

## CHAPTER 6:07 INSOLVENCY ACT

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**To provide for the administration of insolvent and assigned estates and the consolidation of Insolvency legislation in Zimbabwe, to repeal the Insolvency Act [Chapter 6:04] and to provide for matters connected with or incidental to the foregoing**

ENACTED by the Parliament and the President of Zimbabwe.

PART I

PRELIMINARY

**Short title**

This Act may be cited as the Insolvency Act [Chapter 6:07]

**2 Interpretation**

In this Act unless the context otherwise indicates—

“account” in relation to a liquidator means a liquidation account and plan of distribution or of contribution or any supplementary liquidation account and plan of distribution or of contribution;

“associate” means—

- (a) in relation to a natural person—
  - (i) the spouse of such person; or
  - (ii) any person who is by consanguinity related to such first mentioned person or to his or her spouse in the first second or third degree of relationship as determined in accordance with the law on intestate succession; or
  - (iii) the business partner of such person or the spouse of such partner or any person who is related to such partner or spouse in a degree contemplated in subparagraph (ii); or
  - (iv) a beneficiary of a trust, or a trust of which such person or associate of such person is a trustee or beneficiary; or
  - (v) a company of which such person is a director or any juristic person of whom such person is a manager or of which he or she has control;
- (b) in relation to a juristic person—
  - (i) any natural person who is a director of that juristic person or who has control of that juristic person, either alone or together with his or her associate contemplated in subparagraph (a); or
  - (ii) any other juristic person which is controlled by the person who controls the first-mentioned juristic person;
- (c) in relation to another person a person who has control of an undertaking of the other person, and that person is regarded as having control of an undertaking if the person who manages the undertaking is accustomed to act in accordance with that person’s directions or instructions, unless that person gives advice in a professional capacity only;
- (d) a natural person or juristic person who was an associate of another natural person or juristic person at the time of the disposition in question or at the date of the liquidation of the estate or liquidation of one of the parties;

“bank” means a bank as defined in section 2 of the Banking Act [*Chapter 24:20*];

“book or” in relation to bookkeeping or the recording or storage of information, includes any electronic (including relevant passwords) or mechanical device by means of which the information in question is recorded or stored, and in relation to the production, the handing over or the attachment of any book, includes the production, the handing over or the attachment of a print-out or other written version of the information produced by means of such device and books shall be construed accordingly;

“Companies Act” means the Companies Act [*Chapter 24:31*];

“Commissioner of Police” includes Commissioner-General, Senior Assistant Commissioner and Assistant Commissioner of Police;

“concurrent creditor” means a creditor to the extent that the creditor’s claim is not that of a secured creditor or a preferent creditor;

“contribution” in respect of a fund or annuity means a contribution made to the fund or annuity by a debtor in respect of the debtor less that part of the contribution which represents commission or a premium in respect of death or disability benefits and benefits paid to the debtor before the date of liquidation;

“contributory” in relation to a company limited by guarantee has the meaning assigned to it in the Companies Act [*Chapter 24:31*];

“Court” means the High Court of Zimbabwe, and in sections 3(b), 20(1), 24, 26, 27, 106 and 107 also means a magistrate’s Court which has jurisdiction in respect of the matter or offence in question;

“date of liquidation” means the date of the first liquidation order or, subject to section 12 in the case of a voluntary liquidation by resolution in terms of section 9, the date on which notice is given in terms of section 9(9) or, subject to section 12 in the case of a voluntary liquidation by resolution in terms of section 10, the date of the registration or filing of the liquidation resolution;

“debtor”, means any person or entity that is able to incur debt whose estate has been liquidated and includes—

- (a) the estate of any such person or entity;
- (b) any such debtor or debtor’s estate before liquidation;

“direct notice” means notice by fax, e-mail or personal delivery;

- “disposition” means the transfer or abandonment of a right to property and includes a sale, mortgage, pledge, delivery, payment, release, compromise, donation, suretyship, security interest under the Movable Property Securities Interest Act [*Chapter 14:35*] or any contract therefor
- “e-mail” means an electronic mail sent to an e-mail address indicated for use by the intended recipient and provided that no report is received that the electronic mail could not be delivered;
- “employee” means an employee defined in section 2 of the Labour Act [*Chapter 28:01*];
- “fax” means a facsimile transmission which according to a transmission report has been transmitted successfully;
- “financial lease” means a contract whereby a lessor leases specified movable property to a lessee at a specified rent over a specified period subject to a term of the contract that—
- (a) at the expiry of the contract the lessee may acquire ownership of the leased property by paying an agreed or determinable sum of money to the lessor; or
  - (b) the rent paid in terms of the contract shall at the expiry of the contract be applied in reduction of an agreed or determinable price at which the lessee may purchase the leased property from the lessor; or
  - (c) the proceeds of the realisation of the leased property at the expiry of the lease shall accrue wholly or partly to the lessee and includes a financial lease not covered by paragraphs (a) to (c) but which qualifies as a security interest in terms of the Movable Property Security Interests Act [*Chapter 14:35*];
- “first liquidation order” means a provisional order for the liquidation of the estate of a debtor or a final order for the liquidation of the estate of the debtor if a provisional liquidation order has not been granted;
- “free residue” in relation to an insolvent estate means that portion of the estate which is not subject to any claim by a secured creditor;
- “good faith” in relation to the disposition of property means the absence of any intention to prejudice creditors in obtaining payment of their claims or to prefer one creditor above the other;
- “immovable property” means land and every right title and interest in and to land or minerals which is registerable in any office in Zimbabwe tasked with the registration of title to land or the right to mine;
- “insolvent” means a debtor whose estate is under liquidation;
- “insolvent estate” means an estate which is under liquidation;
- “liquidation order” means an order of a Court whereby the estate of a debtor is placed under liquidation and includes a provisional liquidation order when it has not been set aside;
- “liquidation resolution” means—
- (a) in the case of a trust, a resolution to liquidate the trust;
  - (b) in the case of a company, a special resolution to liquidate the company passed by the company in accordance with the Companies Act [*Chapter 24:31*], excluding an external company as defined in that Act;
  - (c) in the case of a private business corporation, a special resolution to liquidate the private business corporation in accordance with the Companies Act [*Chapter 24:31*];
  - (d) in the case of a co-operative, a special resolution to liquidate the cooperative, passed by the members of that co-operative in accordance with the Co-operative Societies Act [*Chapter 24:05*];
  - (e) in the case of any other debtor—
    - (i) if such debtor has been created by legislation, a resolution to liquidate the debtor, passed by the management of such debtor in the manner provided for in the enabling legislation;
    - (ii) if such debtor has been created by the adoption of a constitution a resolution to liquidate the debtor passed by the members of such debtor in terms of the provisions of such constitution;
    - (iii) if such debtor has been created by agreement, a resolution to liquidate the debtor, passed by the members of such debtor in terms of such agreement;
- “liquidator’s notice” means notice or delivery by the liquidator by registered mail, fax, e-mail, or personal delivery supported by an affidavit by the liquidator with a list of the persons given notice or delivered to and the method used by the liquidator to send or deliver the notice:



