous liquidator;

(*b*) the records of the winding-up of the company, including correspondence, proofs and other documents relating to the company reorganization while it was within the liquidator's responsibility; and

(*c*) the company's documents and other records.

Application by liquidator for release

144.—(1) A liquidator's application to the Court for release under section 125 of the Act shall—

(*a*) identify and provide contact details for the liquidator;

(*b*) identify the company;

(*c*) provide details of the circumstances under which the liquidator has ceased to act as liquidator and any other information required by the Act;

(*d*) state that the liquidator of the company is applying to the Court for a certificate of release as liquidator as a result of the circumstances specified in the application; and

(*e*) be signed and dated by the liquidator.

(2) The Court shall deliver a copy of the order for release to the Director, the Registrar of Companies and the Official Receiver within 7 days of the making of the order of release.

(3) When the Court releases the liquidator, the Director shall certify the release and deliver the certificate to the Registrar of Companies and the Official Receiver.

Court's powers to set aside certain transactions

145.—Rule 111 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of the company of a company.

Rule against solicitation

146. Rule 112 shall apply, *mutatis mutandis*, to the creditors' voluntary winding-up of a company.

General powers of liquidator

147.—(1) A permission given by—

(*a*) the creditors' committee, or if there is no such committee, a meeting of the company's creditors; or

(*b*) under these Rules,

shall not be a general permission but shall relate to a particular proposed exercise of the liquidator's power.

(2) A person dealing with the liquidator in good faith and for value need not enquire whether permission under sub-rule (1) has been given.

(3) Where the liquidator has done anything without such permission, the Court or the creditors' committee may ratify what the liquidator has done, but

neither shall do so unless satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay.

General rule as to priority

148.—(1) All fees, costs, charges and other expenses incurred in the course of the winding-up of a company are to be treated as expenses of the winding-up.

(2) The expenses of the winding-up of the company are payable out of—

(*a*) assets of the company available for the payment of general creditors, including proceeds of any legal action which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*b*) proceeds arising from any award made under any arbitration or other dispute resolution procedure which the liquidator has power to bring in the liquidator's own name or in the name of the company;

(*c*) any payments made under any compromise or other agreement intended to avoid legal action or recourse to arbitration or to any other dispute resolution procedure; and

(*d*) payments made as a result of a settlement of any such action, arrangement or procedure in lieu of, or before, any judgment being given or award being made.

(3) Unless provided otherwise, the expenses shall be payable in the following order of priority—

(*a*) expenses which are properly chargeable or incurred by the liquidator in preserving, realising or getting in any of the assets of the company or otherwise in the preparation or conduct of any legal proceedings, arbitration or other dispute resolution procedures, which the liquidator has power to bring in the liquidator's own name or bring or defend in the name of the company or in the preparation or conduct of any negotiations intended to lead or leading to a settlement or compromise of any legal action or dispute to which the proceedings or procedures relate;

(*b*) the cost of any security provided by the liquidator or special manager under the Act or these Rules;

(*c*) the remuneration of the special manager, if any;

(*d*) any amount payable to a person employed or authorised to assist in the preparation of a statement of affairs or of accounts;

(*e*) the costs of employing a secretary, on the application of the liquidator;

(*f*) any necessary disbursements by the liquidator in the course of the administration, including any expenses incurred by members of the creditors' committee or their representatives and allowed by the liquidator;

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

(*h*) the remuneration of the liquidator;

(*i*) the amount of any tax on chargeable gains accruing on the realisation of any asset of the company, irrespective of the person by whom the realisation is effected; and

(*j*) any other expenses properly chargeable by the liquidator in carrying out the liquidator's functions in the winding-up of the company.

Division V—Examination of Company Officers and Others

Application and order for examination

149.—(1) This rule applies to an application by a liquidator to the Court under section 159 (3) of the Act for the examination of any person.

(2) An application relating to a person falling within section 159 (3) of the Act shall be accompanied by a report by the liquidator indicating —

(*a*) the grounds on which the person is supposed to fall within section 159 (3) of the Act; and

(*b*) whether the liquidator thinks it is likely that the order can be served on the person at a known address and, if so, by what means.

(3) The order shall be headed "Order of Examination" and shall—

(*a*) identify the proceedings;

(*b*) state that, upon the application of the liquidator and upon consideration of the evidence, it is ordered that the person specified in the order do attend the venue specified in the order for the purpose of being examined;

(*c*) state the name and postal address of the person to be examined;

(*d*) state the date, time and venue for the examination;

(*e*) state the date of the making of the order; and

(*f*) contain a warning to the person to be examined stating that if the person fails, without reasonable excuse, to attend the examination at the time and place specified in the order, the person shall be in contempt of Court and liable to be committed to prison or fined.

(4) As soon as it is reasonably practicable, after the Court makes the order, the Official Receiver shall serve a copy of the Court's order on the person to be examined.

(5) Where the report accompanying an application relating to a person falling within section 159 (3) of the Act states that the liquidator thinks that there is no reasonable certainty that the order can be served at a known address, the Court may direct that the order be served by some alternative means other than, or in addition to, such service.

(6) The Court shall rescind an order for examination made on an application to which sub-rule (3) relates if the Court is satisfied that the person does not fall within section 159 (3) of the Act.

Notice of hearing

150.—(1) The liquidator shall give at least 14 days' notice of the hearing—

(*a*) to the Official Receiver and the Director;

(*b*) to the special manager, if a special manager has been appointed; and

(*c*) to every creditor and contributory of the company who is known to the Official Receiver subject to any contrary direction of the Court.

(2) Where the liquidator thinks fit, the notice of the hearing—

(*a*) shall be published in the *Gazette*;

(*b*) shall be advertised in two daily newspapers of wide circulation; and

(*c*) may be advertised in such other manner as the liquidator thinks fit, not less than 14 days before the date fixed for the hearing.

(3) In addition to the standard contents, the notice of the hearing shall state—

(*a*) the purpose of the hearing; and

(*b*) the venue, date and time for the hearing.

(4) Where the notice of hearing relates to a person falling within section 159 (3) of the Act, unless the Court directs otherwise, the notice shall not be published under sub-rule (3) until at least 5 business days have elapsed since the examinee was served with the notice.

Request by creditors or contributories for a public examination

151.—(1) This rule applies to a request made to the liquidator by a creditor or contributory for the public examination of a person.

(2) A request by a creditor shall be accompanied by —

(*a*) a list of the creditors concurring with the request and the amounts of their respective claims in the winding-up of the company, with their respective values; and

(*b*) from each concurring creditor, confirmation of the concurrence.

(3) A request by a creditor shall—

(*a*) identify the company;

(*b*) state the name and postal address of the creditor;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the creditor requests the Official Receiver to apply to the Court for a public examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the amount of the creditor's claim in the winding-up of the company;

(*g*) state that the total amount of the creditors and the concurring creditors' claims is believed to represent not less than one-half in value of the debts of the company in relation to total debts;

(*h*) state that the creditor understands the requirement to deposit

with the liquidator such sum as the Official Receiver may determine to be appropriate by way of security for the expenses of holding a public examination;

(*i*) state that the creditor believes that a public examination is required for the reason stated in the request; and

(*j*) be signed and dated by the creditor.

(4) A request by a contributory shall be accompanied by—

(*a*) a list of the contributories concurring with the request and the number of shares and votes each holds in the company; and

(*b*) from each concurring contributory, confirmation of the concurrence and of the number of shares and votes held in the company.

(5) A request by a contributory shall—

(*a*) identify the company;

(*b*) state the name and postal address of the contributory;

(*c*) state the name and postal address of the proposed examinee;

(*d*) describe the relationship which the proposed examinee has, or has had, with the company;

(*e*) state that the requisitioning contributory requests the Official Receiver to apply to the Court for an examination of the proposed examinee under section 159 (3) of the Act;

(*f*) state the number of shares held in the company by the requisitioning contributory;

(*g*) state the number of votes to which the requisitioning contributory is entitled to;

(*h*) state that the total amount of the contributories and concurring contributories' shares and votes is believed to represent not less than three-quarters in value of the company's contributories;

(*i*) state that the requisitioning contributory understands the requirement to deposit with the Official Receiver, such sum as the Official Receiver may determine to be appropriate, by way of security for the expenses of holding a public examination;

(*j*) state that the requisitioning contributory believes that a public examination is required for the reason specified in the request; and

(*k*) be signed and dated by the requisitioning contributory.

(6) A request for an examination does not require the support of concurring creditors or contributories if the requisitioning creditor's debt or, as the case may be, requisitioning contributory's shareholding, is, by itself, sufficient.

(7) Before an application to the Court is made on the request, the requisitioning contributory shall deposit with the liquidator such sum of money, as the liquidator may determine to be appropriate, by way of security

for the expenses of the hearing of an examination, if ordered.

(8) The liquidator shall make the application to the Court required by section 159 (3) of the Act within 28 days of receiving the request, unless the liquidator thinks the request is unreasonable in the circumstances.

(9) Where the liquidator applies without notice to any other party to be relieved of the obligation and the Court makes such an order, then the liquidator shall give notice of the order, as soon as it is reasonably practicable, to the creditors or contributories who requested the examination.

(10) Where the Court dismisses the liquidator's application, the Official Receiver shall make the application under section 160 of the Act, as soon as it is reasonably practicable.

Examinee unfit for examination

152.—(1) Where the examinee is a person who lacks capacity or is unfit to undergo or attend for examination, the Court may—

(*a*) stay the order for the examinee's examination; or

(*b*) direct that it shall be conducted in such manner and at such place as it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malawi or elsewhere to manage the affairs of, or to represent, the examinee;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the liquidator.

(3) Where the application is made by a person other than the liquidator, then—

(*a*) the application shall, unless the examinee is a person who lacks capacity, be supported by a sworn statement of a registered medical practitioner as to the examinee's mental and physical condition;

(*b*) at least 5 business days' notice of the application shall be given to the liquidator; and

(*c*) before any order is made on the application, the applicant shall deposit with the liquidator such sum of money, as the liquidator certifies to be necessary for the additional expenses of an examination.

(4) The order shall—

(*a*) identify the proceedings;

(*b*) state the name and postal address of the applicant;

(*c*) state name and postal address of the examinee;

(*d*) state the date of the order for the examinee's examination ("the original order");

(*e*) state that, upon consideration of the evidence, the Court is satisfied that the examinee specified in the order lacks capacity to manage and administer the examinee's property and affairs or is unfit to undergo a public examination;

(*f*) order that—

(i) the original order be stayed on the grounds that the examinee is unfit to undergo a public examination; or

(ii) the original order be varied, as specified in this order, on the grounds that the examinee is unfit to attend the public examination fixed by the original order; and

(*g*) state the date of the making of the order.

(5) Where a person other than the liquidator makes the application, the Court may order that some or all of the expenses of the examination shall be payable out of the deposit, instead of as an expense of the winding-up of the company.

(6) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing

153.—(1) The examinee shall at the hearing—

(*a*) be examined on oath; and

(*b*) answer all such questions as the Court may put, or allow to be put, to the examinee.

(2) The examinee may, at the examinee's own expense, engage a legal practitioner, who may put to the examinee such questions as the Court may allow for the purpose of enabling the examinee to explain or qualify any answers given by the examinee, and may make representations on behalf of the examinee.

(3) The Court shall have a record made of the examination such as the Court considers appropriate.

(4) The record may, in any proceedings, whether under the Act or otherwise, be used as evidence of any statement made by the examinee in the course of the examination.

(5) Where criminal proceedings have been instituted against the examinee, and the Court is of the opinion that the continuation of the hearing would prejudice a fair trial of those proceedings, the hearing may be adjourned.

Adjournment of examination

154.—(1) The Court may adjourn the examination from time to time, to a fixed date or generally.

(2) Where the examination has been adjourned generally, the Court may at any time on the application of the Official Receiver, or of the examinee, give directions as to the manner in which, and the time within which, notice of the resumed examination is to be given to persons entitled to take part in it.

(3) An order adjourning the examination to a fixed date will contain a warning to the person being examined stating that if the person fails without reasonable excuse to attend the public examination at the venue, date and time specified in the order, the person shall be in contempt of court and liable to be committed to prison or fined.

(4) Where an application to resume an examination is made by the examinee, the Court may grant the resumption on terms that the examinee shall pay the expenses of giving the notices required by sub-rule (2) and that, before the venue, date and time for the resumed public examination is fixed, the examinee shall deposit with the liquidator such sum of money, as the liquidator considers necessary, to cover those expenses.

Expenses of examination

155. Where an examination of the examinee has been ordered by the Court on a creditor's or contributory's requisition, the Court may order that some or all of the expenses of the examination shall be paid out of the deposit, instead of as an expense of the winding-up of the company.

Division VI—Miscellaneous Provisions

Application to Court for order authorising return

156.—(1) This rule applies where the liquidator intends to apply to the Court for an order authorising a return of capital.

(2) The application shall be accompanied by a list of the persons to whom the return is to be made.

(3) The list shall include the same details of those persons as appears in the settled list of contributories, with any necessary alterations to take account of matters after settlement of the list, and the amount to be paid to each person.

(4) Where the Court makes an order authorising the return of capital, it shall deliver a sealed copy of the order to the liquidator.

Procedure for return of capital

157.—(1) The liquidator shall inform each person to whom a return of capital is made of the rate of return of capital per share, and whether it is expected that any further return of capital shall be made.

(2) Any payments made by the liquidator by way of the return of capital may be delivered by post, unless for any reason, another method of making the payment has been agreed with the payee.

PART V—BANKRUPTCY AND ALTERNATIVES

Division I—Bankruptcy Process

Statutory demand

158.—(1) A statutory demand under section 190 of the Act shall—

(*a*) identify the debtor;

(*b*) state the name and address of the creditor;

(*c*) state the amount of the debt, being not less than K100,000 and the consideration for it, or, if there is no consideration, the way in which it arises;

(*d*) if founded on a judgment or order of the Court, it shall give details of the judgment or order;

(*e*) state the grounds on which it is alleged that the debtor appears to have no reasonable prospect of paying the debt; and

(*f*) be dated and signed by the creditor or a person who is authorised

to make the statutory demand on the creditor's behalf.

(2) A statutory demand which is signed by an authorised person shall state that the person is authorised to make the demand on the creditor's behalf.

(3) Where the amount claimed in the statutory demand includes—

(*a*) any charge by way of interest of which notice had not previously been delivered to the debtor as a liability of the debtor; or

(*b*) any other charge accruing from time to time, the amount or rate of the charge shall be separately identified, and the grounds on which payment of it is claimed shall be stated.

(4) The amount claimed in the statutory demand for charges referred to in sub-rule (3) shall be limited to the amount which has accrued and due at the date of the demand.

(5) Where the creditor holds any security in respect of the debt, the full amount of the debt shall be specified, but the statutory demand shall—

(*a*) specify the nature of the security, and the value which the creditor puts upon it at the date of the statutory demand; and

(*b*) claim payment of the full amount of the debt, less the specified value of the security.

(6) For the purposes of—

(*a*) section 192 (4) of the Act, the number of days shall be 21 days; and

(*b*) section 192 (2) (*a*) of the Act, the number of days shall be 42 days.

159.—(1) The statutory demand shall explain the following matters to the debtor—

(*a*) the purpose of the demand;

(*b*) that if the debtor does not comply with the demand, bankruptcy proceedings may be commenced;

(*c*) the date by which the debtor shall comply with the demand, if that consequence is to be avoided;

(*d*) the methods of compliance which are open to the debtor;

(*e*) the debtor's right to apply to the Court for the demand to be set aside;

(*f*) that any application to set aside the demand shall be made within 18 days of service of the demand on the debtor; and

(*g*) that if the debtor does not apply to set aside the demand within 18 days or otherwise deal with the demand within 21 days after its service on the debtor, the debtor may be made bankrupt and the debtor's property and goods taken away.

(2) A demand shall name one or more individuals with whom the debtor may communicate with a view to—

(*a*) securing or compounding for the debt to the satisfaction of the creditor; or

(*b*) establishing to the creditor's satisfaction that there is a reasonable prospect that the debt will be paid when it falls due.

(3) The postal address and telephone number, if any, of the named individual shall be given to the creditor.

(4) The prescribed amount for the purposes of section 188 (4) of the Act shall be K100,000.

Service of statutory demand

160. Unless the Court directs otherwise, a statutory demand shall be served personally.

Proof of service of statutory demand

161.—(1) Where section 188 of the Act requires a statutory demand to be served before the petition, a certificate proving service of the demand shall be filed with the Court together with the petition.

(2) The certificate shall be verified by an sworn statement and be accompanied by a copy of the statutory demand served.

(3) Where the statutory demand has been served personally on the debtor, the certificate shall be signed by the person who served it unless service has been acknowledged in writing by the debtor or a person authorised to accept service of the statutory demand on behalf of the debtor.

(4) Where service of the statutory demand has been acknowledged in writing by—

(*a*) the debtor; or

(*b*) a person who is authorised to accept service of the statutory demand on behalf of the debtor and who has stated that this is the case in the acknowledgement of service,

then the certificate shall be signed by the creditor or by a person acting on behalf of the creditor, and the acknowledgement of service shall accompany the certificate.

(5) Where the Court has directed that the statutory demand be served other than personally and there is no acknowledgement of service, the certificate shall be signed by a person or persons having direct personal knowledge of the means adopted for serving the statutory demand, and shall contain the following information—

(*a*) particulars of the Court's direction for alternative service;

(*b*) the steps taken to serve the statutory demand in accordance with the Court's direction; and

(*c*) a date by which, to the best of the knowledge and belief of the person authenticating the certificate, the statutory demand shall have come to the debtor's attention.

(6) Where the certificate referred to in sub-rule 5 (*c*) specifies such a date then, unless the Court orders otherwise, the statutory demand is deemed to have been served on the debtor on that date for the purposes of these Rules.

Application to set aside statutory demand

162.—(1) The debtor may apply to the Court for an order setting aside a statutory demand.

(2) The application shall be made within 18 days from the date of the service of the statutory demand.

(3) The application shall—

(*a*) identify the debtor;

(*b*) state that the application is for an order that the statutory demand be set aside;

(*c*) state the date of the statutory demand; and

(*d*) be dated and signed by the debtor, or by a person authorised to act on behalf of the debtor.

(4) The time within which the debtor shall comply with the statutory demand ceases to run starting from the date on which the application to set aside the statutory demand is filed with the Court, subject to any order of the Court.

(5) The debtor's application shall be accompanied by a copy of the statutory demand, where it is in the debtor's possession, and supported by a sworn statement containing the following—

(*a*) the date on which the debtor became aware of the statutory demand;

(*b*) the grounds on which the debtor claims that it should be set aside; and

(*c*) any evidence in support of the application.

Hearing of application to set aside statutory demand

163.—(1) On receipt of an application to set aside a statutory demand, the Court may, if satisfied that no sufficient cause is shown for the demand, dismiss the demand without giving notice to the creditor.

(2) Where the application to set aside the statutory demand has been dismissed by the Court, the time for complying with the demand runs again starting from the date on which the application has been dismissed.

(3) Unless the application is dismissed for no sufficient cause, the Court shall fix the date, time and venue for it to be heard, and shall give at least 5 business days' notice to—

(*a*) the debtor or, if the debtor's application was made by a legal practitioner acting on behalf of the debtor, to the legal practitioner;

(*b*) the creditor; and

(*c*) whoever is named in the statutory demand as the person with whom the debtor may communicate about the demand.

(4) The Court may grant the application if—

(*a*) the debtor appears to have a counterclaim, set-off or cross demand which equals or exceeds the amount of the debt specified in the statutory demand;

(*b*) the debt is disputed on grounds which appear to the Court to be substantiated;

(*c*) it appears that the creditor holds security in relation to the debt claimed by the statutory demand, and the Court is satisfied that the value of the security equals or exceeds the full amount of the debt; or

(*d*) the Court is satisfied, on other grounds, that the statutory demand ought to be set aside.

(5) An order setting aside a statutory demand shall—

(*a*) identify the debtor;

(*b*) state the date of the hearing of the application;

(*c*) state that the evidence has been considered;

(*d*) state the date of the statutory demand;

(*e*) order that the statutory demand be set aside;

(*f*) contain details of any further order in the matter; and

(*g*) state the date of the making of the order.

(6) Where the creditor holds some security in relation to the debt, but the Court is satisfied that the statutory demand undervalues the security, the creditor may be required to amend the demand without prejudice to the creditor's right to represent the bankruptcy petition by reference to the statutory demand as amended.

(7) Where the Court dismisses the application to set aside the statutory demand, it shall make an order authorising the creditor to present a bankruptcy petition, as soon as it is reasonably practicable, or on, or after, a date specified in the order.

(8) The Court shall deliver a copy of the order to the creditor, as soon as it is reasonably practicable.

Contents of petition

164. The petition shall state—

(*a*) the name and postal address of the petitioner;

(*b*) where the petitioner is represented by a legal practitioner, the name, postal address and telephone number of the legal practitioner;

(*c*) that the petitioner requests that the Court make a bankruptcy order against the debtor; and

(*d*) any other matter prescribed by the Act.

Identification of debtor

165.—(1) The petition shall state the following matters about the debtor, so far as they are within the petitioner's knowledge—

(*a*) the debtor's identity information;

(*b*) the occupation of the debtor, if any;

(*c*) the name or names in which the debtor carries on business, if other than the name of the debtor, and whether, in the case of any business of a specified nature, the debtor carries it on alone or with others;

(*d*) the nature of the debtor's business, and the address or addresses at which it is carried on;

(*e*) any name or names, other than the name of the debtor, in which the debtor has carried on business at, or after, the time when the debt was incurred, and whether the debtor has done so alone or with others;

(*f*) any address or addresses at which the debtor has resided or carried on business at or after that time, and the nature of that business; and

(*g*) whether the debtor's centre of main business interests is in or outside Malawi.

(2) The particulars of the debtor given under this rule shall determine the title of the proceedings.

(3) Where to the petitioner's knowledge, the debtor has used any name other than the one specified under sub-rule (1)(*a*), that fact shall be stated in the petition.

Identification of debt

166.—(1) The petition shall, for each debt in relation to which it is presented, state—

(*a*) the amount of the debt, the consideration for it, or, if there is no consideration, the way in which it arises, and the fact that it is owed to the petitioner;

(*b*) when the debt was incurred and became due for payment;

(*c*) if the amount of the debt includes any charge by way of interest not previously notified to the debtor as a liability of the debtor, the amount and rate of the charge, separately identified;

(*d*) if the amount of the debt includes any other charge accruing from time to time, the amount and rate of the charge, separately identified;

(*e*) the grounds on which any such a charge is claimed to form part of the debt, provided that the amount or rate shall, in the case of a petition based on a statutory demand, be limited to that claimed in the demand;

(*f*) that the debt is unsecured or that where the claim is secured, the amount of the claim and the estimated value of the security; and

(*g*) that the debt is for a liquidated sum payable—

(*i*) immediately, and the debtor appears to be unable to pay it; or

(ii) at some certain, future time, that time to be specified, and the debtor appears to have no reasonable prospect of being able to pay it.