Provided that the liquidator may substitute another form of notice approved by the Master where the Master is satisfied that there are exceptional circumstances justifying another form of Notice;

“magistrate” includes an additional magistrate and an assistant magistrate;

“management of a debtor” means—

- (a) in the case of a trust, the trustees of the trust [awfully acting as such at the time of liquidation or during three years before liquidation];
- (b) in the case of a company debtor, the directors, secretary or other officers of the company at the time of liquidation or during 3 years before liquidation;
- (c) in the case of a private business corporation debtor, the members or other officers of the private business corporation at the time of liquidation, or during the three years before liquidation;
- (d) in the case of a co-operative society the management committee in accordance with section 54(1) of the Co-operative Societies Act [*Chapter 24:05*]; or other officers of such co-operative at the time of liquidation or during three years before liquidation,
- (e) in the case of another debtor other than a natural person or trust—
  - (i) where the debtor has been created by legislation, the persons who at the time of liquidation or during three years before liquidation were responsible for the management of the debtor in terms of the relevant legislation;
  - (ii) where the debtor has been created by the adoption of a constitution, the persons who at the time of liquidation, or during three years before liquidation were responsible for the management of the debtor in terms of its constitution;
  - (iii) where the debtor has been created by agreement, the persons who at the time of liquidation, or during three years before liquidation were responsible for the management of the debtor in terms of the agreement or otherwise;

“Master” means the Master of the High Court and includes a Deputy Master and an Assistant Master;

“member”—

In relation to a company means a shareholder;

In relation to a Private Business Corporation means a member of such corporation;

In relation to a trust means a founder or a trustee of such a trust or any person designated as such in terms of a trust deed;

In relation to a co-operative means a member of such co-operative;

And members shall be construed accordingly;

“Messenger of court” means the messenger of the Magistrate’s Court and assistants to the messenger of the Magistrate’s Court;

“Minister” means the Minister responsible for the administration of Justice;

“movable property” means every kind of property and every right or interest in property which is not immovable property;

“preferent creditor” means a creditor whose claim enjoys preference in terms of section 89 or a provision in terms of any other Act to pay a creditor who has no preference in respect of particular assets before concurrent creditors;

“prescribed” means prescribed by regulation under this Act;

“property” means movable or immovable property wherever situated and includes a right of interest in property;

“registrar of court” means Registrar of High Court established in terms of section 55 of the High Court Act [*Chapter 7:06*];

“reservation of ownership contract” means a sale of corporeal or incorporeal movable property in terms of which all or part of the price is deferred and is to be paid by periodic payments possession and use of the property is transferred to the purchaser and the contract provides for ownership of the property to pass to the purchaser only when the contract is fully complied with with effect provided for under the Movable Property Security Interests Act [*Chapter 14 35*];

“rule nisi” means a provisional order issued by the High Court in the appropriate form prescribed in rules of court;

“secured creditor” means a creditor of an insolvent estate to the extent that such creditor holds security for his or her claim against the estate;

“security” in relation to the claim of a creditor of an insolvent estate, means property of the insolvent estate over which the creditor has a preferent right by virtue of a special bond landlord’s legal hypothec pledge, including a cession of rights to secure a debt, right of retention, reservation of ownership, financial lease, or any such equivalent right over property in terms of the Movable Property Security Interests Act [*Chapter 14:35*], or any such right over property in terms of any other Act;

“sheriff” means the sheriff of the High Court referred to in section 2 of the High Court Act [*Chapter 7:06*];

“social benefit” means the pension, allowance or benefits payable to a person in terms of the relevant legislation that applies in Zimbabwe;

“special bond” means a mortgage bond hypothecating any immovable property, but excludes any other mortgage bond purporting to hypothecate movable property or any other rights in land;

“spouse” means a wife or husband by virtue of a marriage according to any law or custom and a woman living with a man as his wife or a man living with a woman as her husband although not married to one another, but does not include a wife or husband of an insolvent who is living apart from the insolvent under an order of judicial separation;

“standard notice” means notice by registered mail, fax, e-mail or personal delivery.

### **3 Debtor unable to pay debts**

(1) A debtor is deemed to be unable to pay his or her debts upon proof that the debtor is generally unable to pay debts which are due and payable, or proof that the debtor’s liabilities exceed the value of the debtor’s assets.

(2) For the purposes of subsection (1) a debtor is unable to pay his or her debts if—

- (a) a creditor, by cession or otherwise, to whom the debtor is indebted in an amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money, has, in the manner prescribed in subsection (3), served on the debtor a statutory demand, corresponding substantially with Form F of the First Schedule, for payment of the amount which is due and payable, or to give security to the reasonable satisfaction of the creditor for such amount, or to enter into a compromise therefor, and the debtor has for twenty one days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) it appears from the return of the officer charged with the execution of a judgment of a Court against the debtor that the judgment has not been satisfied after a valid execution thereof.

(3) The statutory demand must be served on the debtor by the Messenger of Court or Sheriff within whose jurisdiction the debtor resides, or by the creditor’s attorney or the attorney’s clerk—

- (a) in the case of a company or private business corporation debtor by leaving the notice at its registered office or main place of business, or
- (b) in the case of a debtor other than a company or private business corporation debtor, by handing the notice to the debtor or leaving it at his or her main office or place of residence, or delivering it to the secretary or some director, member, manager or principal officer of such association of persons or body corporate or in such other manner as the Court may direct.

(4) In determining whether a debtor is unable to pay his or her debts the Court must also take into account the contingent and prospective liabilities of the debtor.

## **PART II**

### **MANNERS IN WHICH DEBTOR MAY BE LIQUIDATED**

#### **4 Application by debtor for liquidation of estate of natural person or partnership**

(1) A natural person, a partnership, a person who lawfully acts on behalf of a natural person who is incompetent to manage his or her own affairs, or the executor of the estate of a deceased person, may apply to a Court for the liquidation of the estate of the debtor.