(2) Where the debt is one for which a statutory demand has been served on the debtor under section 190 of the Act, the petition shall—

(*a*) specify the date and manner of service of the statutory demand; and

(*b*) state that, to the best of the creditor's knowledge and belief—

(i) the demand has been neither complied with nor set aside in accordance with these Rules; and

(ii) no application to set aside the demand is outstanding.

(3) Where the case is one of an unsatisfied execution or process in respect of a judgment debt, a warrant of distress, a garnishee order, a charging order or any other means of enforcement of judgment, the petition shall state which Court and the Registry issued the execution or other process and give particulars of the return.

Verification of petition

167.—(1) The petition shall be verified by a sworn statement.

(2) Where the petition relates to debts to different creditors, the debt to each creditor shall be separately verified.

(3) A sworn statement which is not contained in, or endorsed upon, the petition which it verifies, shall identify the petition to which it refers and shall contain—

(*a*) the name of the debtor;

(*b*) the name of the petitioner; and

(*c*) the Court and the Registry in which the petition is to be presented.

(4) The sworn statement shall be sworn by—

(*a*) the petitioner or, if there are two or more petitioners, any one of them;

(*b*) a person such as a director, company secretary or similar company officer, or a legal practitioner, who has been concerned with the matters giving rise to the presentation of the petition; or

(*c*) a responsible person who is duly authorised to swear the sworn statement and has the requisite knowledge of those matters.

(5) Where the person swearing the sworn statement is not the petitioner, or one of the petitioners, the sworn statement shall state—

(*a*) the name and postal address of the person swearing the sworn statement;

(*b*) the capacity in which, and the authority by which, the person swears the sworn statement; and

(*c*) the means of the authenticating person's knowledge of the matters verified.

(6) Where the petition is based on a statutory demand and more than 42 days have elapsed between the service of the demand and the presentation of the petition, the sworn statement shall explain the reasons for the delay.

Court in which petition is to be presented

168.—(1) Where there is in force for the debtor an individual voluntary arrangement under the Act, the petition shall be presented to the Court to which—

(*a*) the nominee's report under section 256 of the Act was submitted; or

(*b*) where a nominee has made a report under section 257 of the Act, an application has been made.

(2) The petition shall contain sufficient information to establish that it is presented in the appropriate Court.

Procedure for presentation and filing

169.—(1) The following copies of the petition shall also be filed with the Court with the petition—

(*a*) one copy for service on the debtor;

(*b*) one copy for service on the Director;

(*c*) one copy for service on the Official Receiver; and

(*d*) if there is in force for the debtor an individual voluntary arrangement under the Act, and the petitioner is not the supervisor of the individual voluntary arrangement, one copy for the supervisor.

(2) The date and time of filing the petition shall be endorsed on the petition and on the copies.

(3) The Court shall fix the date, time and venue for hearing the petition, and the date, time and venue shall also be endorsed on the petition and the copies.

(4) Each copy of the petition shall have the seal of the Court applied to it and shall be delivered to the petitioner.

Death of debtor before service

170. Where the debtor dies before service of the petition, the Court may order service to be effected on the debtor's personal representative, or on such other person as it considers just.

Amendment of petition

171. The petition may, with the Court's permission, be amended at any time after presentation.

Security for costs

172.—(1) This rule applies where the debt is a liquidated sum payable at some future time, where the petitioner claims that the debtor appears to have no reasonable prospect of being able to pay the debt.

(2) The debtor may apply for an order that the petitioning creditor gives security for the debtor's costs.

(3) The nature and amount of the security to be ordered shall be in the Court's discretion.

(4) Where an order for security is made, then the petition shall not be heard until the whole amount of the security has been given to the satisfaction of the Court.

Debtor's notice of opposition to petition

173.—(1) A debtor who intends to oppose the making of a bankruptcy order shall not less than 5 business days before the day fixed for the hearing—

(*a*) file a notice with the Court; and

(*b*) deliver a copy of the notice to the petitioning creditor or his legal practitioner.

(2) The notice shall—

(*a*) identify the proceedings;

(*b*) state that the debtor intends to oppose the making of a bankruptcy order;

(*c*) state the grounds on which the debtor opposes the making of the order; and

(*d*) be signed and dated by the debtor or by a person authorised to act on behalf of the debtor.

Notice by creditors intending to appear

174.—(1) A creditor who intends to appear on the hearing of the petition shall deliver a notice of intention to appear to the petitioner.

(2) The notice shall contain the following—

(*a*) the name and postal address of the creditor, and any telephone number and reference which may be required for communication with that creditor or with any other person specified in the notice as authorised to speak or act on behalf of the creditor;

(*b*) the date of the presentation of the bankruptcy petition and a statement that the notice relates to that petition;

(*c*) the date of the hearing of the petition;

(*d*) the amount and nature of the debt due from the debtor to the creditor;

(*e*) whether the creditor intends to support or oppose the petition;

(*f*) where the creditor is represented by a legal practitioner or other agent, the name, postal address, telephone number and reference number if any, of that person and details of that person's position with, or relationship to, the creditor; and

(*g*) the name and postal address of the petitioner.

(3) The notice shall be signed and dated by the person delivering it.

(4) The notice shall be delivered to the petitioner or his legal practitioner at the address provided by the petitioner or his legal practitioner as the address for service.

(5) The notice shall be delivered so as to reach the petitioner or his legal practitioner not later than 4:00 pm on the business day before that which is appointed for the hearing, or, where the hearing has been adjourned, for the adjourned hearing.

(6) A person who fails to comply with this rule may appear on the hearing of the petition only with the permission of the Court.

List of appearances

175.—(1) The petitioner shall prepare for the Court a list of the creditors who have delivered a notice of their intention to appear.

(2) The list shall contain—

(*a*) the date of the presentation of the bankruptcy petition;

(*b*) the date of the hearing of the petition;

(*c*) a statement that the creditors listed have delivered notice that

they intend to appear at the hearing of the petition;

(*d*) the name and address of each creditor who has delivered notice of intention to appear;

(*e*) the amount owed to each such creditor;

(*f*) the name and postal address of any legal practitioner for a creditor listed; and

(*g*) whether each creditor listed intends to support the petition, or to oppose it.

(3) On the day appointed for hearing the petition, a copy of the list shall be handed to the Court before the hearing commences.

(4) Where the Court gives a creditor permission to appear, the petitioner shall add that creditor to the list with the same particulars.

Hearing of petition

176.—(1) Subject to sub-rule (2), the petition shall not be heard until at least 14 days have elapsed since it was served on the debtor.

(2) The Court may, on such terms as it considers just, hear the petition at an earlier date, if it appears that the debtor has absconded, or the Court is satisfied that it is a proper case for an expedited hearing, or the debtor consents to a hearing within the 14 days.

(3) The following persons may appear and be heard—

(*a*) the petitioning creditor;

(*b*) the debtor;

(*c*) the supervisor of any individual voluntary arrangement in force for the debtor; and

(*d*) any creditor who has delivered notice to be heard.

Postponement of hearing

177.—(1) The petitioner may, if the petition has not been served, apply to the Court to appoint another day for the hearing.

(2) The application shall state the reasons why the petition has not been served.

(3) No costs of the application shall be allowed in the proceedings except by order of the Court.

(4) Where the Court appoints another day for the hearing, the petitioner shall, as soon as it is reasonably practicable, deliver notice of that day to any creditor who delivered notice of intention to appear.

Adjournment of the hearing

178.—(1) This rule applies where the Court adjourns the hearing of a bankruptcy petition.

(2) The order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) a statement that the evidence has been considered;

(*c*) an order that the further hearing of the petition be adjourned to

the date, time and

(*d*) the date of the making of the order.

(3) Unless the Court otherwise directs, the petitioner shall, as soon as it is reasonably practicable, deliver a notice of the order of adjournment to—

(*a*) the debtor; and

(*b*) any creditor who has delivered a notice of intention to appear but was not present at the hearing.

(4) The notice of the order of adjournment shall identify the proceedings and contain—

(*a*) the date of the presentation of the petition;

(*b*) the date the order of adjournment was made; and

(*c*) the date, time and venue for the adjourned hearing.

Decision on the hearing

179.—(1) On the hearing of the petition, the Court may make a bankruptcy order if satisfied that the statements in the petition are true, and that the debt on which it is founded has not been paid, secured or compounded for.

(2) Where the petition is brought in relation to a judgment debt, or a sum ordered by any Court to be paid, the Court may stay or dismiss the petition on the ground that an appeal is pending from the judgment or order, or that execution of the judgment has been stayed.

(3) An order dismissing a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the presentation of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petition be dismissed or that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*j*) the date of the making of the order.

Non-appearance of creditor

180. A petitioning creditor who fails to appear on the hearing of the petition shall not present a petition alone or jointly with any other person against the same debtor in respect of the same debt without the permission of the Court to which the previous petition was presented.

Petitioner seeking permission to withdraw

181.—(1) Where the petitioner applies to the Court for permission to withdraw the petition, the petitioner shall file with the Court a sworn statement specifying the grounds of the application and the circumstances in which it is made if—

(*a*) a creditor of the debtor has delivered notice of intention to appear at the hearing of the petition; or

(*b*) the Court so orders.

(2) Where any payment has been made to the petitioner since the petition was filed by way of settlement, in whole or in part, of the debt or any arrangement has been entered into for securing or compounding the debt, the sworn statement shall also state—

(*a*) what dispositions of property have been made for the purposes of the settlement or arrangement;

(*b*) whether, in the case of any disposition, it was property of the debtor, or of some other person; and

(*c*) whether, if it was property of the debtor, the disposition was made with the approval of, or has been ratified by, the Court , and if so specifying the relevant Court order.

(3) No order giving permission to withdraw a petition shall be given before the petition has been heard.

(4) The order of permission to withdraw a bankruptcy petition shall contain—

(*a*) the name of the Court and the Registry;

(*b*) the date of the filing of the bankruptcy petition;

(*c*) the name, postal address and description of the applicant;

(*d*) a statement that the petition has been heard;

(*e*) a statement that the evidence has been considered;

(*f*) an order that the petitioner has permission to withdraw the petition;

(*g*) details of any further terms of the order; and

(*h*) the date of the making of the order.

Contents of bankruptcy order

182. The bankruptcy order shall identify the proceedings and state—

(*a*) the name and address of the petitioning creditor;

(*b*) the date of the presentation of the petition;

(*c*) the description of the debtor as set out in the petition;

(*d*) that upon reading the evidence it is ordered that the person named be adjudged bankrupt; and

(*e*) the date and time of the making of the order.

Delivery and notice of bankruptcy order

183.—(1) As soon as it is reasonably practicable, after making a bankruptcy order, the Court shall deliver two sealed copies of the order to the Official Receiver.

(2) The Official Receiver shall, as soon as it is reasonably practicable, deliver a sealed copy of the order to the bankrupt.

(3) On receipt of the sealed copies of the bankruptcy order, the Official Receiver shall, as soon as it is reasonably practicable—

(*a*) cause notice of the order to be published in the *Gazette*; and

(*b*) may cause a notice of the order to be advertised in such other manner as the Official Receiver thinks fit.

(4) In addition to the standard contents, the notice to be published in the *Gazette* and any notice to be advertised shall state—

(*a*) that a bankruptcy order has been made against the bankrupt;

(*b*) the date and time of making of the bankruptcy order;

(*c*) the name and address of the petitioning creditor; and

(*d*) the date of presentation of the petition.

(5) The Court may, on the application of the bankrupt or a creditor, order the Official Receiver to suspend action under sub-rule (3) pending a further order of the Court.

(6) An application under sub-rule (5) shall be supported by a sworn statement stating the grounds on which it is made.

(7) Where an order to suspend an action under sub-rule (3) is made, the applicant shall deliver a copy of the order to the Official Receiver, as soon as it is reasonably practicable.

Expenses of individual voluntary arrangement

184. Where a bankruptcy order is made on a debtor's application and there is in force at the time of the application an individual voluntary arrangement under the Act, any expenses properly incurred as expenses of the administration of the individual voluntary arrangement in question shall be a first charge on the bankrupt's estate.

Official Receiver and trustee in bankruptcy

185.—(1) A qualified insolvency practitioner may perform any functions of the Official Receiver and shall be designated "Trustee of a Bankrupt Estate".

(2) The Court or creditors may appoint a trustee in bankruptcy in place of the Official Receiver.

Remuneration of interim receiver

186.—(1) The remuneration of an interim receiver, other than the Official Receiver, shall be fixed by the Court from time to time on application of the interim receiver.

(2) In fixing the remuneration of the interim receiver, the Court shall take into account—

(*a*) the time properly given by the interim receiver and staff of the interim receiver in attending to the debtor's affairs;

(*b*) the complexity of the case;

(*c*) any respects in which, in connection with the debtor's affairs, there falls on the interim receiver any responsibility of an exceptional kind or degree;

(*d*) the effectiveness with which the interim receiver appears to be carrying out, or to have carried out, the duties of the interim receiver; and

(*e*) the value and nature of the property which the interim receiver has to deal with.

(3) Without prejudice to any order the Court may make as to costs, the interim receiver's remuneration shall be paid to the interim receiver, and the amount of any expenses incurred by the interim receiver—

(*a*) if a bankruptcy order is not made, out of the property of the debtor; and

(*b*) if a bankruptcy order is made, out of the bankrupt's estate in the prescribed order of priority, or in either case, the relevant funds being insufficient, out of any deposit.

(4) Unless the Court otherwise directs, if a bankruptcy order is not made the interim receiver may retain out of the debtor's property such sums or property as are, or may be, required for meeting the remuneration and expenses of the interim receiver.

(5) Where a person, other than the Official Receiver, has been appointed interim receiver, and the Official Receiver has taken any steps for the purpose of obtaining a statement of affairs, or has performed any other duty under these Rules, the interim receiver shall pay the Official Receiver such sum, if any, as the Court may direct.

Statement of affairs (s.209 of the Act)

187.—(1) The Official Receiver shall deliver to the bankrupt instructions for the preparation of the bankrupt's statement of affairs.

(2) The statement of affairs shall—

(*a*) state the name of the Court and the Registry that made the bankruptcy order;

(*b*) identify the bankrupt;

(*c*) state the date of the bankruptcy order;

(*d*) contain a list of the bankrupt's secured creditors, giving in relation to each—

(i) the name and postal address;

(ii) the amount owed to the creditor; and

(iii) particulars of the property of the bankrupt which is claimed by the creditor to secure the creditor's claim and the value of that property;

(*e*)contain a list of unsecured creditors, giving in relation to each—

(i) the name and postal address of the creditor;

(ii) the amount the creditor claims the bankrupt owes to that creditor; and

(iii) the amount the bankrupt thinks is owed by the bankrupt to that creditor;

(*f*) contain a list of the bankrupt's total assets divided into the following categories and giving the value of each asset listed—

(i) cash in hand or at a financial institution;

(ii) household furniture and belongings;

(iii) life policies or other investments;

(iv) money owed to the bankrupt;

(v) stock in trade and work in progress;

(vi) motor vehicles;

(vii) real estate; and

(viii) other property; and

(*g*) the total value of the assets listed under paragraph (*f*).

(3) The bankrupt shall sign and date each page of the statement of affairs.

(4) The statement of affairs shall be verified by a sworn statement and delivered to the Official Receiver and the Director, together with one copy.

(5) The Official Receiver shall file with the Court the statement by the bankrupt verified by a sworn statement.

(6) For the purposes of section 209 (4) of the Act, the prescribed time shall be 28 days.

Limited disclosure

188. Where the Official Receiver thinks that disclosure of the whole or part of the statement of affairs would be likely to prejudice the conduct of the bankruptcy or might reasonably be expected to lead to violence against any person, the Official Receiver may apply to the Court for an order that the statement of affairs or any specified part of it—

(*a*) shall not be filed with the Court; or

(*b*) shall be filed separately and not be open to inspection otherwise than with permission of the Court.

Release from duty to submit statement of affairs and extension of time

189.—(1) The Official Receiver may release the bankrupt from the duty to submit a statement of affairs where the debtor has filed a statement of affairs under section 199 of the Act, or to grant an extension of time, at the Official Receiver's own discretion, or at the bankrupt's request.

(2) The bankrupt may apply to the Court for a release or extension of time if the Official Receiver refuses the bankrupt's request.

(3) The Court may dismiss the application if it considers that no sufficient cause is shown, but shall not do so, unless the bankrupt has had an opportunity to attend the Court for a hearing, of which the bankrupt has been delivered at least 5 business days' notice but which is without notice to any other party.

(4) The bankrupt shall, at least 14 days before the hearing, deliver to the Official Receiver a notice stating the date, time and venue and accompanied by a copy of the application, and of any evidence which the bankrupt intends to provide in support of it.

(5) The Official Receiver may appear and be heard on the application and, whether or not the Official Receiver appears, the Official Receiver may file with the Court a report of any matters which the Official Receiver considers ought to be drawn to the Court's attention.

(6) Where such a report is filed, a copy shall be delivered by the Official Receiver to the bankrupt, not later than 5 business days before the hearing.

(7) Sealed copies of any order on the application shall be delivered by the Court to the bankrupt and the Official Receiver.

(8) The bankrupt shall pay the costs of any application under this rule

and, unless the Court otherwise orders, no allowance towards them shall be made out of the bankrupt's estate.

Expenses of assisting bankrupt to prepare statement of affairs

190.—(1) Where the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may, at the expense of the bankrupt's estate, employ a person or firm to assist in the preparation of the statement of affairs.

(2) At the request of the bankrupt, made on the grounds that the bankrupt cannot personally prepare a proper statement of affairs, the Official Receiver may authorise an allowance payable out of the bankrupt's estate, in accordance with the prescribed order of priority, towards expenses to be incurred by the bankrupt in employing a person or firm to assist the bankrupt in preparing the statement.

(3) The bankrupt's request shall be accompanied by an estimate of the expenses involved, and the Official Receiver shall only authorise the employment of a named person or a named firm, being in either case approved by the Official Receiver.

(4) The Official Receiver may make the authorisation subject to such conditions, if any, as the Official Receiver thinks fit relating to the manner in which any person may obtain access to relevant documents and other records.

(5) Nothing in this rule shall relieve the bankrupt from any obligation relating to the preparation, verification and submission of a statement of affairs, or to the provision of information to the Official Receiver or the trustee.

Delivery of accounts to Official Receiver

191.—(1) The bankrupt shall, at the request of the Official Receiver, deliver to the Official Receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period, as the Official Receiver may specify.

(2) The period specified may begin from a date up to 3 years preceding the date of the presentation of the bankruptcy petition.

(3) The Court may, on the Official Receiver's application, require accounts for any earlier period.

(4) The accounts shall be verified by a sworn statement, and, whether or not so verified, delivered to the Official Receiver and the Director within 21 days of the request, or such longer period as the Official Receiver may allow.

Further disclosure

192.—(1) The Official Receiver may, at any time, require the bankrupt to deliver in writing further information amplifying, modifying or explaining any matter contained in the bankrupt's statement of affairs, or in the accounts delivered under the Act or these Rules.

(2) The information shall be verified by a sworn statement, and, whether or not verified, delivered to the Official Receiver and the Director within 21 days from the date of the requirement, or such longer period as the Official Receiver may allow.

Appointment of trustee by creditors' meeting

193.—(1) This rule applies where a person is appointed as trustee by a meeting of creditors.

(2) The chairperson of the meeting shall only certify the appointment, where the appointee has—

(*a*) delivered, to the chairperson, evidence to the effect that he—

(i) is qualified as an insolvency practitioner under the Act;

(ii) is entitled to act as trustee in relation to the bankrupt; and

(iii) consents to act as trustee; and

(*b*) provided evidence, to the satisfaction of the chairperson, that he has security for the proper performance of the office.

(3) The certificate shall be signed and dated by the chairperson and shall also—

(*a*) identify the bankrupt;

(*b*) identify and provide contact details for the person appointed as trustee;

(*c*) state the date of the meeting of creditors at which the trustee was appointed; and

(*d*) state that at the meeting, the appointee having provided evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, was appointed trustee of the bankrupt's estate.

(4) Where two or more trustees are appointed, the certificate shall also—

(*a*) identify and provide contact details for each person appointed as trustee; and

(*b*) specify the circumstances, if any, in which the joint trustees shall act together or whether one or more of them act for other persons.

(5) The trustee's appointment shall be effective from the date on which the appointment has been certified.

(6) The chairperson of the meeting shall deliver the certificate to—

(*a*) the Director; and

(*b*) the Official Receiver, if he is not the Official Receiver.

(7) The Official Receiver shall in any case deliver the certificate to the trustee.

(8) It shall be the duty of the creditors' committee to review from time to time the adequacy of the trustee's security.

(8) The cost of the security shall be an expense of the bankruptcy.

Creditors' meetings: resolution to appoint trustee

194.—(1) In the case of a resolution for the appointment of a trustee—

(*a*) if on a vote there are two nominees for appointment, the nominee who obtains the most votes shall be appointed;

(*b*) if there are three or more nominees, and one of them has a clear

majority over both or all the other nominees together, the nominee with a clear majority shall be appointed; and

(*c*) in any other case the chairperson shall continue to take votes, disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support at the last time of voting, until a clear majority is obtained for any one nominee.

(2) The chairperson may at any time put to the meeting a resolution for the joint appointment of any two or more nominees.

Appointment of trustee by the Court

195.—(1) This rule applies where the Court appoints a trustee.

(2) The Court's order appointing a trustee shall only be made where the person appointed has filed with the Court evidence to the effect that the person is qualified to act as an insolvency practitioner under the Act, and that he consents to act as the trustee.

(3) The order of the Court shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide contact details for the person appointed as trustee;

(*f*) state that upon consideration of the evidence, it is ordered that the person appointed, having filed evidence of qualification to act as an insolvency practitioner in relation to the bankrupt under the Act and having consented to act as the trustee, he was appointed trustee of the bankrupt's estate; and

(*g*) state the date on which the order is made.

(4) Where two or more trustees are appointed, the order shall also specify the circumstances, if any, in which the joint trustees shall act together.

(5) The Court shall deliver three copies of the order to be sealed, to the Official Receiver and the Director.

(6) The Official Receiver shall deliver the sealed copy of the order to the person appointed as trustee.

(7) The trustee's appointment takes effect from the date of the order.

Authentication of trustee's appointment

196.—A copy of the certificate of the trustee's appointment, or as the case may be, a sealed copy of the order of appointment may be provided in any proceedings as proof that the person appointed is duly authorised to exercise the powers and perform the duties of the trustee of the bankrupt's estate.

Appointment to be advertised

197.—(1) As soon as it is reasonably practicable, after appointment of a trustee, a trustee appointed by a meeting of creditors—

(*a*) shall publish a notice of his appointment in the *Gazette*; and

(*b*) may advertise that notice in such other manner as the trustee thinks fit.