(2) The application must contain the—

- (a) full name and date of birth of the debtor and, if an identity number has been assigned to him or her that identity number;
- (b) any other names under which the debtor traded;
- (c) the marital status of the debtor:

Provided that if an applicant is unable to comply with any of the requirements of subsection (2) the Court may dispense with such requirement if the applicant has been satisfactorily identified by other means.

- (3) The particulars in subsection (2) must appear in the heading of the application.
- (4) An application referred to in subsection (1) must be accompanied by—
- (a) a statement of affairs of the debtor corresponding substantially with Form A of the First Schedule;
  - (b) a certificate of the Master, issued not more than 14 days before the date on which the application is to be heard by the Court that sufficient security has been given for the payment of all costs in respect of the application that might be awarded against the applicant and all costs of the liquidation of the estate that may be incurred until the appointment of a liquidator in terms of section 41.
- (5) Before noon on the fifth Court day before the day on which the application is to be heard by the Court, the applicant must lodge the application with the registrar of the Court for enrolment and send a copy of the application and two copies of the statement of affairs referred to in subsection (4)(a) as well as a copy of the affidavit in support of the application, by standard notice to the Master.
- (6) The affidavit in support of the application for liquidation referred to in subsection (1) must confirm that the requirements of subsection (5) have been complied with.
- (7) The Master may require the applicant to cause the property enumerated in the statement of affairs to be valued by an appraiser or some other person approved by the Master.
- (8) Having considered the application the Court may—
- (a) make an order contemplated in section 14 or 15 if—
    - (i) the debtor is unable to pay his or her debts in accordance with section 3; and
    - (ii) the liquidation of the estate of the debtor will be to the advantage of his or her creditors; and
    - (iii) a pre- or post liquidation composition where applicable would not be more appropriate than a liquidation order;
  - (b) dismiss the application or postpone its hearing or make any other order that it regards as just in the circumstances.

### **5 Application by debtor for liquidation of trust, company, private business corporation, co-operative or other debtor other than a natural person or partnership**

- (1) An application to the Court for the liquidation of a debtor other than a natural person or partnership may be made—
- (a) by the debtor itself if it has resolved that it be liquidated by the Court in terms of a liquidation resolution and the debtor is not prevented by law, agreement or any other legally enforceable reason, from passing such resolution; or
  - (b) by the company, or by one or more directors or by one or more members for an order to wind up the company on the grounds that—
    - (i) the directors are deadlocked in the management of the company, and the members are unable to break the deadlock, and—
      - A. irreparable injury to the company is resulting, or may result, from the deadlock; or
      - B. the company's business cannot be conducted to the advantage of members generally, as a result of the deadlock;
    - (ii) the members are deadlocked in voting power, and have failed for a period that includes at least two financial years to elect successors to directors whose terms have expired; or
    - (iii) it is otherwise just and equitable for the company to be liquidated;
  - (c) by the private business corporation or one or more members for an order to wind up the private business corporation on the grounds that—
    - (i) the members are deadlocked in the management of the private business corporation, and the members are unable to break the deadlock, and—
      - A. irreparable injury to the private business corporation is resulting or may result from the deadlock; or
      - B. the private business corporation's business cannot be conducted to the advantage of members generally, as a result of the deadlock;
    - or
    - (ii) it is otherwise just and equitable for the private business corporation to be liquidated;
  - (d) by a member, with leave of the court, for an order to wind up the company or private business corporation on the grounds that—
    - (i) the directors, members, prescribed officers or other persons in control of the company or private business corporation are acting in a manner that is fraudulent or otherwise illegal; or

- (ii) the company or private business corporation's assets are being misapplied or wasted;
  - (e) by the Registrar of Companies—
    - (i) on the grounds that the company or private business corporation, its directors, members or prescribed officers or other persons in control of the company or private business corporation are acting or have acted in a manner that is fraudulent or otherwise illegal, as determined by an investigation conducted in terms of section 158 of the Companies Act [Chapter 24:31];
    - (ii) if default is made in lodging the statutory report or in holding the statutory meeting in terms of the Companies Act [Chapter 24:31];
    - (iii) if the company or private business corporation does not commence its business within a year from its incorporation or suspends its business for a whole year;
    - (iv) if the company or private business corporation ceases to have any members;
    - (v) if seventy-five *per centum* of the paid-up share capital of the company has been lost or has become useless for the business of the company;
  - (f) by the corporate rescue practitioner of a debtor appointed during corporate rescue proceedings who applies for liquidation under the provisions of Part XXIII, on the grounds that there is no reasonable prospect of the company being rescued;
  - (g) jointly by any or all of the parties mentioned in paragraphs (a) to (f)
  - (h) in the case of any debtor being liquidated voluntarily in terms of a liquidation resolution adopted in accordance with section 9 or 10 by the Master, the debtor, or any creditor, shareholder or member of that debtor;
    - (i) in the case of a judicial management order in terms of Part V of the Companies Act [Chapter 24:31], by the judicial manager of the debtor;
    - (j) By the Registrar of Co-operative Societies in terms of section 102 of the Co-operative Societies Act [Chapter 24:05];
- (2) A shareholder or member may not apply to a Court as contemplated in subsection (1)(b)(c) or (d) unless the shareholder or member—
- (a) has been a shareholder or member continuously for at least six months immediately before the date of the application; or
  - (b) became a shareholder or member as a result of—
    - (i) acquiring another shareholder or member; or
    - (ii) the distribution of the estate of a former shareholder or member, and the present shareholder or member and other or former shareholder or member, in aggregate, satisfied the requirements of paragraph (a).
- (3) A Court may not make an order applied for in terms of subsection (1)(b), (c), or (d) if, before the conclusion of the Court proceedings, any of the directors or members have resigned, or have been removed in terms of section 193 of the Companies Act [Chapter 24:31] the Court concludes that the remaining directors or members were not materially implicated in the conduct on which the application was based.
- (4) Every application to the Court referred to in subsection (1) except an application by the registrar of companies in terms of subsection 1(e) and the Master in terms of paragraph (h) of that subsection must be accompanied by—
- (a) a statement of affairs of the debtor corresponding substantially with Form A of the First Schedule; and
  - (b) a certificate of the Master issued not more than 14 days before the date on which the application is to be heard by the Court that sufficient security has been given for the payment of all costs in respect of the application that might be awarded against the applicant.
- (5) Subsections (2), (5), and (7) of section 4 apply to all applications in terms of this section.
- (6) After having considered any application referred to in subsections (1), (2) and (3), the Court may grant any order in terms of section 8, 14 or 15, but the Court must not refuse to grant a liquidation order on the ground only that the assets of the debtor have been mortgaged to an amount equal to or in excess of those assets, or that the debtor has no assets.
- (7) Where the application is presented by shareholders or members of the debtor and it appears to the Court that the applicants are entitled to relief, the Court must grant a liquidation order unless it is satisfied that some other remedy is available to the applicants and that they are acting unreasonably in seeking to have the debtor liquidated instead of pursuing that other remedy.
- (8) Where the application is presented to the Court by—

- (a) any applicant under paragraph (h) of subsection (1) the Court may in the liquidation order or by any subsequent order confirm all or any of the proceedings in the voluntary liquidation; or
- (b) any shareholder or member under that subsection the Court must satisfy itself that the rights of the shareholder or member will be prejudiced by the continuation of a voluntary liquidation.

(9) The Court may not grant a final liquidation order in the case of a debtor that is already being liquidated by order of Court within Zimbabwe.

## **6 Application by creditor for liquidation of debtor's estate**

(1) A creditor who has a liquidated claim of not less than the amount of \$200 or the amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money, against a debtor who is unable to pay his or her debts as contemplated in section 3 or two or more creditors who in the aggregate have liquidated claims against such a debtor for not less than such amount, may apply to a Court for the liquidation of a debtor's estate—

- (a) who is unable to pay his or her debts as contemplated in section 3 or
- (b) who is a company or private business corporation and—
  - (i) corporate rescue proceedings have ended in the manner contemplated in Part XXIII and it appears to the Court that it is just and equitable in the circumstances for the company or private business corporation to be liquidated;
  - (ii) it is otherwise just and equitable for the company or private business corporation to be liquidated.

(2) A claim in respect of a liquidated debt which is payable at some determined time in the future may be taken into account for purposes of subsection (1).

(3) An application contemplated in subsection (1) must—

- (a) be made with direct notice to the debtor unless the Court dispenses with notice where the Court is satisfied that it would be in the interest of the debtor or of the creditors to dispense with it;
- (b) in the case of a natural person—
  - (i) state the full name and if known the date of birth of the debtor and, if an identity number has been assigned to him or her, that identity number and, in the case of any other debtor, the registration number or other reference number which has been assigned to such debtor and, if no such registration number or reference number exists, this fact shall be stated;
  - (ii) any other names under which the debtor traded;
  - (iii) in the case of a natural person, provide the marital status of the debtor if known;
  - (iv) state the amount, cause and nature of such claim;
  - (v) state whether or not security has been given for the claim and if so, the nature and value of the security;
  - (vi) state the circumstance on which the application is founded.

(4) The allegations in the application must be supported by an affidavit and the application must be accompanied by a certificate of the Master, issued not more than 14 days before the date on which the application is to be heard by the Court that sufficient security has been given for the payment of all costs in respect of the application that might be awarded against the applicant.

(5) The particulars in paragraph (b)(i) and (ii) must appear also in the heading of the application and if the applicant is unable to furnish all such particulars he or she must mention the reason why he or she is unable to do so.

(6) Notwithstanding anything contrary to the High Court rules before the fifth Court day before the day on which the application is to be heard by the Court the applicant must lodge the application with the registrar of the Court for issuing and, unless notice to the debtor has been dispensed with a copy of the application and copies of all annexures thereto must be served on the debtor and the debtor's spouse, if any.

(7) If the debtor wishes to oppose the application he or she must lodge an opposing affidavit with the registrar and serve a copy thereof on the applicant before the second Court day before the day on which the application is to be heard by the Court subject to any provisions of the High Court rules.

(8) A copy of the application and of every affidavit in support of the allegations in the application shall be sent by standard notice to the Master when the application is lodged with the registrar.

(9) If an applicant is unable to comply with any of the requirements of subsection (3)(b) the Court may dispense with such requirements and dispose of the application in the manner that it finds just.

(10) Having considered the application the Court may make an order contemplated in section 8 14 or 15 or may dismiss the application or postpone its hearing or make any other order that it considers just.

## 7 Liquidation of partnership estate

(1) When application is made to a Court for the liquidation of the estate of a partnership application must simultaneously be made for the liquidation of the individual estates of every partner other than a partner who is not liable for partnership debts or a partner in respect of whom there is a lawful bar to the liquidation of his or her estate.

(2) Section 4 in so far as it is applicable applies with the necessary changes in respect of an application by members of a partnership for the liquidation of the partnership estate and section 6 in so far as it is applicable applies with the necessary changes in respect of an application by a creditor of a partnership for the liquidation of the estate of the partnership.

(3) A Court granting a provisional or a final order for the liquidation of the estate of a partnership must simultaneously grant an order for the liquidation of the individual estates of every partner, except a partner who is not liable for partnership debts or a partner in respect of whom there is a lawful bar to the liquidation of his or her estate:

Provided that if a partner has undertaken to pay the debts of the partnership within a period determined by the Court and has given security for such payment to the satisfaction of the registrar, the individual estate of that partner must not be liquidated by reason only of the liquidation of the estate of the partnership.

(4) Where there is no partner whose estate may be liquidated as contemplated in subsection (3), the Court may nevertheless liquidate the partnership estate and in such event every director of a juristic person which juristic person is a partner in the partnership in question, and every natural person who is a partner but whose estate may not be liquidated, is, for the purpose of performing any statutory requirement in respect of the partnership estate, regarded as a person whose estate is under liquidation.

(5) Where the individual estate of a partner is unable to meet fully the costs of the liquidation of that estate, the balance must be paid out of the partnership estate and where the partnership estate is unable to meet fully the costs of liquidation the balance must be paid out of the estates of the other partners.

(6) If a partnership has been dissolved and the partnership estate is unable to pay its debts the partnership estate may on the application of a creditor of the partnership or a former partner be liquidated as an insolvent estate and the provisions of subsections (1), (2), (3), (4) and (5) in so far as they are applicable apply with the necessary changes to such liquidation.

## 8 Abuse of Court's procedures or malicious or vexatious application for liquidation

Whenever the Court is satisfied that an application for the liquidation of a debtor's estate is an abuse of the Court's procedures or is malicious or vexatious the Court may allow the debtor forthwith to prove any damages which he or she may have sustained by reason of the application, and award him or her such compensation as it considers appropriate.