(2) In addition to the standard contents, the notice shall state —

(*a*) that a trustee has been appointed by a meeting of creditors; and

(*b*) the date of the appointment.

Hand-over of bankrupt's estate by Official Receiver to trustee

198.—(1) This rule applies where the trustee is appointed in succession to the Official Receiver acting as trustee.

(2) When the trustee's appointment takes effect, the Official Receiver shall, as soon as it is reasonably practicable, do all that is required for putting the trustee into possession of the bankrupt's estate.

(3) On taking possession of the bankrupt's estate, the trustee shall discharge any balance due to the Official Receiver on account of—

(*a*) expenses properly incurred by the Official Receiver and payable under the Act or these Rules; and

(*b*) any advances made by the Official Receiver in respect of the bankrupt's estate together with interest on the date of the bankruptcy order or subsequently.

(4) As an alternative to sub-rule (3), the trustee may, before taking office, deliver to the Official Receiver a written undertaking to discharge any such balance out of the first realisation of assets.

(5) The Official Receiver shall have a charge on the bankrupt's estate in respect of any sums due under sub-rule (3) until they have been discharged, subject only to the deduction from realisations by the trustee of the costs and expenses of such realisations.

(6) The trustee shall, from time to time out of the realisation of assets, discharge all guarantees properly given by the Official Receiver for the benefit of the bankrupt's estate, and shall pay all the Official Receiver's expenses.

(7) The Official Receiver shall give to the trustee all the information relating to the affairs of the bankrupt and the course of the bankruptcy which the Official Receiver considers to be reasonably required for the effective discharge by the trustee of the trustee's duties in relation to the estate.

Trustee's resignation and appointment of replacement

199.—(1) Rule 105 shall apply, *mutatis mutandis*, to the resignation of the trustee of a bankrupt's estate.

(2) The trustee of a bankrupt's estate shall deliver a copy of his notice of resignation to the Official Receiver and the bankrupt.

(3) A new trustee appointed in place of one who has resigned shall, when delivering his notice of appointment, also deliver the notice of the previous trustee's resignation.

(4) The resigning trustee's release shall be effective from the date on which the notice of resignation is filed—

(*a*) with the Court and the Registry, where the debtor was declared bankrupt by the Court; or

(*b*) with the Official Receiver, where the debtor was declared bankrupt based on a debtor's application.

Meeting of creditors to remove trustee

200.—(1) Where the chairperson of a meeting of creditors is other than the Official Receiver, and a resolution is passed to remove the trustee, the chairperson shall, within 3 business days of the passing of the resolution, deliver a certificate to that effect to the Official Receiver.

(2) Where the creditors have resolved to appoint a new trustee, the certificate of the new trustee's appointment shall also be delivered to the Official Receiver within that time.

(3) The certificate of the trustee's removal shall be signed and dated by the chairperson and—

(*a*) identify the bankrupt;

(*b*) identify and provide the contact details for the trustee;

(*c*) state that at a meeting of the creditors of the bankrupt held on the date specified in the certificate, it was resolved that the trustee specified in the certificate be removed from office as trustee of the bankrupt's estate;

(*d*) state the date of the meeting; and

(*e*) state that the meeting—

(i) did not pass any resolution against the trustee being released; or

(ii) resolved that the trustee should not be released.

(4) The trustee's removal shall be effective from the date of the certificate of removal.

Procedure on removal by creditors

201.—(1) Where the creditors have resolved that the trustee be removed, the Official Receiver shall, in the case where the debtor was declared bankrupt—

(*a*) by the Court, following a creditor's petition, file the certificate of removal with the Court; or

(*b*) following a debtor's application, place the certificate of removal on the bankrupt's file.

(2) The Official Receiver shall deliver a copy of the certificate to—

(*a*) the removed trustee;

(*b*) the new trustee, if appointed; and

(*c*) the Director.

Removal of trustee by the Court

202.—(1) This rule applies where an application is made to the Court for the removal of the trustee, or for an order directing the trustee to summon a meeting of creditors for the purpose of considering a motion removing the trustee.

(2) Where the Court considers that no sufficient cause is shown for the application it shall deliver a notice to that effect to the applicant.

(3) Unless the application is dismissed, the Court will fix the date, time and venue for it to be heard.

(4) The Court may require the applicant to make a deposit or give security for the costs to be incurred by the trustee on the application.

(5) The applicant shall, at least 14 days before the hearing, deliver to the trustee and the Official Receiver and the Director a notice stating the date, time and venue of the hearing, accompanied by a copy of the application, and of any evidence which the applicant intends to provide in support of the application.

(6) On a successful application, the Court's order shall—

(*a*) identify the proceedings;

(*b*) state the name and title of the person making the order;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant is making the application;

(*e*) identify and provide the contact details for the trustee;

(*f*) state that, upon consideration of the evidence, it is ordered that—

(i) the trustee be removed from office; or

(ii) the trustee shall summon a meeting of the bankrupt's creditors on or before the date specified in the order for the purposes of considering the trustee's removal from office;

(*g*) provide details of any further order in the matter; and

(*h*) state the date of the making of the order.

(7) The costs of the application shall not be payable as an expense of the bankruptcy, unless the Court orders otherwise.

(8) Where the Court removes the trustee, the Court shall deliver a copy of the order of removal to the trustee, the Director and the Official Receiver.

Advertisement of removal

203. A new trustee who has been appointed in place of a trustee who has been removed shall, in giving notice of his appointment, state that the previous trustee has been removed and, if it be the case, has been released.

Release of removed trustee

204. Where a trustee is removed by a meeting of creditors, the certificate of removal shall state whether or not the meeting resolved for, or against, the trustee's release.

Deceased trustee

205.—(1) Where the trustee, not being an Official Receiver, dies, a notice to that effect and the date of death shall be delivered, as soon as it is reasonably practicable, to the Official Receiver and the Director by one of the following—

(*a*) a partner in the deceased trustee's firm, if the deceased was a partner in, or an employee of, a firm; or

(*b*) a personal representative of the deceased trustee.

(2) Where such a notice has not been delivered within 28 days following the trustee's death, then any other person may deliver the notice.

(3) The Official Receiver shall file the notice of the death with the Court.

Loss of qualification as insolvency practitioner

206.—(1) This rule applies where the trustee vacates office on ceasing to be qualified to act as an insolvency practitioner in relation to the bankrupt.

(2) The trustee shall, as soon as it is reasonably practicable, deliver a notice stating his loss of qualification referred to in sub-rule (1) to the Official Receiver.

(3) The notice shall—

(*a*) identify and provide contact details for the trustee;

(*b*) identify the bankrupt;

(*c*) state that the trustee ceased to be a qualified insolvency practitioner with effect from the date specified in the notice;

(*d*) specify the date; and

(*e*) be signed and dated by the trustee.

(4) On receiving the notice, the Official Receiver shall deliver a copy of the notice to the Director.

Vacation of office on completion of bankruptcy

207.—(1) The trustee shall not deliver a notice under rule 206 that the administration of the bankrupt's estate is complete until at least 8 weeks after the final report on the bankruptcy and the notice of the trustee's intention to vacate office has been delivered to all the creditors.

(2) In addition to the standard contents, the notice under rule 206 shall—

(*a*) state that the trustee has delivered the notice of intention to vacate office and a copy of the final report to the directors, all the creditors and the bankrupt;

(*b*) state the date of the notice;

(*c*) state whether—

(i) the trustee shall be released on vacating office; or

(ii) more than 10% in value of the creditors objected to the trustee's release, who shall apply to the Director for his release;

(*d*) be signed and dated by the trustee; and

(*e*) be accompanied by a copy of the final report.

(3) The trustee shall deliver a copy of the notice to the Director and the Official Receiver.

Trustee's duties on vacating office

208. A trustee who ceases to be in office in consequence of removal, resignation or loss of qualification as an insolvency practitioner, shall as soon as it is reasonably practicable, deliver to the successor as trustee—

(*a*) the assets of the estate, after deduction of any expenses properly incurred, and distributions made, by the trustee;

(*b*) the records of the bankruptcy, including correspondence, proofs and other documents relating to the bankruptcy while it was within the trustee's responsibility; and

(*c*) the bankrupt's documents and other records.

Rule against solicitation by, or on behalf of, trustee

209.—Rule 112 shall apply, *mutatis mutandis*, to the proscription against solicitation by the trustee or a person acting on his behalf.

Order for public examination

210.—(1) The Court shall hold a public examination of a bankrupt under section 235 of the Act.

(2) The Official Receiver shall deliver a notice of the public examination to a bankrupt 14 days after the statement of the Official Receiver is filed with the Court, or the ordinary resolution of the meeting of creditors has been certified by the Official Receiver or the chairperson of the meeting.

(3) The notice shall appoint the date, time and venue for the public examination, and direct the bankrupt's attendance at the examination.

(4) The notice shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend the bankrupt's public examination at the date, time and venue set out in the notice, the bankrupt commits contempt of court.

(5) The Official Receiver shall deliver the notice of the public examination at least 14 days from the date of the examination—

(*a*) to the trustee; and

(*b*) subject to any contrary direction of the Court, to every creditor of the bankrupt who is known to the Official Receiver.

(6) Where the Official Receiver thinks fit, a notice of the public examination shall be advertised, not less than 14 days before the date of the examination, in two daily newspapers of wide circulation or in such other manner.

(7) The notice of public examination shall include the standard contents.

Order on public examination requested by creditors

211.—(1) A notice by a creditor to the Official Receiver requesting the bankrupt to be publicly examined shall be accompanied by—

(*a*) a list of the creditors concurring with the request with the name and postal address of each of the creditors and the amount of their respective claims in the bankruptcy;

(*b*) confirmation by each creditor of that creditor's concurrence; and

(*c*) a statement of the reasons why the public examination is requested.

(2) The request shall be signed and dated by the creditor giving the notice.

(3) A list of concurring creditors is not required if the requisitioning creditor's debt alone holds more than 20 per cent of the debt without the concurrence of the other creditors.

(4) Before the Official Receiver makes an application to the Court on the request, the creditor requesting the examination shall deposit with the Official Receiver, such sum as the latter may determine to be, by way of security for the expenses of the hearing of a public examination, if so ordered.

(5) Subject to sub-rule (4), the Official Receiver shall make the application to the Court within 28 days of receiving the request for public examination.

(6) Where the Official Receiver is of the opinion that the request is unreasonable, the Official Receiver may apply to the Court for an order relieving him from the obligation to make the application.

(7) Where the Court orders that the Official Receiver need not make the application for the order, and the application for the order was made without notice to any other party, the Official Receiver shall deliver a notice of the order, as soon as it is reasonably practicable, to the person making the request.

Bankrupt unfit for examination

212.—(1) Where the bankrupt is a person who lacks capacity or is unfit to attend the public examination, the Court may —

(*a*) stay the order for the bankrupt's public examination; or

(*b*) direct that it shall be conducted in a manner and place it considers just.

(2) An application shall be made by—

(*a*) a person who has been appointed by a Court in Malawi or elsewhere to manage the affairs of, or to represent, the bankrupt;

(*b*) a person who appears to the Court to be a suitable person to make the application; or

(*c*) the Official Receiver.

(3) Where an application for public examination is made by a person other than the Official Receiver, then—

(*a*) the application shall, unless the bankrupt is a person who lacks capacity, be supported by a sworn statement by a registered medical practitioner as to the bankrupt's mental and physical condition;

(*b*) at least 5 business days' notice of the application shall be delivered to the Director, Official Receiver and the trustee; and

(*c*) before any order is made on the application, the applicant shall deposit with the Official Receiver such sum as the Official Receiver determines is necessary for the additional expenses of the public examination.

(4) The Court may order that some or all of the expenses of the public examination are to be payable out of the deposit under sub-rule (3) (*c*), instead of out of the estate.

(5) The order shall—

(*a*) identify the proeeedings;

(*b*) state the date of the original order for the public examination of the bankrupt;

(*c*) state the name and postal address of the applicant;

(*d*) state the capacity in which the applicant, other than the Official Receiver, is making the application;

(*e*) state the name and postal address of the debtor or the bankrupt;

(*f*) state that upon consideration of the evidence, the Court is satisfied that the bankrupt lacks capacity to manage and administer the bankrupt's property and affairs or is unfit to attend a public examination;

(*g*) order that—

(i) the original order be stayed on the grounds that the bankrupt is unfit to attend a public examination; or

(ii) the original order be varied on the grounds that the bankrupt is unfit to attend the public examination fixed by the original order.

(6) Where the original order is varied, the order shall contain a warning to the bankrupt stating that if the bankrupt fails, without reasonable excuse, to attend his public examination on the date, time and venue set out in the order, he commits contempt of court.

(7) Where the application is made by the Official Receiver, it may be made without notice to any other party, and may be supported by evidence set out in a report by the Official Receiver to the Court.

Procedure at hearing of bankrupt's public examination

213.—(1) At the hearing of the public examination, the bankrupt shall be examined under oath or affirmation and shall answer the questions put to him.

(2) A person allowed to question the bankrupt may, with the approval of the Court, appear by counsel or may authorise in writing another person to question the bankrupt on that person's behalf.

(3) The bankrupt may, at his expense employ, counsel who may put such questions as the Court may allow to be put to the bankrupt for the purpose of enabling the bankrupt to explain or qualify any answers given by the bankrupt, and may make representations on the bankrupt's behalf.

(4) The Court shall have a record made of the public examination, as it considers fit.

(5) The record may, in any proceedings ,whether under the Act or otherwise, be used as evidence of any statement made by the bankrupt in the course of the bankrupt's public examination.

(6) Where criminal proceedings have been instituted against the bankrupt, and the Court is of the opinion that the continuation of the hearing of the public examination may prejudice a fair trial of those proceedings, the hearing may be adjourned until the conclusion of the proceedings.

Adjournment of public examination

214.—(1) The Court may adjourn the public examination to a fixed date or generally.

(2) The order of adjournment of the public examination to a fixed date shall contain a warning to the bankrupt, stating that if the bankrupt fails without reasonable excuse to attend the public examination on the date, time

and venue set out in the order, the bankrupt commits contempt of court and liable to be fined or be sent to prison.

(3) Where the public examination has been adjourned generally, the Court may at any time on the application of the Official Receiver or the bankrupt—

(*a*) fix the date, time and venue for the resumption of the examination; and

(*b*) give directions as to the manner in which, and the time within which, the notice of the examination to be resumed is to be given to persons entitled to take part in it.

(4) Where the application to adjourn the public examination is made by the bankrupt, the Court may grant it on condition that—

(*a*) the expenses of giving the notice under sub-rule (3) shall be paid by the bankrupt; and

(*b*) before the date, time and venue for the hearing of the examination to be resumed is fixed, the bankrupt shall deposit with the Official Receiver such sum as the Official Receiver considers necessary to cover those expenses.

Expenses of public examination

215.—(1) Where a public examination of the bankrupt has been ordered by the Court on a creditor's request, the Court may order that some or all of the expenses of the examination are to be paid out of the deposit made under rule 214 (4) (*b*), instead of out of the bankruptcy estate.

(2) The expenses of a public examination shall not fall on the Official Receiver personally.

Disclaimer

216.—(1)Subject to sub-rules (2) and (3), the trustee may, by notice, disclaim any onerous property and may do so notwithstanding that he has—

(*a*) taken possession of it;

(*b*) endeavoured to sell it; or

(*c*) otherwise, exercised rights of ownership in relation to it.

(2) The following is "onerous property" for the purposes of this rule—

(*a*) any unprofitable contract; or

(*b*) any other property under the bankruptcy estate which is un-saleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this rule—

(*a*) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed; and

(*b*) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

Trustee's notice of disclaimer

217.—(1) A trustee's notice of disclaimer under rule 216 shall have the title "Notice of Disclaimer under Rule 216 of the Insolvency Rules" and shall—

(*a*) identify the bankrupt;

(*b*) contain such particulars of the property as shall enable it to be easily identified;

(*c*) identify and provide contact details of the trustee;

(*d*) state that the trustee of the bankrupt's estate disclaims all interest in the property specified in the notice;

(*e*) state the name and postal address of each person to be sent a copy of the notice under these Rules; and

(*f*) be signed and dated by the trustee.

(2) Where the property consists of land or buildings, the nature of the interest under sub-rule 1 (*d*) shall be stated in the notice.

(3) The trustee shall, as soon as it is reasonably practicable, after authenticating the notice of disclaimer—

(*a*) file a copy of the notice with the Court; and

(*b*) deliver a copy of the notice to the Chief Land Registrar or the Deeds Registrar, as the case may be.

(4) For the purposes of rule 216, the date of the disclaimer shall be the date on which the trustee signs the notice.

Communication of disclaimer to interested persons

218.—(1) The trustee shall serve any copies of a notice of disclaimer in respect of leasehold property within 7 business days after the date of the notice of disclaimer.

(2) The trustee shall, within 7 business days after the date of a notice of disclaimer, deliver copies of the notice to every person who to the trustee's knowledge—

(*a*) claims an interest in the disclaimed property;

(*b*) is under any liability in relation to the property, not being a liability discharged by the disclaimer;

(*c*) if the disclaimer is of an unprofitable contract, is a party to the contract or has an interest under it; or

(*d*) if the disclaimer is of property in a dwelling-house, is in occupation of, or claims a right to occupy, the house.

(3) Where the trustee becomes aware that a person has such an interest in the disclaimed property as to be entitled to receive a copy of the notice of disclaimer, then the trustee shall deliver a copy of the notice to the person, as soon as it is reasonably practicable.

(4) The trustee is not required to deliver a copy of the notice under sub-rule (3) where—

(*a*) the trustee is satisfied that the person has already been made aware of the disclaimer and its date; or

(*b*) the Court, on the trustee's application, orders that delivery of a copy is not required in the particular case.

Delivery of copies of trustee's notice of disclaimer

219. The trustee disclaiming property may at any time deliver copies of the notice of disclaimer to any other person whom the trustee thinks ought, in the public interest or otherwise, to be informed of the disclaimer.

Second bankruptcy

220. Rules 221, 222 and 223, relate to the manner in which, in the case of a second bankruptcy, the existing trustee is to deal with property and money to which section 222(3) of the Act, apply until there is a trustee of the estate in the later bankruptcy.

General duty of existing trustee

221.—(1) The existing trustee shall take into custody or under control all of the property and money, so far as the existing trustee has not already done so as trustee in the earlier bankruptcy.

(2) Where any of the property taken into custody consists of perishable goods, or goods the value of which is likely to diminish if they are not disposed of, the existing trustee may sell or otherwise dispose of the goods.

(3) The proceeds of a sale or disposal of goods under sub-rule (2) shall be held, under the existing trustee's control, with the other property and money comprised in the bankruptcy estate.

Delivery up to later trustee

222. The existing trustee shall, if requested by the later trustee for the purposes of the later bankruptcy, deliver to the later trustee, as soon as it is reasonably practicable, all the property and money in the existing trustee's custody or under his control.

Existing trustee's expenses

223. Any expenses incurred by the existing trustee in compliance with section 222 of the Act and this Part shall be paid out of, and are a charge on, all of the property and money referred to in section 222 of the Act, whether in the hands of the existing trustee or the later trustee for the purposes of the later bankruptcy.

Division II—Individual Voluntary Arrangement

Interpretation

224. In this Division, unless the context otherwise requires—

"nominee" includes the proposed insolvency practitioner nominee in relation to a proposal;

"proposal" means a proposal for an individual voluntary arrangement; and

"supervisor" includes the proposed insolvency practitioner supervisor of an individual voluntary arrangement.

Contents of proposal

225.—(1) The proposal shall—

(*a*) explain briefly why the debtor is making the proposal; and

(*b*) explain why the creditors are being invited to agree to an individual voluntary arrangement.

(2) The proposal shall be signed and dated by the debtor.

(3) The proposal may be amended with the nominee's agreement, in writing, at any time up to the filing of the nominee's report with the Court, or the submission of the nominee's report to the creditors.

(4) The following matters shall be stated, or otherwise dealt with, in the proposal, so far as within the debtor's knowledge, in relation to—

(*a*) assets—

(i) the nature of the debtor's assets, with an estimate of their respective realisable values;

(ii) which assets are subject to an encumbrance and the extent of the encumbrance;

(iii) which assets are to be excluded from the individual voluntary arrangement; and

(iv) particulars of any property to be included in the individual voluntary arrangement which is not owned by the debtor, including details of who owns the property and the conditions under which it may be available for inclusion;

(*b*) liabilities—

(i) the nature and amount of the debtor's liabilities;

(ii) how the debtor's liabilities shall be met, modified, postponed or otherwise dealt with under the individual voluntary arrangement and, in particular—

(AA) how preferential creditors and creditors who are, or claim to be, secured will be dealt with; and

(BB) how creditors who are associates of the debtor will be dealt with;

(iii) if the debtor is an undischarged bankrupt, whether any claim has been made under section 290 of the Act or section 293 of the Act and, if he has, whether, and if so, what provision is being made to indemnify the insolvent estate in respect of such a claim; and

(iv) if the debtor is not an undischarged bankrupt, whether there are circumstances which might give rise to a claim referred to in paragraph (iii) if the debtor were made bankrupt and, where there are such circumstances, whether, and if so, what provision will be made to indemnify the insolvent estate in respect of such a claim;

(*c*) nominee's fees and expenses, the amount proposed to be paid to the nominee as fees and expenses;

(*d*) supervisor—

(i) the name, address and qualification of the supervisor and confirmation that that person is qualified to act as an insolvency practitioner, or is an authorised person, in relation to the debtor;

(ii) how the fees and expenses of the supervisor of the individual voluntary arrangement shall be paid; and

(iii) the tasks to be undertaken by the supervisor;

(*e*) guarantees and proposed guarantees—

(i) details of any guarantees of the debtor's debts that have been given by other persons, specifying which of the guarantors are associates of the debtor; and

(ii) whether, for the purposes of the individual voluntary arrangement, any guarantees are to be offered and, if so, by whom and whether security is to be given or sought;

(*f*) timing—

(i) the period that the individual voluntary arrangement is expected to last; and

(ii) the proposed dates of distribution of proceeds to creditors, with estimates of their amounts;

(*g*) type of proceedings, whether the proceedings will be foreign main or foreign non-main;

(*h*) conduct of business, if the debtor has any continuing business, how that business will be conducted during the course of the individual voluntary arrangement;

(*i*) further credit facilities, details of any further credit facilities or liabilities the debtor proposes to incur during the period of the individual voluntary arrangement and how the debts so arising are to be paid;

(*j*) handling of funds arising—

(i) the manner in which funds held for the purposes of the individual voluntary arrangement are to be banked, invested or otherwise dealt with pending distribution of proceeds to creditors;

(ii) how funds held for the purpose of payment to creditors and may not have been paid on the termination of the individual voluntary arrangement shall be dealt with; and

(iii) how the claim of any person bound by the individual voluntary arrangement under section 261(2) (*b*) (ii) of the Act shall be dealt with; and

(*k*) other proposals, whether any other proposal in relation to the debtor has been submitted within the 24 months preceding the submission of this proposal to the nominee—

(i) for approval by the creditors and, if so—

(AA) whether that proposal was approved or rejected;

(BB) whether, if approved, the individual voluntary arrangement was completed or was terminated; and

(CC) in what respects such a proposal, where rejected, differs from the current proposal; and

(ii) to the Court in connection with an application for an interim order under section 252 of the Act and, if so, whether the interim order was made.