## 9 Voluntary liquidation of insolvent debtor by resolution

(1) A debtor, other than a natural person, partnership or company that is an external/foreign company in terms of the Companies Act [*Chapter 24:31*] which is unable to pay its debts or whose liabilities exceed its assets may be liquidated as a voluntary liquidation by creditors if the debtor has passed a liquidation resolution resolving that the debtor be liquidated voluntarily as a voluntary liquidation by creditors.

(2) A voluntary liquidation resolution contemplated in subsection (1) is of no force and effect unless—

- (a) the liquidation resolution has been filed not more than 3 days after the resolution has been passed with—
- (i) the Registrar of Deeds in the case of a trust;
  - (ii) the Registrar of Companies in the case of a company or a private business corporation;
  - (iii) the Registrar of Co-operatives in the case of a co-operative;
  - (iv) the relevant authority responsible for the administration of that specific type of debtor in the case of another debtor;

and

- (b) the debtor has given all known creditors and the Master at least 14 days standard notice of the meeting at which the liquidation resolution is to be considered; and
- (c) when notice was given of the general meeting at which the resolution was passed, a copy of the notice was furnished to the head office of bondholders with special bonds registered against property of the debtor.

(3) Upon receipt of the notice referred to in subsection (2)(b), the Master must appoint a liquidator in accordance with section 41.

(4) The notice referred to in subsection (2)(b) must state the following, failing which the resolution will have no force or effect—

- (a) the date and time of the meeting at which the liquidation resolution is to be considered; and
- (b) the venue at which such meeting will take place which venue must be accessible to the public.

(5) The notice referred to in subsection (2)(b) and (c) must be accompanied by the following failing which the resolution will have no force or effect—

- (a) a copy of the statement of affairs of the debtor corresponding substantially to Form A contained in the First Schedule;
- (b) a copy of the liquidation resolution which is to be tabled for adoption at the meeting in question;
- (c) a certificate of the Master, issued not more than 14 days before the date on which the meeting to pass a liquidation resolution will be held that sufficient security has been given for the payment of all costs of the liquidation of the estate as referred to in section 88 which are not recoverable from the creditors of the estate.

(6) A creditor, or any other person who has a financial, administrative or other interest in the affairs of the debtor, whether or not the creditor or other person has been notified of the meeting referred to in paragraph (b) of subsection (2) may—

- (a) before the meeting at which the liquidation resolution is to be adopted takes place bring an application to Court preventing the debtor in question from adopting the liquidation resolution, or
- (b) within 14 days after the liquidation resolution has been filed with the Registrar of Deeds the Registrar of Companies the Registrar of Co-operatives or other relevant authority in terms of subsection (2)(a), bring an application to have the liquidation resolution set aside.

Provided that such creditor or other person must give to the Court's satisfaction sufficient notice to the debtor of the fact that he or she intends to bring an application preventing or setting aside the adoption of the liquidation resolution as the case may be and the debtor may oppose such an application.

Provided further that the administration of the estate by the liquidator shall not cease as a result of such an application being made but shall continue subject to any directions by the Court.

(7) In an application brought under subsection (6)(a) or (b), the Court may after having considered the interests of the general body of creditors set aside or confirm such liquidation resolution or make such order as it considers appropriate.

(8) The filing of a liquidation resolution as contemplated in subsection (2)(a) must comply with the procedures set down from time to time by the Registrar of Deeds Registrar of Companies, Registrar of Co-operatives or relevant authority, as the case may be:

Provided that a liquidation resolution which is not lodged with the Registrar of Deeds Registrar of Companies Registrar of Co-operatives or other relevant authority as the case may be within 30 days from the date of its adoption lapses.

(9) A voluntary liquidation by creditors of a debtor as contemplated in this section commences at the time notice is given in terms of subsection (2)(b).

(10) The Registrar of Deeds, Registrar of Companies, Registrar of Co-operatives or other relevant authority, as the case may be, must immediately after the registration of a liquidation resolution in terms of this section, transmit a copy thereof to the Master.

(11) The nomination of a liquidator in terms of an adopted liquidation resolution in terms of this section is of no force and effect and the Master must appoint a liquidator in accordance with the provisions of this Act.

(12) Any debtor who has passed a liquidation resolution for its voluntary liquidation by creditors must within 30 days after the filing of the resolution with the Registrar of Deeds, Registrar of Companies, Registrar of Co-operatives or other relevant authority, as the case may be—

- (a) lodge with the Master a certified copy of the liquidation resolution; and
- (b) send a copy of the liquidation resolution by standard notice to the persons referred to in section 18(1)(a) and (b); and
- (c) give notice of the voluntary liquidation of the debtor in the *Gazette*.

## **10 Voluntary liquidation of solvent company**

(1) A solvent company, other than a solvent company that is an external company or foreign company in terms of the Companies Act [*Chapter 24:31*], or a solvent private business corporation, may be liquidated voluntarily if the company or corporation has adopted a special resolution to be liquidated as a voluntary liquidation by its members.

(2) The resolution referred to in subsection (1) must be filed with the Registrar of Companies, who must immediately after its registration transmit a copy thereof to the Master.

(3) The filing of a liquidation resolution as contemplated in subsection (2) must comply with the procedures set down from time to time by the Registrar of Companies:

Provided that a liquidation resolution which is not lodged with the Registrar of Companies within 30 days from the date of its adoption, lapses.

(4) Before the special resolution for the voluntary liquidation of the company or private business corporation is filed with the Registrar of Companies, the company must—

- (a) arrange for security, satisfactory to the Master, for the payment of the company's debts within no more than 12 months after the start of the liquidation of the company; or
- (b) obtain the consent of the Master to dispense with security, which the Master may do only if the company has submitted to the Master—
  - (i) a sworn statement by a director authorised by the board of the company, or by a duly authorised member in the case of a private business corporation, stating that the company has no debts; and
  - (ii) a certificate by the company or private business corporation's auditor, or if it does not have an auditor, a person who meets the requirements for appointment as an auditor, and appointed for the purpose, stating that to the best of the auditor's knowledge and belief and according to the financial records of the company, the company appears to have no debts.

(5) Any costs incurred in furnishing the security referred to in subsection (4) may be paid by the company or private business corporation.

(6) The nomination of a liquidator in terms of an adopted liquidation resolution in terms of this section is of no force and effect and the Master must appoint a liquidator in accordance with the provisions of this Act.

(7) A liquidator appointed in a voluntary liquidation by members may exercise all powers given by this Act to a liquidator—

- (a) without requiring specific order or sanction of the Court; and
- (b) subject to any directions given by the shareholders of the company in a general meeting or by the members of a private business corporation.

(8) A voluntary liquidation of a company or private business corporation by its members commences when the special resolution referred to in subsection (1) has been filed in terms of subsection (2).

(9) Despite any provision to the contrary in a company's Memorandum of Incorporation, Articles of Association, or a shareholders agreement or in the founding statement of a private business corporation—

- (a) the company or private business corporation remains a juristic person and retains all of its powers as such while it is being liquidated voluntarily; but
- (b) from the commencement of the company or private business corporation's liquidation—
  - (i) it must stop carrying on its business except to the extent required for the beneficial liquidation of the company or private business corporation; and
  - (ii) all of the powers of the company's directors, or members of the private business corporation, cease, except to the extent specifically authorised by the liquidator or the shareholders or members in a general meeting.

## 11 Investigation into winding up of company

(1) If the Minister has reason to believe that—

- (a) a resolution for the voluntary liquidation of a company under section 9 or 10 has been passed primarily for the purpose of avoiding any provision of the Labour Act [*Chapter 28:01*], regarding the termination of employees' contracts of service or the payment of benefits to employees on the termination of their service; or
- (b) the voluntary liquidation of a company will deprive any of the company's employees unfairly of the benefits they would otherwise receive on the termination of their employment with the company;

the Minister may, within four weeks after the passing of the resolution for the company's voluntary winding up, direct the liquidator to—

- (c) conduct an investigation into the affairs of the company; and
- (d) report to him in regard to the matters referred to in paragraphs (a) and (b); and
- (e) mediate in any dispute between the company and any of its employees regarding the termination of their employment; and
- (f) examine the possibility of a takeover of the company by the company's employees and the possible financial arrangements to facilitate the takeover.



(2) Section 44 of the Companies Act [*Chapter 24:31*], shall apply with the necessary changes in relation to an investigation carried out by a liquidator in terms of this section.

(3) The liquidator shall report to the Minister his findings and, where appropriate, the result of his or her mediation in any dispute, within 30 days after being directed by the Minister to conduct an investigation.

(4) If, on receipt of the liquidator's report, the Minister considers that—

- (a) the resolution for the voluntary winding up of the company concerned was passed for a purpose referred to in subsection (1)(a) he or she may, within two weeks after the report was submitted to him, refer it to the Registrar of Labour Relations referred to in section 121 of the Labour Act [*Chapter 28:01*];
- (b) any settlement which the liquidator has negotiated between the company concerned and its employees, including a takeover by the employees, should be made binding, he may, within two weeks after the report was submitted to him, direct the company to take all necessary steps, subject to the Companies Act [*Chapter 24:31*], to ensure that the settlement is implemented by the liquidator;
- (c) any dispute between the company and its employees regarding the termination of their employment should be submitted to arbitration, he may, within two weeks after the report was submitted to him, refer the parties to the dispute to arbitration in terms of the Arbitration Act [*Chapter 7:15*];

and the company shall comply with any directions the Minister may give it in this regard.

## **12 Commencement of voluntary liquidation of a company**

The voluntary liquidation of a company under section 9 or 10 shall be deemed to commence—

- (a) four weeks after the resolution for the company's voluntary liquidation was passed, unless the Minister has appointed the liquidator to investigate the company's affairs in terms of 11;
- (b) where the Minister has appointed the liquidator to investigate the company's affairs in terms of section 11—
  - (i) eight weeks after the liquidator's appointment, unless the Minister has referred parties to arbitration in terms of section 11(4)(c); or
  - (ii) upon the final conclusion of the arbitration, where the Minister has referred parties to arbitration in terms of section 11(4)(c).

## **PART III**

### ACT HAS LIMITED APPLICATION TO CERTAIN TYPES OF DEBTOR

## **13 Act has limited application to certain types of debtor**

(1) This Act does not apply in respect of—

- (a) an insurance company as defined in the Insurance Act [*Chapter 24:07*]; or
- (b) a bank as defined in the Banking Act [*Chapter 24:20*];
- (c) a registered securities exchange, operator of a central securities depository, securities market transaction and any licensed person licensed or registered in terms of the Securities Act [*Chapter 24:25*];
- (d) any person registered in terms of the Asset Management Act [*Chapter 24:26*] and Collective Investment Schemes Act [*Chapter 24:19*];

except insofar as it is made applicable by the provisions of the aforesaid legislation.

## **PART IV**

### LIQUIDATION ORDERS AND COMMENCEMENT OF LIQUIDATION

## **14 Provisional liquidation order**

(1) The Court may grant a provisional order for the liquidation of the estate of a debtor if the Court is satisfied on the face of the documents that the applicable requirements of section 4, 5 or 6 have been complied with and—

- (a) in the case of a debtor other than a natural person or partnership, the debtor has resolved that it be liquidated by the Court in terms of a liquidation resolution, as long as the debtor is not prevented by law, agreement or any other legally enforceable reason, from passing such resolution; or
- (e) in the case of a debtor other than a natural person, partnership or trust, it is just and equitable that the debtor should be liquidated; or
- (b) the Court is satisfied on the face of the documents that—

- (i) in the case of a natural person there is reason to believe that the liquidation of the estate of the debtor will be to the advantage of his or her creditors; and
- (ii) the debtor's liabilities exceed his or her assets or the debtor is unable to pay its debts in terms of section 3; and
- (iii) any of the following, where applicable, is not more appropriate than liquidation—
  - A. corporate rescue proceedings in terms of Part XXIII; or
  - B. a compromise in terms of section 148; or
  - C. a pre- or post-liquidation composition in terms of section 119 or 120.

(2) A Court granting a provisional liquidation order may simultaneously grant a *rule nisi* calling upon all interested parties and the respondent to appear on a date mentioned in the rule and to show cause why the debtor's estate should not be liquidated finally.

(3) The return day of the *rule nisi* may on the application of the respondent be anticipated for the purpose of discharging the order for provisional liquidation if 24 hours direct notice is given to the applicant.

(4) If the Court does not grant a provisional liquidation order it may grant an order in terms of section 15 if it is satisfied that no one will be prejudiced by such an order without a provisional order in terms of this section, dismiss the application, postpone the hearing thereof to a determined date or make any other order it considers just.

(5) When a provisional liquidation order is granted the registrar must ensure that the particulars which must in terms of section 4(2) and 6(3)(d) appear in the heading of the application also appear on the order.