Notice of nominee's consent

226.—(1) Where the nominee consents to act, the nominee shall, as soon as it is reasonably practicable, after submission of the proposal to the nominee, deliver a notice of that consent to the debtor.

(2) The notice shall state the date the nominee received the proposal.

Statement of affairs

227.—(1) Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 209 of the Act, a statement of affairs need not be submitted to the nominee under section 256 (2) or 257 (2) of the Act, unless the nominee requires a further statement of affairs to supplement or amplify the earlier one.

(2) The statement of affairs shall contain—

(*a*) a list of the debtor's assets, divided into such categories as are appropriate for easy identification, and an estimated value of each category;

(*b*) in the case of any property on which a claim against the debtor is wholly or partly secured, particulars of the claim, how and when the security was created;

(*c*) the names and addresses of the preferential creditors, with the amounts of their respective claims;

(*d*) the names and addresses of the unsecured creditors, with the amounts of their respective claims;

(*e*) particulars of any debts owed by, or to the debtor, to or by persons who are associates of the debtor; and

(*f*) such other particulars, if any, as the nominee may, in writing, require to be provided for the purposes of making the nominee's report on the proposal to the Court or to the creditors, as the case may be.

(3) Subject to sub-rule (4), the statement shall be made up to a date not earlier than 2 weeks before the date of the proposal.

(4) The nominee may allow the statement to be made up to a date that is earlier than 2 weeks ,but not earlier than 2 months, before the date of the proposal, where that is more practicable.

(5) Where the statement is made up to an earlier date, the nominee's report shall explain why an earlier date was allowed.

(6) The statement shall be verified by a sworn statement by the debtor.

Limited disclosure of statement of affairs

228. The nominee, the debtor or any person appearing to the Court to have an interest may, if any information in the statement of affairs would be likely to prejudice the conduct of the individual voluntary arrangement or might reasonably be expected to lead to violence against any person, apply to the Court for an order that specified information be omitted from any statement of affairs required to be delivered to creditors.

Additional disclosure for assistance of nominee

229.—(1) Where it appears to the nominee that the report to the Court or the creditors cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the debtor to provide—

(*a*) more information about the circumstances in which, and the reasons why, the debtor is insolvent or is threatened with insolvency;

(*b*) information about any proposals which have, at any time, been

made by the debtor; and

(*c*) any further information relating to the debtor's affairs which the nominee thinks necessary for the purposes of the report.

(2) The nominee may require the debtor to inform the nominee whether, and in what circumstances, the debtor has at any time —

(*a*) been concerned in the affairs of a company, wherever incorporated, which has become insolvent;

(*b*) been made bankrupt; or

(*c*) entered into an arrangement with creditors.

(3) The debtor shall give the nominee such access to the debtor's accounts and records as the nominee requires to enable the nominee to consider the debtor's proposal and prepare the report on it.

Application for interim order (cases within s. 257 of the Act)

230.—(1) An application to the Court for an interim order shall be accompanied by a sworn statement containing—

(*a*) the reasons for making the application;

(*b*) information about any action, execution, other legal process or the levying of any distress which, to the debtor's knowledge, has been commenced against the debtor or the debtor's property;

(*c*) a statement that the debtor is an undischarged bankrupt or is able to make a bankruptcy application;

(*d*) a statement that no previous application for an interim order has been made by or in relation to the debtor in the period of 12 months ending with the date of the sworn statement; and

(*e*) a statement that a person named in the sworn statement is willing to act as nominee in relation to the proposal and is qualified to act as an insolvency practitioner or is authorised person in relation to the debtor.

(2) For the purposes of section 257 (3) of the Act, the prescribed period shall be 21 days.

(3) The sworn statement shall be accompanied by a copy of—

(*a*) the proposal; and

(*b*) the notice of the nominee's consent to act as such.

(4) When the application and the sworn statement have been filed, the Court shall fix the date, time and venue for the hearing of the application.

(5) The applicant shall deliver a notice of the hearing at least 2 business days before the hearing to the nominee and—

(*a*) the debtor, the Official Receiver or the trustee, whichever is not the applicant, where the debtor is an undischarged bankrupt; or

(*b*) any creditor who, to the debtor's knowledge, has presented a bankruptcy petition against the debtor where the debtor is not an undischarged bankrupt.

(6) An application under section 257 (4) of the Act shall contain the name and address of the nominee.

Court in which application to be made

231. An application shall be made—

(*a*) to the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) to the Court having jurisdiction over bankruptcy matters.

Order granting stay

232. A court order under section 254 (1) (*b*) of the Act granting a stay of an action, execution or other legal process pending the hearing of an application for an interim order under section 253 of the Act shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) details of the action, execution or other legal process which is stayed;

(*d*) the date, time and venue for the hearing of the application for the interim order; and

(*e*) the date on which the order granting the stay is made.

Hearing of application for interim order

233.—(1) A person to whom a notice of the hearing of the application for an interim order was delivered, or should have been delivered, may appear or be represented at the hearing.

(2) The Court shall take into account any representations made by, or on behalf of, such a person, in particular, as to whether an order should contain such provision as is referred to in section 255 (3) and (4) of the Act.

(3) Where the Court makes an interim order, it shall fix the date, time and venue for consideration of the nominee's report for a date no later than the date on which the order ceases to have effect.

Interim order

234. An interim order shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the order has effect from its making until the end of the period of 14 days beginning on the day after the date on which it is made;

(*d*) particulars of the effect of the order under section 252 (2) of the Act;

(*e*) an order that the report of the nominee be delivered to the Court, not later than a specified date which shall not be later than 2 business days before the interim order ceases to have effect;

(*f*) particulars of any orders made under section 255 (3) and (4) of the Act;

(*g*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the interim order to the Official

Receiver;

(*h*) the date, time and venue for the Court's consideration of the report; and

(*i*) the date of the order.

Action to follow making of order

235.—(1) The Court shall deliver at least 2 sealed copies of the interim order to the applicant.

(2) As soon as it is reasonably practicable, the applicant shall deliver—

(*a*) one copy of the interim order to the nominee and, where the debtor is an un-discharged bankrupt, another copy to the Official Receiver, unless the Official Receiver was the applicant; and

(*b*) a notice that the order has been made to any other person to whom a notice of the hearing of the application for an interim order was, or should have been, delivered and who was not in attendance or represented at the hearing.

Order extending period of interim order (s. 256(4) of the Act)

236. An order under section 256 (4) of the Act extending the period for which an interim order has effect shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the application is that of the nominee for an extension of the period under section 256 (4) of the Act for which an interim order is to have effect;

(*d*) a statement that the period for which the interim order has effect is extended to a specified date;

(*e*) particulars of the effect under section 252 (2) of the Act of the interim order;

(*f*) an order that the report of the nominee be delivered to the Court not later than a specified date which shall not be later than 2 business days before the day on which the Court is to consider the nominee's report;

(*g*) particulars of any orders made under section 255 (3) or (4) of the Act;

(*h*) where the debtor is an undischarged bankrupt and the applicant is not the Official Receiver, an order that the applicant delivers, as soon as it is reasonably practicable, a copy of the order to the Official Receiver;

(*i*) the date, time and venue for the Court's consideration of the report; and

(*j*) the date of the order.

Nominee's report on the proposal

237.—(1) The nominee's report under section 256 of the Act shall be filed with the Court not less than 2 business days before the interim order ceases to have effect and it shall be accompanied by—

(*a*) a copy of the report;

(*b*) a copy of the proposal, as amended, if applicable; and

(*c*) a copy of any statement of affairs or a summary of the statement.

(2) The nominee's report shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why creditors should or should not be invited to consider the proposal.

(3) The Court shall endorse the nominee's report and the copy of it with the date on which they were filed and return the copy to the nominee.

(4) Where the debtor is an undischarged bankrupt, the nominee shall deliver to the Official Receiver and any trustee a copy of—

(*a*) the proposal;

(*b*) the nominee's report; and

(*c*) any statement of affairs or summary of such statement.

(5) Where the debtor is not an undischarged bankrupt, the nominee shall deliver a copy of each of the documents referred to in sub-rule (4) to any person who has presented a bankruptcy petition against the debtor.

Order extending period of interim order (s. 256(5) of the Act)

238. An order under section 256 (5) of the Act extending the period for which an interim order has effect to enable creditors to consider the proposal shall identify the proceedings and contain—

(*a*) the section number of the Act under which it is made;

(*b*) a statement that the evidence has been considered;

(*c*) a statement that the Court has considered the nominee's report filed under section 256 of the Act;

(*d*) the date that the nominee's report was filed;

(*e*) a statement that for the purpose of enabling the creditors to consider the proposal, the period for which the interim order has effect is extended to a specified date;

(*f*) a statement that the nominee will be inviting the creditors to consider the proposal and if the nominee has decided that the proposal should be considered at a meeting, the date, time and venue for the meeting; and

(*g*) the date of the order.

Replacement of nominee

239.—(1) A debtor, who intends to apply under section 256 (3) (*a*) or (*b*) of the Act for the nominee to be replaced, shall deliver a notice to the nominee, at least 5 business days before making an application, that such application will be made.

(2) A nominee, who intends to apply under section 256 (3) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least 5 business days before making an application, that such application will be made.

(3) The Court shall not appoint a replacement nominee unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner in relation to the debtor.

Appearance at consideration of nominee's report

240. A person to whom a notice was or should have been delivered may appear in person or be represented and appear by a legal practitioner at the Court's hearing to consider the nominee's report.

Nominee's report (s. 257 (3) of the Act)

241.—(1) The nominee's report under section 257 (3) of the Act shall explain why the nominee considers that the proposal does or does not have a reasonable prospect of being approved and implemented and why the creditors should or should not be invited to consider the proposal.

(2) The nominee shall deliver a copy of the report to the debtor.

(3) Where the nominee gives an opinion in the affirmative on the matters referred to in section 257 (3) (*a*) and (*b*) of the Act, the copy of the report delivered by the nominee to each of the creditors shall be accompanied by—

(*a*) a statement that an application for an interim order under section 253 of the Act is not being made;

(*b*) a copy of the proposal as amended, if applicable;

(*c*) a copy of any statement of affairs or a summary of such statement; and

(*d*) a copy of the notice of the nominee's consent to act as such.

(4) The nominee shall also deliver the documents referred to in sub-rule (3) to—

(*a*) the Official Receiver and any trustee, where the debtor is an undischarged bankrupt; and

(*b*) any person who has presented a bankruptcy petition against the debtor,

within 14 days or such longer period, as the Court may allow of receipt of the documents and statement referred to in section 257 (2) of the Act.

Applications to the Court

242.—(1) This rule applies where the nominee has made a report under section 257 (3) of the Act.

(2) An application under section 263 of the Act may not be made after the period of 28 days beginning with the first day on which the nominee gave notice of the result of consideration of the proposal under section 260 (1) of the Act.

(3) The 28 day time limit for making an application shall not apply to an application by a person who was not invited to consider the proposal.

(4) An application relating to a proposal or an individual voluntary arrangement shall be made to—

(*a*) the Court which heard the bankruptcy proceedings, where the debtor is an undischarged bankrupt; or

(*b*) the Court having jurisdiction over bankruptcy matters.

(5) Where an application relates to a matter relating to a proposal or an individual voluntary arrangement, the applicant shall file with the Court, in addition to the documents in support of the application, such other documents required by these rules as the applicant considers may assist the Court in determining the application.

Replacement of the nominee (s. 257 (4) of the Act)

243.—(1) A debtor who intends to apply under section 257 (4) (*a*) or (*b*) of the Act for the nominee to be replaced shall deliver a notice to the nominee at least 5 business days before making the application that such an application is being made.

(2) A nominee, who intends to apply under section 257 (4) (*b*) of the Act to be replaced, shall deliver a notice to the debtor at least 5 business days before making the application, that such an application is being made.

(3) The Court will not appoint a replacement nominee, unless the replacement nominee has filed with the Court a statement confirming—

(*a*) his consent to act as such; and

(*b*) that he is qualified to act as an insolvency practitioner or is an authorised person in relation to the debtor.

Consideration of proposal-common requirements

244.—(1) The nominee may invite the creditors to consider a proposal by correspondence or by summoning a meeting of the creditors.

(2) The nominee shall deliver to each creditor a notice which, in addition to the standard contents, shall—

(*a*) identify the proceedings;

(*b*) state—

(i) in a case where an interim order has not been obtained, the Court to which the application shall be made; or

(ii) in a case where an interim order is in force, the Court in which the nominee's report on the debtor's proposal has been filed under section 256 of the Act;

(*c*) state the effect of the following—

(i) creditors' voting rights;

(ii) the calculation of creditors' voting rights; and

(iii) the requisite majorities of creditors for passing resolutions; and

(*d*) unless they have been delivered already, be accompanied by—

(i) a copy of the proposal;

(ii) a copy of the statement of affairs, or, if the nominee thinks fit, a summary of the statement, including a list of creditors with the amounts of their debts;

(iii) a copy of the nominee's report on the proposal; and

(iv) a copy of the resolution to be voted on.

245.—(1) Where the nominee invites the creditors to consider the proposal by correspondence, the notice shall, in addition to the requirements under rule 237— Consideration by correspondence

(*a*) invite the creditor to vote for or against each resolution; and

(*b*) state that in order to be counted—

(i) a vote shall be received by the deadline stated in the notice;

(ii) that written details of the creditor's claim shall have been received by the nominee before the deadline;

(iii) require any person who signs the vote on behalf of a creditor to state the capacity in which the person signs the vote; and

(iv) state how any proposals by those creditors entitled to vote for modifications to the proposals can be made, and how they will be dealt with by the nominee.

(2) The deadline referred to in sub-rule (1) (*b*) (i) shall be 12 noon on a date which shall be not less than 14 days from the date of delivery of the notice and not more than 28 days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) the nominee's report was considered by the Court in a case where an interim order is in force.

246.—(1) Where the nominee invites the creditors to consider the proposal at a meeting, the notice shall in addition to the requirements of these Rules— Consideration at a meeting

(*a*) specify the date, time and venue for the meeting;

(*b*) specify the purpose of the meeting;

(*c*) state that a creditor may only vote at the meeting if details of the claim are delivered to the nominee or to the chairperson of the meeting, before or at the meeting; and

(*d*) be accompanied by a blank proxy.

(2) The nominee shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a meeting, including the resumption of an adjourned meeting.

(3) The date of the meeting shall not be more than 28 days from the date on which—

(*a*) the nominee received the document and statement of affairs referred to in section 257 (2) of the Act in a case where an interim order has not been obtained; or

(*b*) on which the nominee's report was considered by the Court in a case where an interim order is in force.

247. A notice summoning a meeting shall be delivered to all the creditors at least 14 days before the day fixed for the meeting. Notice of meeting: when and to whom delivered

Non-receipt of notice of meeting

248. Where under the Act or these Rules consideration of a proposal is invited by correspondence or at a meeting, the consideration is presumed to have duly taken place even if not everyone to whom the notice was delivered responded in writing or attended the meeting.

Quorum at meeting of creditors

249.—(1) A meeting of creditors is not competent to act unless at least one creditor entitled to vote is in attendance.

(2) The start of a meeting shall be delayed by at least 15 minutes if—

(*a*) the quorum consists of the chairperson, with or without one other person; and

(*b*) the chairperson is aware that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

250. The chairperson of a meeting of creditors shall be the nominee or his appointee.

Adjournment of meeting by chairperson

251.—(1) The chairperson may, and if the meeting so resolves shall, adjourn a meeting for not more than 14 days.

(2) A meeting shall be concluded not later than 14 days after the date on which the meeting was originally held.

Suspension of meeting

252. The chairperson may suspend a meeting for one or more periods not exceeding one hour in total without adjourning the meeting.

Creditors' voting rights

253.—(1) For the purposes of section 261(2) of the Act, every creditor, secured or unsecured, is entitled to vote in respect of the debt due from the debtor, but whether a creditor may cast a vote is determined by these Rules.

(2) A creditor may only vote if details of his claim are delivered—

(*a*) before or by the deadline in the notice where the proposal is being considered by correspondence; or

(*b*) to the nominee or chairperson at or before the meeting where the proposal is being considered at a meeting.

Calculation of voting rights

254.—(1) Votes are to be calculated according to the amount of each creditor's claim—

(*a*) at the date of the interim order, where the debtor is not an undischarged bankrupt and an interim order is in force;

(*b*) at the date of the meeting, or the deadline in the notice inviting consideration by correspondence, where the debtor is not an undischarged bankrupt and an interim order is not in force; and

(*c*) at the date of the bankruptcy order, where the debtor is an undischarged bankrupt.

(2) A creditor may vote in respect of a debt for a liquidated amount, including a debt for an unliquidated amount or of an unascertained value.

(3) For the purposes of voting but not otherwise, a debt referred to in sub-rule (2) is to be valued at K1000 unless the nominee, an appointee or the chairperson of a meeting decides to put a higher value on it.

(4) A creditor whose claim is wholly secured may not vote.

(5) A creditor whose claim is partly secured may vote in respect of the unsecured balance.

Procedure for admitting creditors' claims for voting

255.—(1) The nominee or his appointee shall ascertain both entitlement to vote, and whether votes may be cast, and admit or reject claims them accordingly.

(2) A claim may be rejected in whole or in part.

(3) Where the nominee or his appointee is in any doubt whether a claim should be admitted or rejected, the nominee or the appointee shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities of creditors

256.—(1) A resolution other than a resolution approving a proposal or modification is passed by creditors by correspondence or by a creditors' meeting when a majority in value of those voting have voted in favour of it.

(2) Subject to sub-rule (3), a resolution approving a proposal or a modification is passed by creditors by correspondence or by a creditors' meeting when a majority of three-quarters or more in value of those voting have voted in favour of it.

(3) A resolution is not passed by correspondence, unless at least one creditor votes in favour of it.

(4) A resolution is not passed if those voting against it include more than half in value of all the qualifying votes of unassociated creditors, whether or not actually cast.

(5) A creditor is unassociated unless the nominee, and appointed person or the chairperson decides that the creditor is an associate of the debtor.

(6) In deciding whether a creditor is an associate, reliance may be placed on the information provided by the debtor's statement of affairs or otherwise under these Rules.

(7) For the purposes of sub-rule (4), a vote is a qualifying vote except to the extent that by or under these Rules it is not permitted to be cast.

Appeals against decisions

257.—(1) A creditor or the debtor may appeal against a decision of a creditors' meeting to the Court.

(2) An appeal may not be made after the end of the period of 28 days beginning with the day on which—

(*a*) where an interim order has not been obtained, the notice of the result of the consideration of the proposal required by section 260 (1) of the Act has been given; or

(*b*) where an interim order has been obtained, the report required by section 260 (1) of the Act is made to the Court.

(3) Whether the decision is reversed or varied, or votes are declared invalid, the Court may order the nominee to review a decision taken by correspondence or to summon another meeting or may make such order as it

considers just, but only if it considers that the circumstances which led to the appeal give rise to unfair prejudice or material irregularity.

(4) The nominee or his appointee who took the decision shall not be personally liable for expenses incurred by a person appealing.

Report of creditors' consideration of proposal

258.—(1) A report of the creditors' consideration of a proposal shall be prepared by the nominee or his appointee, in the case of consideration by correspondence or the chairperson, in the case of consideration at a meeting.

(2) The report shall—

(*a*) state whether the proposal was approved or rejected and, if approved, with what, if any, modifications;

(*b*) list the creditors who voted by correspondence or attended the meeting, setting out with their respective values how they voted on each resolution;

(*c*) if the proposal was approved, state whether, in the opinion of the supervisor, the proceedings are foreign main or foreign non-main proceedings;

(*d*) state the reasons for the supervisor's opinion; and

(*e*) include such further information as the nominee, the appointed person or the chairperson thinks appropriate.

(3) Where an interim order was obtained, a copy of the report shall be filed with the Court, within 4 business days of—

(*a*) the deadline, if the proposal was considered by correspondence; or

(*b*) the date of the meeting of creditors.

(4) The Court shall endorse the copy of the report with the date of filing.

(5) The nominee, the appointee or the chairperson shall give notice of the result of the consideration to—

(*a*) everyone who was invited to consider the proposal by correspondence or to whom notice of a meeting was delivered;

(*b*) any other creditor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee.

(6) The notice shall be given—

(*a*) where an interim order was obtained, as soon as it is reasonably practicable, after a copy of the chairperson's report is filed with the Court; or

(*b*) where an interim order was not obtained—

(i) within 4 business days of the deadline, if the proposal was considered by correspondence; or

(ii) on the date of the meeting of creditors.

Appointment of proxy-holders

259.—(1) A proxy-holder shall be an individual who is at least 18 years of age.

(2) A proxy may be given for use only at a particular meeting.

(3) A principal may appoint more than one person to be proxy-holder at a particular meeting, but if so—

(*a*) their appointment is as alternates;

(*b*) the order in which they are authorised to be proxy-holder shall be specified in the appointment; and

(*c*) only one of them may act as proxy-holder for that principal at the meeting.

(4) A proxy may be given to the chairperson of the meeting in question, and the chairperson may not refuse it.

Blank proxies

260.—(1) Blank proxies delivered under these Rules shall not have inserted in them the name or description of any person as proxy.

(2) A proxy shall be signed and dated by the creditor or by a person authorised by the creditor.

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

Use of proxies

261.—(1) A signed proxy given for a meeting shall be delivered to the chairperson before the meeting begins.

(2) Subject to sub-rule (3), a proxy given for a meeting may be used at the resumption of the meeting after an adjournment, and need not be delivered again to the chairperson at the resumed meeting whether or not the chairperson is the same person.

(3) Where a different proxy is given for use at a resumed meeting, the signed proxy shall be delivered to the chairperson before the beginning of the resumed meeting.

(4) Where the nominee holds proxies for use as chairperson of a meeting but another person acts as chairperson, that other person may use the proxies as if the person were the proxy-holder.

(5) Where a proxy directs a proxy-holder to vote for or against a resolution for the appointment of a person as the supervisor, the proxy-holder may, unless the proxy states otherwise, vote for or against, as the proxy-holder thinks fit, any resolution for the appointment of the person jointly with another or other persons.

(6) A proxy-holder may propose any resolution which the proxy could vote for if someone else proposed it.

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

Retention of proxies

262. The chairperson of a meeting shall—

(*a*) retain the proxies used for voting at the meeting where the chairperson is the nominee; or

(*b*) deliver them, as soon as it is reasonably practicable, after the meeting to the nominee.

Right of inspection

263.—(1) The nominee shall allow a creditor or the debtor to inspect proxies at all reasonable times on a business day, so long as the proxies remain in the nominee's possession, custody or power.