(6) If there are reasonable grounds to believe that a debtor who is a natural person, or the management of a debtor which is not a natural person, may flee the country to avoid prosecution or to take assets out of the reach of creditors, the Court may, when it grants a provisional or final liquidation order or at any time thereafter on an application by the liquidator, issue an order that the passport of such person be handed to the liquidator for the period stated in the order.

### **15 Final liquidation order.**

(1) The Court may make an order for the final liquidation of the estate of a debtor at the hearing of an application contemplated in section 4, 5 or 6 or pursuant to a *rule nisi* contemplated in section 14(2), if—

- (a) the applicable requirements of section 4, 5, or 6, as the case may be, have been complied with;
- (b) the debtor is unable to pay its debts in terms of section 3; and
- (c) in the case of a debtor who is a natural person, there is reason to believe that it will be to the advantage of the creditors of the debtor if his or her estate is liquidated; and
- (d) any of the following, where applicable, are not more appropriate than issuing a liquidation order—
  - (i) corporate rescue proceedings in terms of Part XXIII;
  - (ii) a compromise in terms of section 148; or
  - (iii) a pre- or post liquidation composition in terms of section 119 or 120.

(2) If the requirements of subsection (1) are not met and a provisional order is not issued in terms of section 14, the Court must dismiss the application for the liquidation of the estate of the debtor and set aside any provisional liquidation order or postpone the hearing for a reasonable period to a determined date so as to allow the applicant to furnish further proof.

(3) When a final liquidation order is granted the registrar must ensure that the particulars which must in terms of section 4(2) and 6(3)(d) appear in the heading of the application also appear on the order.

### **16 Separate meetings of shareholders or members**

(1) When the Court considers an application for the liquidation of a company, private business corporation, co-operative or association, or after an application has been made, a Court may, on application by any interested person, if the Court is satisfied that there is a reasonable possibility that a surplus will accrue to shareholders or members in terms of section 103(4), (5), (6), or (7), order that separate meetings of shareholders or members must be convened and held when a liquidator is elected or directives are given to the liquidator at a meeting.

(2) The separate meeting of shareholders or members must, with the changes required because it is a meeting of shareholders or members, be convened and held in the same manner as a meeting of creditors.

(3) If the meetings of creditors and shareholders or members have nominated different persons as liquidators, the Master must, subject to the provisions of section 74, decide the difference and appoint all or any of the persons so nominated, as the Master thinks fit, as liquidator or liquidators.

(4) If there is a difference between the directions given by creditors and shareholders or members at such meetings, the liquidator must apply to the Master for directions and the Master must give or refuse to give directions as the Master thinks fit.

### **17 Obligations of creditor upon whose application a liquidation order is made**

(1) The creditor upon whose application a liquidation order is made must, at his or her own cost, prosecute all the proceedings in the liquidation until a liquidator is appointed.

(2) The liquidator must pay to the said creditor his or her costs in respect of the prosecution of the liquidation proceedings as costs of the liquidation, and the costs so payable to the said creditor must be taxed according to the tariff applicable in the Court that made the liquidation order.

### **18 Notice of liquidation**

(1) The registrar of the Court that has granted a first liquidation order must without delay send a copy of that order and of any order amending or discharging that order, by standard notice—

- (a) to the Registrar of Deeds of every deeds registry in Zimbabwe;
- (b) to the Reserve Bank of Zimbabwe as administrator of the Collateral Registry established under section 58B of the Reserve Bank Act [*Chapter 22:15*]; and
- (c) to the sheriff of the district in which the debtor resides, has its registered office or principal place of business appears to be carrying on business or owns property.

(2) Every Registrar of Deeds, the Reserve Bank of Zimbabwe and every sheriff who receives a copy of an order in terms of subsection (1) must note thereon the date and time when it was received by him or her.

(3) A Registrar of Deeds or the Reserve Bank of Zimbabwe who receives a copy of a first liquidation order, or a copy of the liquidation resolution referred to in section 9, must enter a caveat against the transfer of all immovable and movable property as the case may be or the cancellation or cession of every bond registered in the name of or belonging to the debtor and if the registrar or the Reserve Bank of Zimbabwe receives a copy of an order discharging a liquidation order, he or she must cancel every caveat entered in respect of such first liquidation order.

(4) A caveat entered in terms of this subsection expires ten years after the date of the liquidation order in question or ten years after the date of the registration of a duly registered liquidation resolution referred to in section 9.

(5) The registrar of the Court must without delay send a copy of every liquidation order and any other order made by the Court in respect of the debtor or the liquidator of the insolvent estate by standard notice to the Master.

(6) Upon the granting of a first liquidation order the applicant who applied for the order must without delay cause a notice of the order to be published in the *Gazette*

## **PART V**

### **EFFECT OF LIQUIDATION**

### **19 Effect of liquidation on debtor and his or her property**

(1) The issuing of a first liquidation order or the registration of a liquidation resolution in terms of section 10, or the giving of notice to pass a liquidation resolution in terms of section 9 in respect of a debtor has the effect that—

- (a) all the property of the debtor in question must be regarded as being in the custody and under the control of the Master until a liquidator has been appointed whereupon the insolvent estate must be regarded as being in the custody and under the control of the liquidator; and
- (b) the provisions of the Movable Property Security Interests Act [*Chapter 14:35*] relating to the creation, perfection or enforcement of security interests under Parts II III and VII respectively shall cease to apply for as long as the debtor remains in liquidation.

(2) The estate of the debtor remains in the custody and under the control of the liquidator until it reverts to the debtor in terms of a composition or compromise contemplated in Part XXII or Part XXIII, or until the property is re-vested in the debtor or the debtor's estate because of the setting aside of the liquidation order or liquidation resolution.

(3) If the liquidator vacates his or her office or dies or becomes incompetent to exercise his or her powers and perform his or her duties, the estate falls under the custody and control of any remaining liquidator or, if there is none, under the custody and control of the Master, until the appointment of a new liquidator.

(4) After the expiry of every caveat entered in terms of section 18(3), 49(10), or 108(3) in respect of the property of a debtor any act of registration in respect of such property brought about by such debtor is valid in spite of the fact that the property formed part of the insolvent estate.

(5) If a debtor who is or was insolvent unlawfully disposes of immovable property which forms part of his or her insolvent estate, the liquidator may recover the value of the property so disposed of—

- (a) from the debtor or former debtor; or
- (b) from any person who, knowing such property to be part of the insolvent estate, acquired such property from the debtor or former debtor; or
- (c) from any person who acquired such property from the debtor or former debtor without giving sufficient value in return, in which case the amount so recovered must be the difference between the value of the property and any value given in return.