(2) A creditor in sub-rule (1) is a person who has delivered a written claim to be a creditor of the debtor, but does not include a person whose claim has been wholly rejected.

(3) A person attending a meeting is entitled, immediately before or in the course of the meeting, to inspect proxies and associated documents delivered by a creditor to the nominee, the chairperson or any other person in accordance with the notice convening the meeting.

(4) The right of inspection in sub-rule (3) shall be subject to the rules governing confidentiality of documents and the breach of those rules shall be the ground for refusing inspection.

Proxy-holder with financial interest

264.—(1) Subject to sub-rule (2), a proxy-holder, including the chairperson of the meeting, using a proxy shall not vote in favour of a resolution which would—

(*a*) directly or indirectly place the proxy-holder or an associate in a position to receive any payment from the debtor; or

(*b*) increase or reduce the amount of remuneration or expenses receivable by the proxy-holder or an associate out of the debtor's assets.

(2) A proxy-holder may vote for a resolution referred to in sub-rule (1) if the principal specifically directs the proxy-holder to vote in that way.

(3) Where—

(*a*) a principal has signed the proxy stating that the proxy-holder is authorised to do so; and

(*b*) the proxy specifically directs the proxy-holder to vote as mentioned in sub-rule (1),

the proxy-holder shall nevertheless not vote in that way without having produced to the chairperson the authorisation from the principal sufficient to show that the proxy-holder was entitled so to vote.

Corporate representation

265.—(1) A person authorised to represent a company at a meeting, other than as a proxy, shall produce to the chairperson—

(*a*) the instrument conferring the authority; or

(*b*) a copy of the instrument certified as a true copy by—

(i) two directors;

(ii) a director and the secretary; or

(iii) a managing director in the presence of a witness who attests the

managing director's signature.

(2) The instrument conferring the authority shall have been executed in accordance with the Companies Act. Cap. 46:03

Resolutions to follow approval

266.—(1) Where two or more supervisors are appointed, the creditors shall decide, at the same time when approving the individual voluntary arrangement, whether acts done in connection with the individual voluntary arrangement may be done by any one or more of them, or shall be done by all of them.

(2) Where in response to a notice inviting consideration of the proposal by correspondence a creditor proposes that a person other than the nominee be appointed as supervisor, the person's consent to act and confirmation of being qualified to act as an insolvency practitioner or being an authorised person in relation to the debtor shall be delivered to the nominee.

(3) Where at the creditors' meeting a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person shall produce to the chairperson at or before the meeting—

(*a*) confirmation of being qualified to act as an insolvency practitioner or being an authorised person in relation to the debtor; and

(*b*) written consent to act as such, unless the person is present at the meeting and signifies consent.

Hand-over of property, etc., to supervisor

267.—(1) As soon as it is reasonably practicable after the individual voluntary arrangement is approved, the debtor or, where the debtor is an undischarged bankrupt, the Official Receiver or any trustee shall do all that is required to put the supervisor in possession of the assets included in the individual voluntary arrangement.

(2) Where the debtor is an undischarged bankrupt, the supervisor shall—

(*a*) before taking possession of the assets included in the individual voluntary arrangement deliver to the Official Receiver or any trustee an undertaking to discharge the balance due to the Official Receiver or trustee out of the first realisation of the assets; or

(*b*) upon taking possession of the assets included in the individual voluntary arrangement discharge such balance.

(3) The balance is any balance due to the Official Receiver or any trustee—

(*a*) by way of fees or expenses properly incurred and payable under the Act or these Rules; or

(*b*) on account of any advances made in respect of the insolvent estate, together with interest on such advances at the base lending rate at the date of the bankruptcy order.

(4) Where the debtor is an undischarged bankrupt, the Official Receiver and any trustee have a charge on the assets included in the individual voluntary arrangement in respect of any sums comprising such balance, subject only to the deduction from realisations by the supervisor of the proper expenses of realisation.

(5) Any sums due to the Official Receiver shall take priority over those due to any trustee.

(6) The supervisor shall, from time to time, out of the realisation of assets—

(*a*) discharge all guarantees properly given by the Official Receiver or any trustee for the benefit of the estate; and

(*b*) pay the expenses of the Official Receiver and any trustee.

Report to Director of the approval of individual voluntary arrangement

268.—(1) After the creditors approve an individual voluntary arrangement, the nominee, his appointee or the chairperson of the creditors' meeting shall deliver a report containing the required information to the Director.

(2) The report shall be delivered, as soon as it is reasonably practicable, and in any event within 14 days after the report that the creditors have approved the individual voluntary arrangement has been filed with the Court or sent to the creditors, as the case may be.

(3) The required information shall be—

(*a*) information identifying the debtor and his business or occupation, if any;

(*b*) the debtor's gender;

(*c*) the debtor's date of birth;

(*d*) any name by which the debtor was, or is, known, not being the name in which the debtor has entered the individual voluntary arrangement;

(*e*) the date on which the individual voluntary arrangement was approved by the creditors; and

(*f*) the name and address of the supervisor.

(4) Where the proposal was approved by correspondence, the deadline for voting shall be taken as the date when the individual voluntary arrangement was approved.

(5) A person who is appointed to act as a supervisor, including as a replacement of another person, or who vacates that office, shall deliver a notice of the fact to the Director, as soon as it is reasonably practicable.

Revocation or suspension of an individual voluntary arrangement

269.—(1) This rule applies where the Court makes an order of revocation or suspension under section 263 of the Act.

(2) The applicant for the order referred to in sub-rule (1), shall deliver a sealed copy of it to—

(*a*) the debtor, if different to the applicant;

(*b*) the supervisor; and

(*c*) where the debtor is an undischarged bankrupt, the Official Receiver and any trustee, if different to the applicant.

(3) Where the order includes a direction by the Court under section 263

(4) (*b*) of the Act for a matter to be considered further by correspondence or by a meeting, the applicant for the order shall deliver a notice that the order has been made to the person who is directed to take such action.

(4) The debtor, the trustee, if the debtor is an undischarged bankrupt, or the Official Receiver, if there is no trustee, shall—

(*a*) as soon as it is reasonably practicable, deliver a notice that the order has been made to everyone to whom a notice to consider the matter by correspondence or at a creditors' meeting was delivered or who appear to be affected by the order; and

(*b*) within 5 business days of delivery of a copy of the order, or within such longer period as the Court may allow, deliver, if applicable, a notice to the Court advising that it is intended to make a revised proposal to the creditors, or to invite re-consideration of the original proposal.

(5) The applicant for the order shall, within 5 business days of the making of the order, give notice of the order to the Director.

(6) The applicant for the order shall, within 5 business days of the expiry of any order of suspension, give notice of the expiry to the Director.

Supervisor's accounts, records and reports

270.—(1) The supervisor shall keep accounts and records where the individual voluntary arrangement authorises or requires the supervisor—

(*a*) to carry on the business of the debtor or trade on behalf of, or in the name of, the debtor;

(*b*) to realise assets of the debtor or, in a case where the debtor is an undischarged bankrupt, belonging to the estate; or

(*c*) otherwise, to administer or dispose of any funds of the debtor or the estate.

(2) The accounts and records which shall be kept are of the supervisor's acts and dealings in and in connection with the individual voluntary arrangement, including in particular records of all receipts and payments of money.

(3) The supervisor shall preserve any such accounts and records which were kept by any other person who has acted as supervisor of the individual voluntary arrangement and are in the supervisor's possession.

(4) The supervisor shall deliver reports on the progress and prospects for the full implementation of the individual voluntary arrangement to—

(*a*) the debtor;

(*b*) all the creditors bound by the individual voluntary arrangement; and

(*c*) the Director.

(5) Each report shall cover a 12 month period ending with the anniversary of the commencement of the individual voluntary arrangement and shall be delivered within 2 months of the end of that period.

(6) A report referred to in sub-rule (5) shall not be required if an obligation to deliver a final report arises in the 2 months' period referred in sub-rule (5).

(7) Where the supervisor is authorised or required to do any of the things mentioned in sub-rule (1), the report shall include or be accompanied by—

(*a*) a summary of receipts and payments which sub-rule (2) requires to be kept; or

(*b*) where there have been no such receipts and payments, a statement to that effect.

Production of accounts and records to the Director

271.—(1) The Director may during the individual voluntary arrangement or after its completion or termination require the supervisor to produce for inspection, at the supervisor's premises or elsewhere,—

(*a*) the supervisor's accounts and records in relation to the individual voluntary arrangement; and

(*b*) copies of reports and summaries prepared in compliance with rule 270.

(2) The Director may require any accounts and records produced under this rule to be audited and, if so, the supervisor shall provide such further information and assistance as the Director requests for the purposes of the audit.

Fees and expenses

272. The fees and expenses that may be paid or incurred for the purposes of the individual voluntary arrangement are—

(*a*) fees for the nominee's services agreed with the debtor, the Official Receiver or any trustee;

(*b*) disbursements made by the nominee before the approval of the individual voluntary arrangement; and

(*c*) fees and expenses which—

(i) are sanctioned by the terms of the individual voluntary arrangement; or

(ii) would be payable or correspond to those which would be payable in the debtor's bankruptcy.

Termination or full implementation of the individual voluntary arrangement

273.—(1) The supervisor shall deliver a notice that the individual voluntary arrangement has been terminated or fully implemented to the debtor and the creditors bound by the individual voluntary arrangement not more than 28 days after the termination or full implementation of the individual voluntary arrangement.

(2) The notice shall be accompanied by a copy of a report by the supervisor which—

(*a*) summarises all receipts and payments in relation to the individual voluntary arrangement;

(*b*) explains any departure from the terms of the individual voluntary arrangement as approved by the creditors; and

(*c*) sets out the reasons why the individual voluntary arrangement

has been terminated, if that is the case.

(3) Not more than 28 days after the termination or full implementation of the individual voluntary arrangement, the supervisor shall deliver to the Director and, if the creditors were invited to consider the proposal following a report under section 257 of the Act, file with the Court a copy of the notice and report.

(4) The supervisor shall not vacate office until the notice and report have been delivered to the Director.

Application under s. 250(1) of the Act

274.—(1) An application to the Court under section 250 (1) of the Act shall be supported by a sworn statement stating—

(*a*) that the individual voluntary arrangement has been approved by the creditors; and

(*b*) the date of the approval.

(2) The application and a sworn statement shall be filed with the Court and the Court shall deliver a notice of the date, time and venue for the hearing to the bankrupt.

(3) Not less than 5 business days before the date of the hearing, the bankrupt shall deliver the notice of the date, time and venue, with a copy of the application and the sworn statement, to—

(*a*) the Official Receiver;

(*b*) where the trustee is not the same person as the Official Receiver, the trustee; and

(*c*) the supervisor.

(4) The Official Receiver, the trustee or the supervisor may attend the hearing in person or be represented and appear by a legal practitioner and draw the attention of the Court to any matter which seem to him to be relevant.

Notice of order

275.—(1) An Official Receiver, who has delivered a notice of the debtor's bankruptcy to creditors, shall, as soon as it is reasonably practicable, deliver to the creditors a notice of an annulment under section 250 of the Act.

(2) Upon delivering the notice under sub-rule (1), the expenses incurred by the Official Receiver in delivering of the notice under sub-rule(1) shall be a charge in the Official Receiver's favour on the property of the former bankrupt, whether or not the property is in the possession, custody or power of the former bankrupt.

(3) Where any property is in the possession, custody or power of a person other than the former bankrupt, the Official Receiver's charge is valid subject only to any expenses that may be incurred by the person in effecting realisation of the property for the purpose of satisfying the charge.

Advertisement of order

276. (1) The former bankrupt may, in writing within 28 days of the date of an order under section 250 of the Act, require the Official Receiver to—

(*a*) cause a notice of the order to be published in the *Gazette*; and

(*b*) advertise the notice in such manner as he thinks fit.

(2) The Official Receiver shall comply with any such requirement, as soon as it is reasonably practicable.

(3) In addition to the standard contents, the notice shall state —

(*a*) the name of the former bankrupt;

(*b*) the date on which the bankruptcy order was made;

(*c*) that the bankruptcy order has been annulled;

(*d*) the date of the annulling order; and

(*e*) the grounds of the annulment.

(4) Where the former bankrupt has died, or is a person lacking capacity to manage his affairs, the reference to the former bankrupt in sub-rule (1) shall be read as reference to the personal representative of the former bankrupt or, as the case may be, a person appointed by the Court to represent, or act for, the former bankrupt.

Trustee's final account

277.—(1) The making of an order under section 250 of the Act shall not of itself release the trustee from any duty or obligation, imposed by or under the Act or these Rules, to account for all of the trustee's transactions in connection with the former bankrupt's estate.

(2) As soon as it is reasonably practicable, after the making of an order, the trustee shall—

(*a*) deliver a copy of the final account of the trustee to the Director; and

(*b*) file a copy of that account with the Court.

(3) The final account shall include a summary of the trustee's receipts and payments in the administration of the former bankrupt's estate.

(4) The trustee shall be released from such time as the Court may determine, having regard to whether sub-rule (2) has been complied with.

Application for suspension of automatic discharge

278.—(1) A bankrupt shall be automatically discharged 2 years after adjudication under section 240 of the Act, unless the Court orders otherwise under section 244 of the Act.

(2) Sub-rules (3) to (10) apply where the Official Receiver or the trustee applies to the Court for an order for suspension of automatic discharge.

(3) The Official Receiver or the trustee shall file with the application, a sworn statement setting out the reasons why it appears that an order for suspension of automatic discharge should be made.

(4) The Court shall fix the date, time and venue for the hearing of the application, and shall deliver the notice of the hearing to the Official Receiver, the trustee and the bankrupt.

(5) The Official Receiver shall deliver copies of his report to the bankrupt and any trustee who is not the Official Receiver, so as to reach them at least 21 days before the date fixed for the hearing.

(6) Copies of the trustee's sworn statement shall be delivered by the trustee to the Official Receiver and the bankrupt at least 21 days before the date fixed for the hearing.

(7) The bankrupt may, not later than 5 business days before the date of the hearing, file with the Court a notice specifying any statements in the Official Receiver's or trustee's sworn statement which the bankrupt intends to dispute.

(8) Where the bankrupt files such a notice under sub-rule (6), the bankrupt shall deliver copies of the notice, not less than 3 business days before the date of the hearing, to the Official Receiver and any trustee who is not the Official Receiver.

(9) Where the Court makes an order suspending the bankrupt's discharge, copies of the order shall be delivered by the Court to the Official Receiver, any trustee who is not the Official Receiver and the bankrupt.

(10) An order of the suspension of automatic discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify and provide contact details for the applicant who will be the Official Receiver or the trustee;

(*c*) identify the bankrupt;

(*d*) state the date of the bankruptcy order;

(*e*) state that upon considering the evidence it appears to the Court that the bankrupt has failed or is failing to comply with the bankrupt's obligations under the Act for the reasons specified in the order;

(*f*) state in what respect the bankrupt has failed to comply with his obligations under the Act;

(*g*) order that the relevant period for the purpose of section 279 of the Act will cease to run for the period specified in the order until the conditions specified in the order have been fulfilled;

(*h*) state the period and conditions referred to in paragraph (*g*); and

(*i*) state the date of the making of the order.

Certificate of discharge from bankruptcy

279.—(1) A bankrupt shall apply to the Court for a certificate of discharge whether the discharge is on account of expiration of time or otherwise.

(2) Where it appears to the Court that the bankrupt is discharged, whether by expiration of time or otherwise, the Court shall deliver a certificate of discharge to the former bankrupt.

(3) The certificate of discharge shall—

(*a*) state the name of the Court and the Registry;

(*b*) identify the former bankrupt;

(*c*) state the date of the bankruptcy order,

(*d*) certify that the former bankrupt was discharged from bankruptcy;

(*e*) state the date of discharge from bankruptcy; and

(*f*) state the date of the certificate.

(4) The certificate shall also state that—

(*a*) the former bankrupt may request notice of the discharge to be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183; and

(*b*) such a request shall be delivered to the Official Receiver within 28 days of the making of the certificate of discharge.

(5) As soon as it is reasonably practicable, after delivery of such a request to the Official Receiver, the notice of discharge shall be published in the *Gazette* and advertised in the same manner as the bankruptcy order is to be advertised under rule 183.

(6) In addition to the standard contents, the notice shall state—

(*a*) the name of the former bankrupt;

(*b*) the date of the bankruptcy order;

(*c*) that a certificate of discharge has been delivered to the former bankrupt;

(*d*) the date of the certificate; and

(*e*) the date from which the discharge is effective.

(7) An application for a notice of discharge and a request for the notice to be published in the *Gazette* and advertised may be made by the former bankrupt's personal representative or, as the case may be, a person appointed by the Court to represent or act for the former bankrupt where the former bankrupt—

(*a*) has died; or

(*b*) is a person lacking capacity to manage his affairs.

Deferment of issue of order pending appeal

280. An order made by the Court on an application by the bankrupt for discharge under section 240 of the Act shall not be drawn up or published in the *Gazette* until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

Bankruptcy Restrictions Register

281.—(1) Where any of the following orders are made against a bankrupt or a debtor, the Director shall enter on the bankruptcy restrictions register the specified information—

(*a*) a bankruptcy order; and

(*b*) a bankruptcy restrictions order, if any.

(2) The specified information shall be—

(*a*) the bankrupt's or debtor's identity information;

(*b*) the bankrupt's or debtor's gender;

(*c*) the bankrupt's or debtor's occupation, if any;

(*d*) a statement that a bankruptcy order has been made against the bankrupt or debtor;

(*e*) the date of the making of the order;

(*f*) the Court and the Registry in which the order was made and the Court or order reference number; and

(*g*) the duration of the order, if any.

(3) In proceedings, the bankruptcy restrictions register shall be conclusive proof of the matters in the register.

PART VI—INSOLVENCY PROCEEDINGS

Division I—General Provisions

Formal defects

282. No insolvency proceedings shall be invalidated by any formal defect or any irregularity, unless the Court before which an objection is made considers that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the Court.

Requirement to assess costs by the detailed procedure

283.—(1) Where the costs of any person are payable as an expense out of the insolvent estate, the amount payable shall be decided by detailed assessment unless agreed between the office-holder and the person entitled to payment.

(2) In the absence of an agreement, the office-holder—

(*a*) may serve a notice requiring the person entitled to payment to commence detailed assessment proceedings under the rules of civil procedure; and

(*b*) except in a receivership, shall serve such notice where a liquidation or creditors' committee formed in relation to the insolvency proceedings resolves that the amount of the costs shall be decided by detailed assessment.

(3) Detailed assessment proceedings shall be commenced in the Court and the Registry to which the insolvency proceedings are allocated or, where in relation to a company there is no such Court, any Court having jurisdiction to wind up the company.

(4) Where the costs of any person employed by an office-holder in insolvency proceedings are required to be decided by detailed assessment or fixed by order of the Court, the office-holder may make payments on account to such person in respect of those costs if that person undertakes in writing—

(*a*) to repay, as soon as it is reasonably practicable, any money which may, when detailed assessment is made, prove to have been overpaid; and

(*b*) to pay interest on any such sum as is mentioned in paragraph (*a*) at the rate specified in the Courts Act on the date payment was made and for the period beginning with the date of payment and ending with the date of repayment. Cap.3:02

(5) In any proceedings before the Court, including proceedings on a petition, the Court may order costs to be decided by detailed assessment.

(6) Unless otherwise directed or authorised, the costs of a trustee in bankruptcy or a liquidator shall be allowed on the standard basis under the rules of civil procedure.

Procedure where detailed assessment is required

284.—(1) Before making a detailed assessment of the costs of any person employed in insolvency proceedings by the office-holder, the Court shall require a certificate of employment, which shall be endorsed on the bill and signed by the office-holder.

(2) The certificate shall include—

(*a*) the name and address of the person employed;

(*b*) details of the tasks to be carried out under the employment; and

(*c*) a note of any special terms of remuneration which have been agreed.

(3) Every person whose costs in insolvency proceedings are required to be decided by detailed assessment shall, on being required in writing to do so by the office-holder, commence detailed assessment proceedings under the rules of civil procedure.

(4) Where a person referred to in sub-rule (3) does not commence detailed assessment proceedings within 3 months of being required to do so under that sub-rule, or within such further time as the Court, on application, may allow, the office-holder may deal with the insolvent estate without regard to any claim for costs by the person, whose claim is forfeited by such failure to commence proceedings.

(5) In any case falling within sub-rule (4), a claim for costs shall—

(*a*) lie against an office-holder in the office-holder's official and personal capacities; and

(*b*) be forfeited by the failure to commence proceedings.

Enforcement

285. A judgment of the Court in insolvency proceedings shall be enforced as any other civil judgment of the Court.

Procedure on appeal

286.—(1) An appeal against a decision of the Court at first instance may be brought—

(*a*) with the permission of the Court which made the decision; or

(*b*) with the permission of the Court which has jurisdiction to hear the appeal where the Court which made the decision refused to grant the permission.

(2) An appellant shall file a notice of appeal within 30 days after the date of the decision of the Court, stating the appellant's intention to appeal.

Official Receiver's expenses

287.—(1) Any expenses, including damages, incurred by the Official Receiver, in whatever capacity the Official Receiver may be acting, in connection with proceedings taken against the Official Receiver in insolvency proceedings are to be treated as expenses of the insolvency proceedings.

(2) In respect of any sums due to the Official Receiver under sub-rule (1)

in connection with insolvency proceedings, the Official Receiver shall have a charge on the insolvent estate.

Division II—Provisions Applicable to all Debtors

Interpretation

288.—(1) In this Division—

"debt", in relation to winding-up of the company, means, subject to sub-rule (2), one or more of the following—

(*a*) a provable debt or liability to which the company is subject at the relevant date;

(*b*) a debt or liability to which the company may become subject after the relevant date by reason of any obligation incurred before that date; and

(*c*) interest provable;

"dividend", in its application to a members' voluntary winding -up of the company, includes a distribution to members;

"relevant date" means—

(*a*) in the case of an administration which was not immediately preceded by a winding-up of the company, the date on which the company entered administration;

(*b*) in the case of an administration which was immediately preceded by a winding-up of the company, the date on which the company went into liquidation;

(*c*) in the case of a winding-up of the company which was not immediately preceded by an administration, the date on which the company went into liquidation;

(*d*) in the case of a winding-up of the company which was immediately preceded by an administration, the date on which the company entered administration; and

(*e*) in the case of a bankruptcy, the date of the bankruptcy order.

(2) For the purposes of any provision of the Act or these Rules about winding-up of the company, a liability in tort is a debt provable in a winding-up of the company, if —

(*a*) the cause of action has accrued at the relevant date; or

(*b*) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(3) For the purposes of references, in any provisions of the Act or these Rules about winding-up of the company, to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is liquidated or unliquidated, or is capable of being ascertained by fixed rules or as a matter of opinion, and references in any such provision to owing a debt are to be read accordingly.

(4) In any provision of the Act or these Rules about winding-up of the company, "liability" means, subject to sub-rule (3), a liability to pay money or

money's worth, including any liability—

(*a*) under an enactment;

(*b*) for breach of trust;

(*c*) in contract, tort or bailment; and

(*d*) arising out of an obligation to make restitution.

(5) This rule applies where a company is in administration and shall be read as if—

(*a*) references to winding-up of the company were references to administration of the company;

(*b*) references to administration of the company were references to winding-up of the company;

(*c*) references to going into liquidation of the company were references to entering administration of the company; and

(*d*) references to entering administration of the company were references to going into liquidation of the company.

Provable debts

289.—(1) All claims by creditors in insolvency proceedings are provable as debts against the company or the bankrupt, whether they are present or future, certain or contingent, ascertained or sounding in damages.

(2) Nothing in sub-rule (1) shall prejudice any law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

Proving debt

290.—(1) Proofs of debt in insolvency proceedings, except in shareholders' voluntary winding-up of the company, shall be delivered to the office-holder unless—

(*a*) the Court orders otherwise;

(*b*) in a winding-up of the company immediately preceded by an administration of the company, the creditor has already proved in the administration; or

(*c*) in an administration of the company immediately preceded by a winding-up of the company, the creditor has already proved in the winding-up.

(2) In a shareholders' voluntary winding-up of the company, the liquidator may require proofs of debt to be delivered to him.

Requirements for proof of debt

291.—(1) A proof of debt shall—

(*a*) be made out by, or under the direction of, the creditor and authorised by the creditor or a person authorised in that behalf;

(*b*) state the creditor's name and address;

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(*c*) if the creditor is a company, state its unique identifiers under the Companies Act;

(*d*) state the total amount of the creditor's claim, including value added tax, as at the relevant date, less any payments made after that date

in relation to the claim, any adjustment by way of set-off under section 280 of the Act;

(*e*) state whether or not the claim includes an uncapitalised interest;

(*f*) contain particulars of how and when the debt was incurred by the company or the bankrupt;

(*g*) contain particulars of any security held, the date on which it was given and the value which the creditor attaches on it;

(*h*) provide details of any security interest in relation to goods to which the debt refers;

(*i*) provide details of any document by reference to which the debt can be substantiated, but the document shall accompany the proof of debt only if called for under sub-rule (2); and

(*j*) state the name, postal address and authority of the person authorising the proof of debt, if it is someone other than the creditor.

(2) The office-holder may call for any document or other evidence to be produced to the office-holder if the office-holder considers it necessary for the purpose of substantiating the whole or any part of a claim.

Creditor bears own costs of proof of debt

292.—(1) Unless the Court otherwise orders, each creditor bears the cost of proving that creditor's own claim, including costs incurred in providing documents or evidence under rule 289 (2).

(2) In an administration or winding-up of the company, costs incurred by the office-holder in estimating the value of a debt are payable out of the assets as an expense of the administration or winding-up.

(3) In a bankruptcy, costs incurred by the office-holder in estimating the value of a debt fall on the estate as an expense of the bankruptcy.

Allowing inspection of proofs of debt

293. The office-holder shall, as long as proofs of debt delivered to the office-holder are in the possession of the office-holder, allow them to be inspected, at all reasonable times on any business day, by any of the following persons—

(*a*) any creditor who has delivered a proof of debt, unless the proof has been wholly rejected for purposes of dividend or otherwise;

(*b*) any member or contributory of the company or, in the case of a bankruptcy, the bankrupt; and

(*c*) any person acting on behalf of the persons mentioned in paragraphs (*a*) and (*b*).

Transmission of proofs: appointment or replacement of office-holder

294.—(1) Where an office-holder is first appointed, or is appointed in succession to the Official Receiver or to replace another office-holder, ('the appointee') the former office-holder or, where it is the case, the Official Receiver, shall, as soon as it is reasonably practicable, after the appointment, deliver to the appointee all proofs of debt which the former office-holder or the Official Receiver has received, together with an itemised list of them.

(2) The appointee shall sign the list and return it to the former office-holder or the Official Receiver.

Admission and rejection of proofs of debt for dividend

295.—(1) A proof of debt may be admitted for dividend for the whole amount claimed by the creditor or for part of that amount.

(2) Where the office-holder rejects a proof of debt in whole or in part, the office-holder shall prepare a statement of his reasons for doing so, and deliver the statement, as soon as it is reasonably practicable, to the creditor.

Appeal against decision on proof of debt

296.—(1) Where a creditor is dissatisfied with the office-holder's decision in relation to the creditor's proof of debt, including any decision on the question of priority, the creditor may apply to the Court for the decision to be reversed or varied.

(2) A member, a contributory, any other creditor or, in a bankruptcy, a bankrupt, may, if dissatisfied with the office-holder's decision admitting or rejecting the whole or any part of a proof of debt, make such an application within 21 days of being notified of the office-holder's decision.

(3) The Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant to the creditor in question, if the applicant is not the creditor who delivered the proof of debt in question and the office-holder.

(4) The office-holder shall, on receipt of the notice, file with the Court the relevant proof of debt, together with relevant documents.

(5) Where the application is made by a member or a contributory, the Court shall not disallow the proof of debt, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that it is likely that there shall be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(6) After the application has been heard and determined the proof of debt shall be returned by the Court to the office-holder.

Withdrawal or variation of proof of debt

297.—A creditor's proof of debt may, at any time, by agreement between the creditor and the office-holder, be withdrawn or varied as to the amount claimed.

Exclusion of proof of debt by the Court

298.—(1) The Court may exclude a proof of debt or reduce the amount claimed—

(*a*) on the office-holder's application where he proves that the proof of debt has been improperly admitted or ought to be reduced; or

(*b*) on the application of a creditor, a member or a contributory if the office-holder declines to exclude a proof of debt or reduce the amount claimed.

(2) Where the application is made by a member or a contributory, the Court shall not exclude a proof of debt or reduce the amount claimed, in whole or in part, unless the member or the contributory shows that there is, or would be but for the amount claimed in the proof of debt, or that there will be, or would be but for the amount claimed in the proof of debt, a surplus of assets to which the company would be entitled.

(3) Where an application is made under sub-rule (1), the Court shall fix the date, time and venue for the application to be heard, a notice of which shall be sent by the applicant—

(*a*) in the case of an application by the office-holder, to the creditor who made the proof of debt; and

(*b*) in the case of an application by a creditor, a member or a contributory, to the office-holder and to the creditor who made the proof of debt, if the applicant is not the creditor who made the proof of debt.

Debts of insolvent company to rank equally

299.—(1) Sub-rule (2) apply in cases of—

(*a*) company reorganization; and

(*b*) winding-up of the company.

(2) Debts, other than preferential debts, rank equally between themselves and, after the preferential debts, shall be paid in full, unless the assets are insufficient to satisfy them in full, in which case they abate in equal proportions.

Division of unsold assets

300. In a company reorganization or in a winding-up of the company, the office-holder may, with the permission— .

(*a*) in a company reorganization, of the creditors' committee, or, if there is no creditors' committee, the creditors; or

(*b*) in a winding-up of the company, without prejudice to provisions about disclaimer, of the creditors' committee, or, the liquidation committee, or, if there is no creditors committee or liquidation committee, the creditors,

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

Estimate of value of debt

301.—(1) In a company reorganization or in a winding-up of the company, the office-holder shall estimate the value of a creditor's claim which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

(2) The office-holder may revise an estimate previously made under sub-rule (1), if he thinks fit by reference to a change of circumstances or to information becoming available to him.

(3) The office-holder shall inform the creditor his estimate and any revision of the estimate.

(4) Where the value of a creditor's claim is estimated under this rule or by the Court under section 278 of the Act, the amount provable in the case of that claim is that of the estimate for the time being.

Negotiable instruments, etc.

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

Secured creditors

303. A secured creditor who—

(*a*) realises a security, may prove for the balance of the debt owed to him, after deducting the amount realised; or

(*b*) voluntarily surrenders a security for the general benefit of creditors, may prove for the whole debt owed to that secured creditor, as if it were unsecured.

Secured creditor: value of security

304.—(1) Except where sub-rule (2) applies, a secured creditor may, with the permission of the Court or with the agreement of the office-holder, at any time alter the value which that creditor has attached to a security in a proof of debt.

(2) Where a secured creditor—

(*a*) is the applicant for a company reorganization order and has in the application or the notice of appointment attached a value on a security;

(*b*) has voted in a company reorganization, winding-up of the company by the Court or a bankruptcy in relation to the unsecured balance of the secured creditor's debt; or

(*c*) is the petitioner in a winding-up of the company by the Court or a bankruptcy and has in the petition attached a value on a security,

he may only alter the value of a security with the permission of the Court.

Secured creditor: surrender for non-disclosure

305.—(1) Subject to sub-rule (2), where a secured creditor omits to disclose a security in a proof of debt, the secured creditor shall surrender that security for the general benefit of creditors.

(2) On application by the secured creditor, the Court may relieve the secured creditor from surrendering his security for the general benefit of creditors on the ground that the omission referred to in sub-rule (1) was inadvertent or the result of an honest mistake.

(3) Where the Court grants the relief under sub-rule (2), it may require or allow the creditor's proof of debt to be amended on such terms as the Court considers just.

Secured creditor: Redemption by office-holder

306.—(1) The office-holder may, at any time, deliver a notice to a creditor whose debt is secured that the office-holder proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value attached to it in the creditor's proof of debt.

(2) The creditor shall have 21 days, or such longer period as the office-holder may allow, in which to exercise the right to alter the value of a security with the permission of the Court, where rule 304 applies but otherwise without the need for the agreement of the office-holder or the permission of the Court.

(3) Where the creditor alters the value of the security, the office-holder may only redeem at the new value.

(4) Where the office-holder redeems the security, the cost of transferring

it is—

(*a*) in the case of a company reorganization or a winding-up of the company, payable out of the assets; and

(*b*) in the case of a bankruptcy, borne by the bankruptcy estate.

(5) A secured creditor may, at any time, by notice, call upon the office-holder to choose whether the office-holder shall or shall not exercise his power to redeem the security at the value attached to it, and the office-holder shall have 3 months within which to exercise or not exercise his power to redeem.

Secured creditor : potential sale of security

307.—(1) Where the office-holder is dissatisfied with the value which a secured creditor attaches to a security, whether in the proof or by way of alteration of value under rule 304 (1), the office-holder may require the security to be offered for sale.

(2) The terms of sale shall be as agreed between office-holder and the secured creditor or as the Court may direct.

(3) Where the sale is by auction, the office-holder, on behalf of the company or the bankruptcy estate, and the creditor may bid.

(4) This rule shall not apply if the value of the security has been altered with the permission of the Court.

Realisation of security by creditor

308. Where a creditor who has valued a security subsequently realises the security, whether or not at the instance of the office-holder,—

(*a*) the net amount realised shall be substituted for the value previously attached by the creditor to the security; and

(*b*) that amount shall be treated in all respects as an amended valuation made by the creditor.

Discounts

309. All trade and other discounts, except a discount for immediate or early settlement, which would have been available but for the insolvency proceedings shall be deducted from the claim.

Company reorganization: mutual dealings and set-off

310.—(1) This rule applies in a company reorganization where the administrator proposes to make a distribution and has delivered a notice to that effect.

(2) An account shall be taken as at the date of the notice of what is due from the company and a creditor to each other from their mutual dealings and the sums due from the one shall be set off against the sums due from the other.

(3) Where there is a balance owed to the creditor, then only that balance is provable in the company reorganization.

(4) Subject to sub-rule (5), if there is a balance owed to the company, such balance shall be paid to the administrator as part of the assets.

(5) Where all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the administration of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) an application for a company reorganization order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) an application for an administration order was pending; or

(ii) a person had delivered a notice of intention to appoint an administrator;

(*c*) a debt arising out of an obligation incurred after the company entered administration;

(*d*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into after the company entered administration;

(*e*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or a winding-up petition was pending; and

(ii) the winding-up of the company immediately preceded the administration of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a creditors' meeting had been summoned under section 146 of the Act or that a winding-up petition was pending; and

(ii) where the winding-up of the company immediately preceded the administration of the company;

(g) a debt arising out of an obligation incurred during the winding-up of the company which immediately preceded the administration of the company; or

(*h*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during the winding-up of the company which immediately preceded the administration of the company.

(7) A sum shall be treated as being due to, or from, the company for the purposes of sub-rule (3) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Winding-up of the company: mutual dealings and set off

311.—(1) This rule applies in the winding-up of the company where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the company proving for a debt in the liquidation.

(2) An account shall be taken of what is due from the company and the creditor to each other from their mutual dealings and the sums due from the one shall be set off against the sums due from the other.

(3) Where there is a balance owed to the creditor, only that balance is provable in the winding-up of the company.

(4) Where there is a balance owed to the company, such balance shall be paid to the liquidator as part of the assets.

(5) Notwithstanding sub-rules (3) and (4), if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor, the balance, or that part of the balance which results from the contingent or prospective debt, shall be paid in full when the debt becomes due and payable.

(6) In this rule—

"obligation" means an obligation however arising, whether by virtue of an agreement, law or otherwise; and

"mutual dealings" means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving for a debt in the winding-up of the company but does not include any of the following—

(*a*) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*b*) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into at a time when the creditor had notice that—

(i) a creditors' meeting had been summoned under section 171 of the Act; or

(ii) a winding-up petition was pending;

(*c*) a debt arising out of an obligation where—

(i) at the time the obligation was incurred the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*d*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into—

(i) at a time when the creditor had notice that a company reorganization application was pending or a person had delivered a notice of intention to appoint an administrator; and

(ii) a company reorganization immediately preceded the winding-up of the company;

(*e*) a debt arising out of an obligation incurred during an administration of the company which immediately preceded the winding-up of the company;

(*f*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into during an administration of the company which immediately preceded the winding-up of the company; or

(*g*) a debt which has been acquired by a creditor by assignment under an agreement between the creditor and another party where that agreement was entered into after the company went into liquidation.

(8) A sum shall be treated as being due to, or from, the company for the purposes of sub-rules (3) and (4) whether—

(*a*) it is payable at present or in future;

(*b*) the obligation by virtue of which it is payable is certain or contingent; or

(*c*) its amount is liquidated, unliquidated or is capable of being ascertained by fixed rules or as a matter of opinion.

Debt in foreign currency

312.—(1) For the purpose of proving for a debt incurred or payable in a foreign currency, the amount of the debt shall be converted into Malawi Kwacha at a single foreign currency exchange rate for the foreign currency determined by the office-holder with reference to the foreign currency exchange rate prevailing on the relevant date.

(2) Where the office-holder receives any objections from the creditors to the foreign currency exchange rate determined under sub-rule (1), he shall apply to the Court to determine the rate.

313.—(1) In the case of rent and other payments of a periodic nature, the creditor may prove for any amounts due and unpaid up to the relevant date. Payments of periodic nature

(2) Where at the relevant date any payment shall have been accruing and becomes due, the creditor may prove for the payment as would have been due at the date, if the payment shall have been accruing from day to day.

314.—(1) Where a debt proved in insolvency proceedings bears interest, the interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date. Interest

(2) The creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed if the debt is due by virtue of a written instrument and payable at a certain time, in which case interest may be claimed for the period from that time to the relevant date.

(3) Where the debt is due otherwise, interest may only be claimed if, before—

(*a*) the date on which the company—

(i) entered administration or, if the administration of the company was immediately preceded by the winding-up of the company, the date on which the company went into liquidation; or

(ii) went into liquidation or, if the winding-up of the company was immediately preceded by the administration of the company, the date on which the company entered administration; or

(*b*) the presentation of the bankruptcy petition or the bankruptcy application, a demand for payment of the debt was made in writing by, or on behalf of the creditor, and a notice delivered that interest would be payable from the date of the demand to the date of the payment.

(4) Interest under sub-rule (3) may only be claimed from the date of the demand to the relevant date and for all the purposes of the Act and these Rules shall be charged at a rate not exceeding the rate under section 65 of the Courts Act on the relevant date. Cap 3:02

(5) In a company reorganization—

(*a*) any surplus remaining after payment of the debts proved shall, before being applied for any purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;

(*b*) all interest payable under paragraph (*a*) shall rank equally whether or not the debts on which the interest is payable rank equally; and

(*c*) the rate of interest payable under paragraph (*a*) is whichever is the greater of the rate specified under sub-rule (4) and the rate applicable to the debt apart from the administration.

315.—(1) In a company reorganization and in the winding-up of the company, the office-holder shall deliver notice to the creditors of his intention to declare and distribute a dividend. Intention to declare and distribute dividend

(2) In the winding-up of the company, whenever the liquidator has funds available, he shall, subject to the retention of such funds as may be necessary for the expenses of the winding-up of the company, declare and distribute dividends among the creditors in respect of the debts which they have proved.

Notice of intention to declare dividend

316.—(1) Where an office-holder intends to declare a dividend, he shall deliver a notice of his intention to declare a dividend to all creditors who have not proved their debts.

(2) Before declaring a dividend, the office-holder shall, by a notice, invite the creditors to prove their debts, unless he has previously done so by a notice which has been published in the *Gazette* or otherwise advertised.

(3) The notice—

(*a*) shall be published in the *Gazette*; and

(*b*) may be advertised in such other manner as the office-holder thinks fit.

(4) Where a dividend is to be declared for preferential creditors—

(*a*) a notice under sub-rule (1) need only be delivered to creditors whose debts the office-holder has reason to believe are preferential; and

(*b*) a notice under sub-rule (3) need only be delivered if the office-holder thinks fit.

Content of notice

317. A notice under rule 316(1) or (4) shall, in addition to the standard contents—

(*a*) specify a date ("the last date for proving"), by which proofs of debt shall be delivered, and which shall be —

(i) the same date for all creditors; and

(ii) not less than 21 days from the date of notice;

(*b*) state that it is the intention of the office-holder to make a distribution to creditors within 2 months from the last date for proving;

(*c*) specify whether the proposed dividend is interim or final;

(*d*) specify the place to which proofs of debt shall be delivered;

(*e*) in the case of a company reorganization, state that it is the intention of the administrator to make a distribution to creditors within 2 months from the last date for proving;

(*f*) in the case of the winding-up of the company or bankruptcy, state that it is the intention of the office-holder to declare a dividend within 2 months from the last date for proving; and

(*g*) in the case of a members' voluntary winding-up of the company, where the distribution is to be a sole or final distribution, state that the dividend may be distributed without regard to the claim of any person in respect of a debt not proved.

Postponement or cancellation of dividend

318. Where within the 2 months referred to in rule 317 (*b*)—

(*a*) the office-holder has rejected a proof of debt in whole or in part and an application is made to the Court for that decision to be reversed

or varied; or

(*b*) an application is made to the Court for the office-holder's decision on a proof of debt to be reversed or varied, or for a proof of debt to be excluded, or for a reduction of the amount claimed, the office-holder may postpone or cancel the dividend.

Declaration of dividend

319.—(1) Where the office-holder has not had cause to postpone or cancel the dividend in the 2 months referred to in rule 317 (*e*) or (*f*), he shall within that period proceed to declare the dividend to one or more classes of creditors to which he gave notice.

(2) Except with the permission of the Court, the office-holder shall not declare a dividend as long as there is pending any application to the Court to reverse or vary his decision on a proof of debt, or to exclude a proof of debt or to reduce the amount claimed.

(3) Where the Court gives permission under sub-rule (2), the office-holder shall make such provision in relation to the proof of debt as the Court may direct.

Notice of declaration of dividend

320.—(1) Subject to sub-rule (3), where the office-holder declares a dividend, he shall deliver a notice of such declaration to all creditors who have proved their debts.

(2) The notice under sub-rule (1) shall include the following particulars relating to the insolvency proceedings—

(*a*) amounts raised from the sale of assets, indicating, as far as it is reasonably practicable, amounts raised by the sale of the particular assets;

(*b*) payments made by the office-holder in carrying out his functions in relation to the insolvency proceedings;

(*c*) provision, if any, made for unsettled claims, and funds, if any, retained for particular purposes;

(*d*) the total amount to be distributed and the rate of dividend; and

(*e*) whether, and if so, when, any further dividend shall be declared.

(3) Where the office-holder declares a dividend for preferential creditors only, the notice under sub-rule (1) shall be delivered to those preferential creditors who have proved their claims.

Payment of dividends and related matters

321.—(1) The office-holder may distribute a dividend simultaneously with the notice declaring the distribution of a dividend.

(2) The office-holder may pay a dividend to the creditor by post, or with the agreement of the creditor, arrange for the dividend to be paid to the creditor by any other means or in any form, or hold for the creditor's collection.

(3) Where a dividend is paid on a bill of exchange or other negotiable instrument, the amount of the dividend shall be endorsed on the instrument, or on a certified copy of the instrument, if required to be produced by the holder for that purpose.

(4) In the declaration of a dividend, no payment shall be made more than once by virtue of the same debt.

Notice of no dividend, or no further dividend

322. Where the office-holder delivers a notice to the creditors that he is unable to declare any dividend or further dividend, the notice shall contain a statement to the effect that—

(*a*) no funds have been realised; or

(*b*) the funds realised have already been distributed, used or allocated for defraying the expenses of conducting the insolvency proceedings.

Declaration of sole or final dividend

323.—(1) When the liquidator in the winding-up of the company has realised all the company's assets or so much of them as can, in the liquidator's opinion, be realised without needlessly prolonging the winding-up of the company, he shall deliver a notice—

(*a*) of the intention to declare a final dividend; or

(*b*) that no dividend or further dividend shall be declared.

(2) The notice under sub-rule (1) shall contain such particulars as are required by these Rules and shall require claims against the assets to be established by a date set out in the notice.

(3) Where, in a company reorganization or the winding-up of the company, it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under these Rules, the office-holder—

(*a*) in the winding-up of the company, shall defray any outstanding expenses of the winding-up out of the assets;

(*b*) in a company reorganization, shall—

(i) pay any outstanding expenses of the winding-up of the company or provisional winding-up of the company that immediately preceded the company reorganization;

(ii) pay any items payable under section 65 of the Act; and

(iii) pay any amounts ,including any debts or liabilities and the administrator's own remuneration and expenses, which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which the administrator had custody, possession or control under section 65 of the Act; and

(*c*) in a members' voluntary winding-up of the company may, and in every other case shall, declare and distribute that dividend without regard to the claim of any person whose debt not already proved.

(4) The Court may, on the application of any person whose debt is not already proved, postpone the date specified in the notice.

Admission or rejection of proofs of debt

324.—(1) Unless the office-holder has already dealt with them, he shall, within 5 business days of the last date for proving—

(*a*) admit or reject, in whole or in part, proofs of debt delivered to him; or

(*b*) make such provision in relation to proofs of debt as he thinks fit.

(2) The office-holder shall not be obliged to deal with proofs delivered after the last date for proving, but he may do so, if he thinks fit.

Company reorganization and winding-up: provisions on dividends

325. In a company reorganization or the winding-up of the company, in the calculation and distribution of a dividend, the office-holder shall make provision for—

(*a*) any debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to deliver their proofs of debt;

(*b*) any debts which are the subject of claims which have not yet been determined; and

(*c*) disputed proofs of debt and claims.

Supplementary provisions on dividends

326.—(1) Subject to sub-rule (2), a creditor shall not interfere with the payment of any dividend or making of any distribution on the ground that—

(*a*) the amount claimed in the creditor's proof of debt is increased after payment of the dividend;

(*b*) in a company reorganization, insolvency proceedings or a compulsory winding-up of the company, the creditor failed to prove for a debt before the declaration of the dividend; or

(*c*) in a members' voluntary winding-up of the company, the creditor failed to prove for a debt before the last date for proving or increases the claim in proof of debt after that date.

(2) A creditor shall be entitled to be paid a dividend or receive a distribution which he has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) The dividend under sub-rule (2) shall be paid or distributed before that money is applied to the payment of any further dividend or making of any further distribution.

(4) Where, after a creditor's proof of debt has been admitted, the proof of debt is withdrawn or excluded, or the amount of the proof is reduced, the creditor shall be liable to repay to the office-holder, for the credit of the insolvency proceedings, any amount overpaid by way of dividend.

Secured creditors

327.—(1) Sub-rules (2) and (3) shall apply where a creditor alters the value of a security after a dividend has been declared.

(2) Where the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor shall, as soon as it is reasonably practicable, repay to the office-holder, for the credit of the administration or of the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) Where the alteration increases the creditor's unsecured claim, the creditor shall be entitled to receive from the office-holder, out of any money

for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor shall not interfere with any dividend that has been declared, whether or not the dividend has been distributed, before the date of the alteration.

Disqualification from participation in dividend

328. Where a creditor contravenes the Act or these Rules in relation to the valuation of securities, the Court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

Assignment of right to dividend

329.—(1) Where a person who is entitled to a dividend ("the entitled person") delivers a notice to the office-holder that the entitled person wishes the dividend to be paid to another person, or that the entitled person has assigned his entitlement to another person, the office-holder shall pay the dividend to that other person.

(2) The notice delivered under sub-rule (1) shall specify the name and address of the person to whom payment is to be made.

Debt payable in future

330. Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, he shall be entitled to the dividend equally with other creditors, but subject as follows—

For the purpose of the dividend, the amount of the creditor's admitted proof of debt or, if a distribution has previously been made to the creditor, the amount remaining outstanding under the creditor's admitted proof of debt, shall be reduced by applying the following formula—

$$\frac{X}{1.05^{n}}$$

where—

"X" is the value of the admitted proof of debt; and

"n" is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would have been due, expressed in years, part of a year being expressed as a decimal fraction of a year.

Non-payment of dividend

331.—(1) In a company reorganization or the winding-up of the company, where the office-holder refuses to pay a dividend that has been declared, the Court may, if it considers it just, order the office-holder to pay the dividend.

(2) The Court shall order the office-holder to pay, out of his personal money—

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(*a*) interest on the dividend, at the rate under section of the Courts Act, from the time when it was withheld; and

(*b*) the costs of the proceedings in which the order to pay the interest shall have been made.

Division III—Committees and Meetings

Functions of committee

332. In addition to any functions conferred on a committee by any

provision of the Act, the committee shall assist the office-holder in discharging his functions and act in relation to him in such manner as may from time to time be agreed.

Composition of committee

333. A committee shall have at least 3 members but not more than 5 members.

Eligibility to be member of committee

334. A person claiming to be a creditor shall be eligible to be a member of the creditors' or liquidation committee—

(*a*) in a company reorganization or an receivership if the person's claim—

(i) has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(ii) is not fully secured; or

(*b*) in a creditors' voluntary winding-up of the company, a winding-up of the company by the Court or a bankruptcy, if—

(i) the person has delivered a proof of debt;

(ii) the proof of debt has neither been wholly disallowed for voting purposes, nor wholly rejected for the purpose of distribution or payment of a dividend; and

(iii) the debt is not fully secured.

Eligibility of body corporate to be member of committee

335. A body corporate may be a member of a creditors' committee, but it cannot act otherwise than by a representative duly appointed.

Cessation of creditors' committee when creditors are paid in full

336.—(1) Where the creditors have been paid in full together with interest, if applicable, the liquidator shall—

(*a*) issue a certificate to that effect; and

(*b*) deliver to the Registrar of Companies and the Director a notice to that effect together with a copy of the certificate referred to in paragraph (*a*).

(2) On the issue of the certificate, the creditors' committee shall cease to exist.

(3) The certificate shall—

(*a*) identify the liquidator;

(*b*) contain a statement by the liquidator certifying that the creditors of the company have been paid in full with interest, if applicable; and

(*c*) be signed and dated by the liquidator.

Filling vacancy in creditors' committee

337.—(1) This rule applies if there is a vacancy in the membership of a creditors' committee.

(2) The vacancy may not be filled if—

(*a*) the office-holder and a majority of the remaining committee members agree; and

(*b*) the number of members does not fall below 3.

(3) The office-holder may appoint a creditor, who is qualified to be a member of the committee, to fill the vacancy, if—

(*a*) a majority of the members of the committee agree to the nomination; and

(*b*) the creditor consents to act as such.

(4) Alternatively to sub-rule (3), a meeting of creditors may resolve that a creditor be appointed, with the creditor's consent, to fill the vacancy.

(5) Where the vacancy is filled by an appointment made by a creditors' meeting which the office-holder does not attend, the chairperson of the meeting shall report the appointment to the office-holder.

Resignation of committee member

338. A member of a committee may resign from his office by a notice delivered to the office-holder.

Termination of membership of committee

339. A person's membership of a committee shall automatically terminate if the person—

(*a*) becomes bankrupt, in which case the person's trustee in bankruptcy shall replace the bankrupt as a member of the committee;

(*b*) neither attends nor is represented at 3 consecutive meetings, unless it has been resolved at the third of those meetings that this rule shall not be applicable in that person's case;

(*c*) has ceased to be eligible to be a member of the committee under these Rules;

(*d*) ceases to be a creditor and 3 months have elapsed from the date that the member ceased to be a creditor; or

(*e*) is found never to have been a creditor.

Removal of member of committee

340. A member of a committee may be removed by a resolution at a creditors' meeting.

Formalities of establishment of committee; certificate of due constitution

341.—(1) A committee shall not come into being until the office-holder has issued a certificate of its due constitution.

(2) The certificate of due constitution shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state that the committee has been duly constituted;

(*d*) identify each company that is a member of the committee;

(*e*) give the full name and address of a member which is not a company; and

(*f*) be signed and dated by the office-holder.

(3) Where the office-holder is not the chairperson of the creditors' meeting which resolves to establish the committee, the chairperson shall, as soon as it is reasonably practicable, deliver a notice of the resolution to the office-holder or the person the meeting appoints as office-holder, and inform the office-holder of the names and addresses of the persons elected to be members of the committee.

(4) A person shall not act as a member of the committee, unless he consents to act as such.

(5) A person's consent to act as a member of a committee may be given by his proxy-holder attending the meeting establishing the committee or, in the case of a body corporate, by its duly appointed representative, unless the relevant proxy or authorisation does not allow the provision of consent to act as such.

(6) The certificate of due constitution shall be issued, as soon as it is reasonably practicable, after the minimum number of persons have agreed to act as members of a committee.

(7) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the certificate to the Registrar of Companies and the Director.

Issue of an amended certificate of due constitution

342.—(1) The office-holder shall issue an amended certificate of due constitution if there is a change in membership of the committee.

(2) The amended certificate shall—

(*a*) identify the proceedings;

(*b*) identify and provide contact details for the office-holder;

(*c*) state the date of the original certificate of due constitution and the date of the last amended certificate, if any;

(*d*) state that this amended certificate replaces the previous certificate;

(*e*) identify each company that is a member of the committee;

(*f*) give the full name and address of a member which is not a company;

(*g*) state whether any member has become a member since the issue of the previous certificate;

(*h*) give the full name and address of any member named on the previous certificate who is no longer a member and the date when such membership ended; and

(*i*) be signed and dated by the office-holder.

(3) The office-holder shall, as soon as it is reasonably practicable—

(*a*) in bankruptcy proceedings based on a petition, file the amended certificate with the Court;

(*b*) in bankruptcy proceedings based on a bankruptcy application, deliver the amended certificate to the Official Receiver; and

(*c*) in other proceedings, deliver the amended certificate to the Registrar of Companies and the Director.

Convening committee meeting

343. The convener shall have regard to the convenience of those invited to attend when fixing the date, time and venue for a committee meeting, including the resumption of an adjourned meeting.

Notice of meeting: content and accompanying documents

344.—(1) A notice summoning a meeting shall specify the purpose of, the date, time and venue for the meeting and—

(*a*) in case of a creditors' meeting, state that claims, proofs of debt ,if not already delivered, and proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for creditors to be entitled to vote at the meeting;

(*b*) in the case of a meeting of contributories, state that proxies shall be delivered to a specified place not later than 12:00 noon on the business day before the date fixed for the meeting in order for contributories to be entitled to vote at the meeting;

(*c*) in the case of a meeting to remove a liquidator in an insolvent or compulsory winding-up of the company, draw the attention of creditors to provisions which relate to the release of the liquidator and provisional liquidator, as the case may be; and

(*d*) in the case of a meeting to remove a trustee in a bankruptcy, draw the attention of creditors to rules which relate to the release of the trustee.

(2) Blank proxies complying with these Rules shall be delivered with every notice summoning a meeting.

(3) This rule shall not apply if the Court orders that a notice of a meeting be given by advertisement only.

Non-receipt of notice of meeting

345. Where a meeting is summoned by a notice under the Act or these Rules, the meeting shall be presumed to have been duly summoned and held, even if not everyone of all those persons to whom the notice was delivered responded in writing or attended the meeting.

Requisitioned meetings

346.—(1) In the case of a company reorganization, a request for a meeting under the Act or these Rules shall be delivered within 8 business days from the date on which the administrator's statement of proposals shall have been delivered.

(2) The request for the meeting under sub-rule (1) shall include a statement of the purpose of the proposed meeting and—

(*a*) a statement of the requesting creditor's claim or contributory's claim;

(*b*) a list of the creditors or contributories concurring with the request and the amounts of their respective claims or values; and

(*c*) a confirmation of concurrence from each creditor or contributory concurring or a statement of the requesting creditor's claim or contributory's claim and that amount alone is sufficient without the concurrence of other creditors or contributories.

(3) In sub-rule (2), a contributory's value shall be the amount which the contributory may vote at any meeting.

(4) A requisitioned meeting shall be held within 28 days from the date of the request.

Expenses of requisitioned meetings

347.—(1) The convener shall, not later than 21 days from the receipt of a request for a meeting, inform the requesting creditor or contributory of the sum to be deposited as security for payment of the expenses of summoning and holding the meeting.

(2) The convener shall not be obliged to summon a requisitioned meeting under sub-rule (1) unless —

(*a*) the convener has received the required sum; or

(*b*) 21 days have expired from receipt of the request for a meeting without the convener having informed the requesting creditor or contributory of the sum required to be deposited as security.

(3) The expenses of the requisitioned meeting shall be paid out of the deposit under sub-rule (1), if any, unless—

(*a*) the meeting resolves that the expenses shall be payable out of the assets of the company as an expense of the administration of the company, winding-up of the company or bankruptcy; and

(*b*) in the case of a meeting of contributories, the creditors are first paid in full and, if applicable, with interest.

(4) Where there is no resolution under sub-rule (3)(*a*), the expenses shall be paid by the requesting creditor or contributory to the extent that the deposit, if any, is not sufficient.

(5) To the extent that the deposit, if any, shall not be required for payment of the expenses, it shall be repaid to the requesting creditor or contributory, as soon as it is reasonably practicable.

Quorum at meeting of creditors or contributories

348.—(1) A meeting of creditors or contributories shall not be competent to transact any business unless a quorum shall have been satisfied.

(2) A quorum shall be—

(*a*) in the case of a meeting of creditors, at least one creditor entitled to vote; and

(*b*) in the case of a meeting of contributories, at least 2 contributories entitled to vote, or all the contributories, if their number does not exceed 2.

(3) A meeting of creditors or contributories shall not commence, unless at least the expiry of 15 minutes after the time appointed for its commencement where—

(*a*) the provisions of this rule as to a quorum attending are satisfied by the attendance of the chairperson alone, or one other person in addition to the chairperson; and

(*b*) the chairperson is aware, by virtue of claims or proofs of debt and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote.

Chairperson at meetings

349.—(1) The chairperson of a creditors' meeting or contributories or a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy shall be the convener or an appointee.

(2) Where the convener is the Official Receiver or the Director, the appointment need not be in writing if the appointee is another Official Receiver.

Adjournment by chairperson

350.—(1) The chairperson may, and shall, if it is so resolved, adjourn for not more than 14 days any meeting of creditors in company reorganization, but subject to the direction of the Court—

(*a*) any meeting in an insolvent or compulsory winding-up of the company or bankruptcy where the adjournment is with a view to obtaining the attendance of the bankrupt; or

(*b*) any other meeting in an insolvent or compulsory winding-up of the company or bankruptcy.

(2) Further adjournment under this rule shall not be to a day later than 14 days after the date on which the meeting was originally held.

(3) Where a meeting is adjourned, the chairperson shall, as soon as it is reasonably practicable, unless for any reason the chairperson thinks it unnecessary or impracticable, deliver a notice of the adjournment in an insolvent or compulsory winding-up of the company, to any person—

(*a*) who did not attend the meeting as the chairperson thinks fit; or

(*b*) in a bankruptcy, to the bankrupt if not in attendance at the meeting.

Administrator's proposals: lack of majority at initial creditors' meeting

351. Where an initial creditors' meeting has failed to satisfy the requisite majority for approval of the administrator's proposals for a company reorganization, the chairperson may, and if a resolution is passed to that effect shall, adjourn the meeting for not more than 14 days.

Adjournment of meetings to remove liquidator or trustee

352. Where the chairperson of a meeting to remove the liquidator or trustee in an insolvent or compulsory winding-up of the company or bankruptcy is the liquidator or trustee, or the liquidator's or trustee's nominee, and a resolution has been proposed for the liquidator's or trustee's removal, the chairperson shall not adjourn the meeting without the consent of at least one-half, in value, of the creditors attending and entitled to vote.

Adjournment in absence of chairperson

353.—(1) This rule applies to meetings in a company reorganization, an insolvent or compulsory winding-up of the company or a bankruptcy.

(2) Where the chairperson fails to attend a meeting within 30 minutes of

the time fixed for the meeting to start, the meeting shall be adjourned to the same time and place in the following week or, if that is not a business day, to the business day immediately following.

(3) Where on the second adjournment the chairperson fails to attend the meeting within 30 minutes of the time fixed for the meeting to start and no person is available to act as a chairperson in place of the chairperson, the meeting shall come to an end.

Proofs of debt and proxies on adjournment

354. Where a meeting in a company reorganization, insolvent or compulsory winding-up of the company or bankruptcy is adjourned, claims, proofs of debt and proxies may be used if delivered at any time up to 12:00 noon on the business day immediately before resumption of the adjourned meeting.

Adjournment in receivership

355. A creditors' meeting in a receivership shall not be adjourned, even if no quorum is satisfied, except where the chairperson thinks it fit that the meeting may be adjourned to another date, time and venue.

Suspension of meeting

356. In the course of a meeting, the chairperson may, without an adjournment, declare the meeting suspended for one or more periods not exceeding 1 hour in total.

Creditors' voting rights at meetings

357.—(1) A creditor shall be entitled to vote at a creditors' meeting only if—

(*a*) there has been delivered to the convener—

(i) in a company reorganization or receivership, details of the debt; or

(ii) in an insolvent or compulsory winding-up of the company or bankruptcy, a proof of debt, claimed under sub-rule (2), including any calculation; and

(*b*) the details of the debt were, or a proof of debt was, delivered to the convener—

(i) not later than 12:00 noon on the business day before the day fixed for the meeting; or

(ii) later than the time in sub-paragraph (i) but the chairperson of the meeting is satisfied that the delay was due to circumstances beyond that person's control; and

(*c*) the claim has been admitted for the purposes of entitlement to vote; or

(*d*) there has been delivered to the convener any proxy intended to be used on behalf of that person.

(2) A debt shall be claimed under this rule if it is claimed as due from the company or bankrupt to the person seeking to be entitled to vote.

(3) The details of the debt delivered to the convener in a receivership shall state—

(*a*) the creditor's name and address, and, if a company, its unique identifiers under the Companies Act; Cap.46:03

(*b*) the total amount of the claim, including any value added tax, as at the date of the appointment of the receiver, less all trade and other discounts available to the company, or which would have been available to the company but for the appointment, except for any discount for immediate or early settlement;

(*c*) whether or not that amount includes uncapitalised interest;

(*d*) particulars of how and when the debt was incurred by the company;

(*e*) particulars of any security held, the date when it was given and the value which the creditor attaches to it;

(*f*) details of any reservation of title in relation to goods to which the debt refers; and

(*g*) the name, and address and authority of the person making out the claim, if other than the creditor.

(4) The chairperson of a creditors' meeting may call for any document or other evidence to be produced if he thinks it necessary for the purpose of substantiating the whole or any part of a claim.

Calculation of voting rights

358.—(1) Votes shall be calculated according to the amount of each creditor's claim—

(*a*) in a company reorganization, as at the date on which the company entered company reorganization, less —

(i) any payments that have been made to the creditor after that date in respect of the claim; and

(ii) any adjustment by way of set-off under these Rules—

(AA) as if that rule were applied on the date on which the votes are counted if a notice of declaration of a dividend has not been delivered; or

(BB) which has actually been made in calculating the dividend to be paid to the creditor if the notice of declaration of a dividend has been delivered;

(*b*) in a receivership, as at the date of the appointment of the receiver, less any payment that has been made to the creditor after that date in respect of the claim; and

(*c*) in an insolvent or compulsory winding-up of the company or bankruptcy, as set out in the creditor's proof of debt to the extent that it has been admitted.

(2) A creditor may vote in respect of a debt which is for an unliquidated amount or the value of which is not ascertained if the chairperson decides to attach to the debt an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose.

(3) A creditor may not vote in respect of any claim or part of a claim where the claim or its part is secured, except where the vote is cast—

(*a*) in a company reorganization, in respect of —

(i) the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor; or

(ii) the full value of the debt without deduction of the value of the security in a case where the administrator has made a statement under section 35 (5) (*b*) of the Act and an initial creditors' meeting has been requisitioned under section 35 (6) of the Act; and

(*b*) in a receivership, insolvent or compulsory winding-up of the company or bankruptcy, in respect of the balance, if any, of the debt after deduction of the value of the security as estimated by the creditor.

(4) A vote may not be cast by virtue of a claim more than once on any resolution put to the meeting; and for this purpose, the claim of a creditor and of any member in relation to the same debt are a single claim.

Procedure for admitting creditors' claims for voting at meetings

359.—(1) At a creditors' meeting, the chairperson shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claims.

(2) The chairperson may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the chairperson is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, he shall mark the claim as objected to, and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Procedure for admitting creditors' claims for voting by correspondence

360.—(1) Where a matter is being voted on by correspondence, the office holder or appointee shall ascertain a creditor's claim of entitlement to vote and shall admit or reject such claim.

(2) The office holder or appointee may admit or reject a creditor's claim of entitlement to vote in whole or in part.

(3) Where the office holder or appointee is in any doubt whether a creditor's claim of entitlement to vote may be admitted or rejected, the office holder or appointee shall mark the claim as objected to and allow votes to be cast in respect of the claim, subject to such of the creditor's votes being subsequently declared invalid if the objection to the claim is sustained.

Requisite majorities

361. A resolution shall be passed by creditors when a majority in value of those voting by correspondence or attending and voting at a meeting have voted in favour of the resolution.

Appeals against decisions of meetings

362.—(1) The decision of the office holder or appointee, in respect of matters considered by correspondence, or the chairperson's decision, in respect of matters considered at a meeting, under these Rules are subject to appeal to the Court by a creditor, a contributory or a bankrupt.

(2) Where the chairperson's decision shall have been reversed or varied, or a creditor's votes shall have been declared invalid, the Court may order another meeting to be summoned or make such order as it considers just.

(3) An appeal under this rule shall not be made later than 21 days after the date of the meeting.

(4) The chairperson shall not be personally liable for costs incurred by any person in relation to an appeal under this rule unless the Court makes an order to that effect.

(5) The Court may not make an order under sub-rule (4) if the chairperson in the winding-up of the company by the Court or a bankruptcy is the Official Receiver or a person nominated by the Official Receiver to be the chairperson.

Voting rights and requisite majorities at contributories' meetings

363. At a meeting of contributories—

(*a*) voting rights shall be as at a general meeting of the company, subject to any provision of the articles affecting entitlement to vote, either generally or at a time when the company is in liquidation; and

(*b*) a resolution shall be passed if more than one half of the votes cast by contributories attending shall have been in favour of the resolution.

PART VII—CROSS BORDER INSOLVENCY

Division I—Application to Court for Recognition of Foreign Proceedings

Application and sworn statement in support of recognition application

364. A recognition application shall be in Form 1 in the *Schedule* and shall be supported by a sworn statement sworn by the foreign representative complying with rule 366.

Form and content of recognition application

365. The recognition application under rule 364 shall state the following matters—

(*a*) the name of the applicant and his address for service within Malawi;

(*b*) the name of the debtor in respect of which the foreign proceeding is taking place;

(*c*) the name or names in which the debtor carries on business in the country where the foreign proceeding is taking place and in this country, if other than the name given under paragraph (*b*);

(*d*) the principal or last known place of business of the debtor in Malawi, if any, and, in the case of an individual, his usual or last known place of residence in Malawi, if any;

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(*e*) any unique identifiers allocated to the debtor under the Companies Act or Business Names Registration Act, as the case may be;

(*f*) brief particulars of the foreign proceeding in respect of which recognition is applied for, including the country in which it is taking place and the nature of the proceeding;

(*g*) that the foreign proceeding is a proceeding within the meaning of Part X of the Act;

(*h*) that the applicant is a foreign representative within the meaning of Part X of the Act;

(*i*) the address of the debtor's centre of main interest; and

(*j*) where the debtor does not have its centre of main interests in the country where the foreign proceeding is taking place, whether the debtor has an establishment within the meaning of the equivalent of Part X of the Act in that country, and if so, its address.

Contents of sworn statement

366.—(1) There shall be attached to the application a sworn statement in support which shall contain or have exhibited to it—

(*a*) the evidence and statement required under section 331 (2) and (3) of the Act;

(*b*) any other evidence which in the opinion of the applicant will assist the Court in deciding whether the proceeding, the subject of the application, is a foreign proceeding and whether the applicant is a foreign representative within the meaning of section 318 of the Act;

(*c*) evidence that the debtor has its centre of main interest or an establishment within the country where the foreign proceeding is taking place; and

(*d*) any other matter which in the opinion of the applicant may assist the Court in deciding whether to make a recognition order.

(2) The sworn statement shall also have exhibited to it the translations required under section 331 (4) of the Act and a translation in English of any other document exhibited to the sworn statement which is in a language other than English.

(3) All translations referred to in sub-rule (2) shall be certified by the translator as a correct translation.

Hearing and powers of the Court

367.—(1) On hearing a recognition application, the Court may in addition to its powers under the Act to make a recognition order—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

(2) Where the Court makes a recognition order under this rule, it shall be in Form 2 in the *Schedule*.

Notification of subsequent information

368.—(1) The foreign representative shall set out any subsequent information required to be given to the Court under section 334 of the Act in a statement which shall be attached to Form 3 in the *Schedule* and filed with the Court.

(2) The statement shall include details of the information required to be given under section 334 of the Act.

(3) The foreign representative shall send a copy of Form 3, including the statement attached to it, filed with the Court to the following—

(*a*) a debtor; and

(*b*) persons referred to in rule 387 (3).

Division II—Applications for Relief under the Act

Application for interim relie-sworn statement

369. An application for interim relief must be supported by a sworn statement sworn by the foreign representative stating—

(*a*) the grounds on which it is proposed that the interim relief applied for should be granted;

(*b*) details of any proceeding under the Act taking place in relation to the debtor;

(*c*) whether, to the foreign representative's knowledge, receiver or manager of the debtor's property is acting in relation to the debtor;

(*d*) an estimate of the value of the assets of the debtor in Malawi in respect of which relief is applied for;

(*e*) whether, to the foreign representative's best knowledge and belief , the interests of the debtor's creditors ,including any secured creditors, and any other interested parties, including, if appropriate, the debtor, will be adequately protected;

(*f*) whether, to the foreign representative's best knowledge and belief, the grant of any of the relief applied for would interfere with the administration of a foreign main proceeding; and

(*g*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Application for confirmation of status of replacement foreign representative

370. Unless the Court otherwise directs, it shall not be necessary to serve the application for interim relief on, or give notice of it to, any person.

Hearing by, and powers of, of Court

371. On hearing an application for interim relief, the Court may in addition to its powers under section 335 of the Act to make an order granting interim relief—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make any other order which the Court considers appropriate.

Application for provisional relief under s. 335 of the Act: sworn statement

372. An application for provisional relief under section 335 of the Act shall be supported by a sworn statement of the foreign representative stating—

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) an estimate of the value of the assets of the debtor in Malawi in respect of which relief is applied for;

(*c*) in the case of an application by a foreign representative who is, or believes that he is, a representative of a foreign non-main proceeding, the reasons why the applicant believes that the relief relates to assets that, under the Act, should be administered in the foreign non-main

proceeding or concerns information required in that proceeding;

(*d*) whether, to the foreign representative's best the knowledge and belief, the interests of the debtor's creditors ,including any secured creditors, and any other interested parties, including if appropriate the debtor, shall be adequately protected; and

(*e*) any other matter that in the opinion of the foreign representative may assist the Court in deciding whether or not it is appropriate to grant the relief applied for.

Division III—Replacement of Foreign Representative

Application for confirmation of status of replacement foreign representative

373.—(1) This rule shall apply where following the making of a recognition order the foreign representative dies or for any other reason ceases to be the foreign representative in the foreign proceeding in relation to the debtor.

(2) Where a person has succeeded the former foreign representative or is otherwise holding office as foreign representative in the foreign proceeding in relation to the debtor, the person may apply to the Court for an order confirming his status as replacement foreign representative for the purpose of proceedings under these Rules.

(3) In sub-rule (2), "the former foreign representative" means the foreign representative referred to in sub-rule (1).

Contents of application and sworn statement

374.—(1) An application under rule 373(2) shall, in addition to the matters required to be stated by rule 365, state the following matters—

(*a*)the name of the replacement foreign representative and his address for service within Malawi;

(*b*) details of the circumstances in which the former foreign representative ceased to be foreign representative in the foreign proceeding in relation to the debtor ,including the date on which he ceased to be the foreign representative; and

(*c*) details of his own appointment as replacement foreign representative in the foreign proceeding, including the date of that appointment.

(2) The application shall be accompanied by an sworn statement of the applicant which shall contain or have attached to it—

(*a*) a certificate from the foreign court affirming—

(i) the cessation of the appointment of the former foreign representative as foreign representative; and

(ii) the appointment of the applicant as the foreign representative in the foreign proceeding;

(*b*) in the absence of such a certificate, any other evidence acceptable to the Court of the matters referred to in paragraph (*a*), and

(*c*) a translation in English of any document exhibited to the sworn statement which is in a language other than English.

(3) A translation referred to in sub-rule 2 (*c*) shall be certified by the translator as a correct translation.

Hearing by, and powers of, the Court

375.—(1) On hearing an application under rule 373 (2), the Court may—

(*a*) make an order confirming the status of the replacement foreign representative as the foreign representative for the purpose of proceedings under these Rules;

(*b*) dismiss the application;

(*c*) adjourn the hearing conditionally or unconditionally;

(*d*) make an interim order; or

(*e*) make any other order which the Court considers appropriate, including in particular an order making such provision as the Court considers fit with respect to matters arising in connection with the replacement of the foreign representative.

(2) Where the Court dismisses the application, it may also, if it considers it fit, make an order terminating recognition of the foreign proceeding and such an order may include such provision as the Court considers fit with respect to matters arising in connection with the termination.

(3) Rule 376 shall not apply to an order made under sub-rule (2).

Division IV—Reviews of Court Orders

Reviews of Court orders: where Court makes order of its own motion

376.—(1) The Court shall not, on its own motion, make a modification or termination order, unless the foreign representative and the debtor have—

(*a*) had an opportunity of being heard on the question; or

(*b*) consented in writing to such an order.

(2) Where the foreign representative or the debtor desires to be heard on the question of such an order, the Court shall give all relevant parties a notice of the date, time and venue at which the question shall be considered and may give directions as to the issues on which the Court requires evidence.

(3) Where the Court makes a modification or termination order, the order may include such provision as the Court considers fit with respect to matters arising in connection with the modification or termination.

(4) For the purposes of sub-rule (2), all "relevant parties" means the foreign representative, the debtor and any other person who appears to the Court to have an interest justifying his being given notice of the hearing.

Application for review: sworn statement

377. An application for review shall be supported by a sworn statement sworn by the applicant stating—

(*a*) the grounds on which it is proposed that the relief applied for should be granted;

(*b*) whether, to the best of his knowledge and belief, the interests of the debtor's creditors ,including any secured creditors or parties to hire-purchase agreements, and any other interested parties, including, if appropriate, the debtor, shall be adequately protected; and

(*c*) any other matter that in his opinion may assist the Court in deciding whether or not to grant the relief applied for.

Hearing of application for review by, and powers of, the Court

378. On hearing an application for review, the Court may, in addition to its powers under the Act to make a modification or termination order—

(*a*) dismiss the application;

(*b*) adjourn the hearing conditionally or unconditionally;

(*c*) make an interim order; or

(*d*) make any other order which the Court considers appropriate, including an order making such provision as the Court considers fit with respect to matters arising in connection with the modification or termination.

Division V—Court Procedure and Practice with regard to Principal Applications and Orders

Preliminary and interpretation

379. This Division shall apply to—

(*a*) any of the following applications made to the Court under these Rules—

(i) a recognition application;

(ii) an application for provisional relief under section 335 of the Act;

(iii) an application under rule 366 for an order confirming the status of a replacement foreign representative; and

(iv) an application for review.

(*b*) any of the following orders made by the Court under these Rules—

(i) a recognition order;

(ii) an order granting provisional relief under section 335 of the Act;

(iii) an order granting relief under section 337 of the Act;

(iv) an order confirming the status of a replacement foreign representative; and

(v) a modification or termination order.

Form and contents of application

380.—(1) Subject to sub-rule (4), every application to which this Division applies shall be an ordinary application and shall be in Form 4 in the *Schedule*.

(2) Each application shall be in writing and shall state—

(*a*) the names of the parties;

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

(*c*) the names and addresses of the persons, if any, on whom it is intended to serve the application;

(*d*) the names and addresses of all those persons on whom these Rules require the application to be served, as far as it is known to the

applicant; and

(*e*) the applicant's address for service.

(3) The application shall be signed by the applicant if he is acting in person, or, when he is not so acting, on his behalf by his legal practitioner.

(4) This rule shall not apply to a recognition application.

Filing of application

381.—(1) An application and all supporting documents shall be filed with the Court, with a sufficient number of copies for service and use as provided by rule 382 (1).

(2) Each of the copies filed shall have affixed to each copy, the seal of the Court and be issued to the applicants, and on each copy there shall be endorsed the date and time of filing.

(3) The Court shall fix the date, time and venue for the hearing of the application and the date, time and venue shall be endorsed on each copy of the application issued under sub-rule (2).

Service of application

382.—(1) Unless the Court otherwise directs, the application shall be served on the following persons, unless they are the applicant—

(*a*) on the foreign representative;

(*b*) on the debtor;

(*c*) if a Malawi insolvency office-holder is acting in relation to the debtor, on him;

(*d*) if any person has been appointed a receiver or receiver and manager of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor in Malawi, on him;

(*e*) if to the knowledge of the foreign representative a foreign representative has been appointed in any other foreign proceeding regarding the debtor, on him;

(*f*) if there is pending in Malawi a petition for the winding-up of the company or bankruptcy of the debtor, on the petitioner; and

(*g*) on any person who to the knowledge of the foreign representative is or may be entitled to appoint an administrator of the company reorganization of the debtor under Part II of the Act.

(2) In sub-rule (1), references to the application are to a sealed copy of the application issued by the Court together with a sworn statement and any documents exhibited to the sworn statement.

Manner in which service is to be effected

383.—(1) Service of the documents in an application under rule 382 (1) shall be effected by the applicant, or his legal practitioner, or by a person instructed by him or his legal practitioner, not less than 5 business days before the date fixed for the hearing.

(2) Service shall be effected by delivering the documents to a person's proper address or in such other manner as the Court may direct.

(3) A person's proper address shall be any which he has previously notified as his address for service within Malawi, but if he has not notified any

such address or if for any reason service at such address is not practicable, service may be effected as follows—

(*a*) subject to sub-rule (4), in the case of a company incorporated in Malawi, by delivery to its registered office; and

(*b*) in the case of any other person, by delivery to his usual or last known address or principal place of business in Malawi.

(4) Where delivery to a company's registered office is not practicable, service may be effected by delivery to the company's last known principal place of business in Malawi.

(5) Delivery of documents to any place or address may be made by leaving the documents at the place or address or by sending the documents by courier.

Proof of service

384.—(1) Service of the documents in the application under rule 382 (1) shall be verified by an sworn statement in Form 5 in the *Schedule*, specifying the date on which, and the manner in which, service was effected and the statement shall be filed with the Court.

(2) The sealed copy of the application, which shall have been served on the other party, shall be returned to the Court, as soon as it is reasonably practicable after service, and in any event not less than 3 business days before the hearing of the application.

Urgent applications

385. Where the case is one of urgency, the Court may, without prejudice to its general power to extend or abridge time limits—

(*a*) hear the application immediately, with or without notice to, or the attendance of, other parties; or

(*b*) authorise a shorter period of service than the period under rule 383,

and any such application may be heard on terms providing for the filing or service of documents, or the carrying out of other formalities, as the Court considers fit.

Hearing

386. At the hearing of the application, the applicant and any of the following persons ,not being the applicant, may appear in person or be represented by a legal practitioner—

(*a*) the foreign representative;

(*b*) the debtor and, in the case of any debtor other than an individual, any one or more directors or other officers of the debtor, including—

(i) if a Malawi insolvency office-holder is acting in relation to the debtor, that person;

(ii) if any person has been appointed a receiver of the debtor or as a receiver or manager of the property of the debtor in Malawi, that person;

(iii) if a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(iv) any person who has presented a petition for the winding-up of the company or bankruptcy of the debtor in Malawi;

(v) any person who is or may be entitled to appoint an administrator of a company reorganization of the debtor under Part II of the Act; and

(vi) with the permission of the Court, any other person who appears to have an interest justifying his appearance.

Notification and advertisement of order

387.—(1) Where the Court makes any of the orders referred to in rule 379 (*b*), it shall, as soon as it is reasonably practicable, send sealed copies of the order in duplicate to the foreign representative.

(2) The foreign representative shall send a sealed copy of the order, as soon as it is reasonably practicable, to the debtor.

(3) The foreign representative shall, as soon as it is reasonably practicable, after the date of the order, give a notice of the making of the order—

(*a*) if a Malawi insolvency office-holder is acting in relation to the debtor, to him;

(*b*) if any person has been appointed a receiver of the debtor or, to the knowledge of the foreign representative, as a receiver or manager of the property of the debtor, to him;

(*c*) if to his knowledge a foreign representative has been appointed in any other foreign proceeding regarding the debtor, that person;

(*d*) if there is pending in Malawi a petition for the winding-up of the company or bankruptcy of the debtor, to the petitioner;

(*e*) to any person who to his knowledge is, or may be entitled to appoint, an administrator of the company reorganization of the debtor; and

(*f*) to any other person as the Court may direct.

(4) In the case of an order recognizing a foreign proceeding in relation to the debtor as a foreign proceeding, or an order under section 335 or 337 of the Act staying execution, distress or other legal process against the debtor's assets, the foreign representative shall also, as soon as it is reasonably practicable, after the date of the order, give notice of the making of the order—

(*a*) to any enforcement officer or other officer who to his knowledge is charged with an execution or other legal process against the debtor or its property; and

(*b*) to any person who to his knowledge is distraining against the debtor or its property.

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(5) Where the debtor is a company registered under the Companies Act, the foreign representative shall send a notice of the making of the order to the Registrar of Companies before the end of the period of 5 business days beginning with the date of the order.

(6) The notice to the Registrar of Companies under sub-rule (5) shall be in Form 6 in the *Schedule*.

(7) The foreign representative shall advertise the making of the following orders once it has been published in the *Gazette* and in a newspaper with wide circulation for ensuring that the making of the order comes to the notice of the debtor's creditors—

(*a*) a recognition order;

(*b*) an order confirming the status of a replacement foreign representative; and

(*c*) a modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement shall be in Form 7 in the *Schedule*.

(8) In the application of sub-rules (3) and (4), the references to property shall be taken as references to property situated within Malawi.

Adjournment of hearing : directions

388.—(1) This rule shall apply in any case where the Court exercises its power to adjourn the hearing of the application under rule 382.

(2) The Court may, at any time, give such directions as it considers fit as to—

(*a*) service or notice of the application on or to any person, whether in connection with the date, time and venue of a resumed hearing or for any other purpose;

(*b*) the procedure on the application;

(*c*) the manner in which any evidence is to be adduced at a resumed hearing and, in particular, as to—

(i) the taking of evidence wholly or in part by an sworn statement or orally; or

(ii) the cross-examination on the hearing in Court or in chambers, of a deponent to an sworn statement; and

(*d*) any matter to be dealt with in evidence.

Division VI—Applications to the Chief Land Registrar or Deeds Registrar

Applications following Court orders Cap 58:01

389.—(1) Where the Court makes any order in proceedings under this Division which is capable of giving rise to an application or applications under the Registered Land Act, the foreign representative shall, as soon as it is reasonably practicable, after the making of the order or at the appropriate time, make the appropriate application or applications to the Chief Lands Registrar or the Deeds Registrar under the Deeds Registration Act.

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(2) In sub-rule (1), an appropriate application shall be—

(*a*) in any case where—

(i) a recognition order in respect of a foreign main proceeding or an order suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor is made; and

(ii) the debtor is the registered proprietor of a registered land or registered charge and holds it for his sole benefit and an application under Part VII of the Registered Land Act as appropriate to be

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entered in the relevant registered title is made, or an application under section 11 of the Deeds Registration Act is made; and

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(*b*) in any other case, an application under the Registered Land Act or the Deeds Registration Act for such an entry in the register as shall be necessary to reflect the effect of the Court order under this Division is made.

(3) The entry referred to in sub-rule (2) (*a*) shall restrict any dealings except under a further order of the Court.

Division VII—Misfeasance by Foreign Representative

Examination of conduct of foreign representative: misfeasance

390. The Court may examine the conduct of a person who—

(*a*) is or purports to be the foreign representative in relation to a debtor; or

(*b*) has been or has purported to be the foreign representative in relation to a debtor.

(2) An examination under this rule shall be held only on the application of—

(*a*) a Malawi insolvency office-holder acting in relation to the debtor;

(*b*) a creditor of the debtor; or

(*c*) with the permission of the Court, any other person who appears to have an interest justifying an application.

(3) An application under sub-rule (2) shall allege that the foreign representative—

(*a*) has misapplied or retained money or other property of the debtor;

(*b*) has become accountable for money or other property of the debtor;

(*c*) has breached a fiduciary or other duty in relation to the debtor; or

(*d*) has been guilty of misfeasance.

(4) On an examination under this rule into a person's conduct, the Court may order him—

(*a*) to repay, restore or account for money or property;

(*b*) to pay interest; or

(*c*) to contribute a sum to the debtor's property by way of compensation for breach of duty or misfeasance.

(5) In sub-rule (3), "foreign representative" includes a person who purports or has purported to be a foreign representative in relation to a debtor.

391. The rules of practice and procedure of the High Court or the Supreme Court of Appeal shall apply to proceedings under these Rules in the High Court or the Supreme Court of Appeal with such modification as may be necessary for the purpose of giving effect to these Rules and in the case of any conflict between the rules of practice and procedure of the High Court or the Supreme Court of Appeal and these Rules, these Rules shall prevail. Rules of practice and procedure to apply with modification

392. No appeal shall lie against the decision of a Judge in an interlocutory matter, unless the decision has the effect of completely disposing of the matter. Appeals in interlocutory matters

393. The Companies (Winding-Up of the Company) Rules 2010 and the Bankruptcy Rules are revoked. Revocation of Rules

SCHEDULE

FORM 1

r. 364

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... ESPONDENT

RECOGNITION APPLICATION

1. The application of ..... being the foreign representative(s) appointed in relation to the above named debtor in a foreign proceeding, under section 331 (1) of the Insolvency Act dated the ..... day of ..... 20....
2. The proceeding is in relation to foreign proceeding in relation to ..... ('the debtor") lately carrying on business in ..... as ..... and lately carrying on business in Malawi.
3. The debtor's principal/last known place of business in Malawi is .....
4. The debtor was incorporated on ..... under the Companies Act and the unique identifier of the debtor is .....
5. The principal business lately carried on in Malawi is .....
6. The foreign proceeding in which recognition is applied for is taking place in .... about.....

7. The foreign proceeding in respect of which recognition is applied for is a proceeding within the meaning of section 318 (1) of the Insolvency Act, and the applicant is the foreign representative of the debtor within the meaning of section 318 (1) of the Insolvency Act in relation to that proceeding, and the evidence referred to in section 331 (2) of the Insolvency Act is contained in or exhibited to the sworn statement in support attached to this application.

8. The address of the debtor's centre of main interest is.....

   OR

   the address of the debtor's registered office or habitual residence is .....

9. An sworn statement in support of this application is attached.

10. The statement referred to in section 331 (3) of the Insolvency Act is exhibited to the sworn statement in support attached to this application.

11. Messrs....., a duly registered insolvency practitioner, will act with the applicant in accordance with the Insolvency (Practitioners) Regulations.

12. The applicant therefore prays as follows:

    (*a*) that the Court make an order recognising the foreign proceeding the subject of this application as a foreign main/or non-main* proceeding.

    (*b*) state any other ancillary relief.

(signed)

.....

Applicant/Legal Practitioner for the Applicant

NB: Attach a Notice of Hearing.

*Delete as appropriate

Form 2

rule 367 (2)

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

RECOGNITION ORDER

UPON APPLICATION OF .....

Presented to the Court on ..... in respect of.....

AND UPON HEARING counsel

AND UPON reading the evidence filed in this application

IT IS ORDERED THAT .....

(i) be recognised as a foreign main proceeding/foreign non main proceeding* in accordance with section 331 of the Insolvency Act;

(ii) state any other reliefs granted

(iii)that costs of this application be .....

THIS ORDER TAKES EFFECT FROM .....

Dated the ..... day of ....., 20.....

.....

Judge

*Delete as appropriate

Form 3

rule 368

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .....("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

STATEMENT OF SUBSEQUENT INFORMATION

I/WE.....

attach a statement providing information under section 334 of the Insolvency Act, as set out in rule 368 of the Insolvency Rules.

Dated the ..... day of ..... 20.....

.....

(Signed)

.....

REPRESENTATIVES

Form 4

rule 380

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF ..... ("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

APPLICATION

.....RELET ALL PARTIES concerned attend before the Judge on ..... day of ....., 20..... in the ..... noon at the High Court Commercial Division, ... Registry, on the hearing of an application on the part of the applicant for an order in the following terms:

.....

The grounds on which the applicant claims to be entitled to the order are:

.....

The name and addresses of the persons on whom it is intended to serve this application are:

.....

OR

It is not intended to serve any person with this application.

(signed)

.....

Applicant/Legal Practitioner for the Applicant

Form 5

rule 384 (1)

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .....("the Debtor")

..... APPLICANT

AND

..... RESPONDENT

SWORN STATEMENT VERIFYING SERVICE

I, ... acting on behalf of the applicant make oath and say as follows:

1. That I did on the ..... day of ..... 20..... serve the above named debtor with a copy of the application for ..... ("the application") duly sealed with the seal of the Court and its supporting documents by leaving the same at the debtor's address at ..... OR by sending the same on the ..... day of ..... 20..... by courier in an envelope duly prepaid and properly addressed to the said debtor at .....

2. That I did on the.... ...day of ..... 20..... serve, ...the foreign representatives*(change as applicable) by leaving the same at the debtor's address at ..... OR by sending the same on the ..... day of ..... 20..... by courier in an envelope duly prepaid and properly addressed to the said debtor at .....

3. That the same has not been returned to me.

Sworn by

This ..... day of ..... 20.....

Before me:

.....
COMMISSIONER FOR OATHS

Form 6

rule 387 (6)

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .....("the Debtor")

.....APPLICANT

AND

.....RESPONDENT

NOTIFICATION OF ORDER

The following Order has been made in relation to the above debtor under Part IX of the Insolvency Act.

Order made on .....

Name and addresses for foreign representatives:.....

.....

Form 7

rule 387 (7)

IN THE HIGH COURT OF MALAWI

COMMERCIAL DIVISION

..... REGISTRY

IN THE MATTER OF THE INSOLVENCY ACT

AND

IN THE MATTER OF .....("the Debtor")

.....APPLICANT

AND

.....RESPONDENT

Modification or termination order which modifies or terminates recognition of a foreign proceeding, and the advertisement of Order *(change as applicable)

Order made on .....

Name and addresses for foreign representatives:.....

.....

Made this 10th day of February, 2017.

ANDREW K. C. NYIRENDA, SC
Chief Justice

(FILE NO.: INV/06)