(6) The execution of a judgment in respect of property of the debtor, or the enforcement of a security interest by a creditor under Part VII of the Movable Property Security Interests Act [*Chapter 14:35*] must be stayed—

- (a) as soon as the sheriff or creditor becomes aware of the issuing of a Liquidation order against the debtor, unless the Court orders otherwise;
- (b) as soon as the sheriff or creditor becomes aware of the adoption of a liquidation resolution by the debtor in terms of section 10, or the notice given to adopt a liquidation resolution in terms of section 9:

Provided that the sheriff must hold over such execution of a judgment or the creditor must hold over the enforcement of a security interest until such time as he or she is satisfied that the resolution in question has been filed or registered with the necessary authority in terms of section 9(2)(a) or section 10(2), failing which he must continue with the execution of the judgment or enforcement of the security interest as if the liquidation resolution in question under section 10 had not been adopted, or notice given of the intention to pass a resolution under section 9.

(7) If costs in connection with the sale in execution of assets of the debtor have already been incurred when the execution of a judgment or enforcement of the security interest is stayed as contemplated in subsection 6(a), the Master may on the application of the liquidator, on the conditions he or she finds just and subject to confirmation of the sale price by the Master or by resolution of a meeting of creditors of the estate, approve the continuation of the sale for the benefit of the insolvent estate, in which case the costs of the sale before or after liquidation must be deducted from the proceeds.

(8) The liquidator of an insolvent estate is entitled to recover from a creditor of the debtor the net amount of any payment in pursuance of the execution of any judgment made or in pursuance of the enforcement of any security interest to such creditor after the granting of the first liquidation order, or after the adoption of a liquidation resolution in pursuance of section 10, or after the notice of the intention to pass a resolution under section 9.

(9) For the purposes of this section—

- (a) the following property must be excluded from the insolvent estate of a debtor who is a natural person—
  - (i) the necessary beds, bedding and wearing apparel;
  - (ii) the necessary furniture (other than beds) and household utensils of the insolvent in so far as they do not exceed the amount of \$200 or the amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money;
  - (iii) stock, tools and agricultural implements of a farmer, in so far as they do not exceed \$200 in value or the amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money;
  - (iv) the supply of food and drink in the house sufficient for the needs of the insolvent and his or her family for a period of one month;
  - (v) tools and implements of trade, in so far as they do not exceed the amount of \$200 or the amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money;
  - (vi) professional books, documents or instruments necessarily used by the insolvent in his or her profession, in so far as they do not exceed the amount of \$200 or the amount prescribed from time to time so as to reflect subsequent fluctuation in the value of money;
  - (vii) such arms and ammunition as the insolvent is required by law, regulation or disciplinary order to have in his or her possession as part of his or her equipment;
  - (viii) necessary medicine and medical devices;

- (b) and all other property of the debtor at the date of the issuing of the first liquidation order, or at the date of the adoption of a liquidation resolution in pursuance of section 9 or 10, including property or the proceeds thereof which are in the hands of the sheriff under a writ of attachment or a warrant of execution, or in the hands of a creditor under the enforcement of a security interest under the provisions of the Movable Property Security Interests Act [*Chapter 14:35*], and, subject to section 21, all property acquired by or which accrued to the debtor during his or her insolvency, forms part of the debtor's insolvent estate.

## **20 The effect of liquidation on civil proceedings by or against the debtor**

(1) The issuing of a liquidation order in respect of a debtor, or the giving of notice for the passing of a resolution under section 9, or the adoption and subsequent registration of a liquidation resolution as provided for in section 10, has the effect that all civil proceedings instituted in a Court by or against the debtor are stayed, subject to section 21(8).

(2) Proceedings that have been stayed in terms of subsection (1) may, with the consent of the Court or liquidator appointed in terms of section 76 or with three weeks' standard notice to the liquidator, be continued against the insolvent estate:

Provided that the opposite party may apply to the registrar to substitute the liquidator for the debtor in the proceedings.

(3) The liquidator may, by giving liquidator's notice to all parties and to the registrar, substitute himself or herself as party for the debtor in proceedings by or against the debtor, other than proceedings contemplated in section 21(8).

(4) The Court may on application by the liquidator, or a creditor who has proved a claim against the insolvent estate, prohibit the continuation of proceedings against the insolvent estate if the Court is of the opinion that the institution or continuation of the proceedings was delayed unreasonably and that the continuation of the proceedings will unreasonably delay the finalisation of the insolvent estate.

(5) No person may institute legal proceedings against the insolvent estate in respect of any liability that arose before the date of liquidation after the confirmation of the liquidator's first account by the Master and more than three months after the conclusion of the first meeting:

Provided that the Court may, subject to section 100 and subject to such conditions as the Court may impose, permit the institution of such proceedings if it is of the opinion that there was a reasonable excuse for the delay in instituting the proceedings.

## **PART VI**

### **RIGHTS AND OBLIGATIONS OF DEBTOR DURING INSOLVENCY**

## **21 Rights and obligations of debtor during insolvency**

(1) Subject to subsection (2) the fact that a debtor who is a natural person entering into a contract is insolvent, does not affect the validity of that contract.

(2) If the debtor thereby purports to dispose of any property of his or her insolvent estate or, without the consent in writing of the liquidator of his or her estate, enters into any contract whereby any earnings that accrue to his or her insolvent estate in terms of subsection (2) are or are likely to be adversely affected, the contract is in either case voidable at the option of the liquidator, but subject to section 22.

(3) A debtor who is a natural person may follow any profession or occupation and, subject to subsection (6), he or she may collect for his or her own benefit any remuneration for work done or payment for professional services rendered by him or her or someone on his or her behalf after the issuing of the liquidation order.

(4) Any person who after the date of liquidation of a debtor's estate—

(a) became a creditor of the debtor as a result of illegal conduct on the part of the debtor is entitled to payment of the debt out of any assets that accrued to the insolvent estate as a result of the said illegal conduct to the extent that such debt cannot be recovered from the debtor personally, and after payment of all costs attributable to such assets;

(b) was, at the time when he or she became a creditor, aware of or could, by exercising reasonable care, have acquired knowledge of the illegal conduct, that creditor is not entitled to payment in terms of paragraph (a).

(5) A debtor—

(a) who is a natural person must keep a detailed record of all assets and income received by him or her after liquidation from whatever source, and of all expenses incurred by him or her;

- (b) must for a period of one year from the issuing of the first liquidation order, supply the liquidator monthly during the first week of every month with a statement of his or her income and expenses during the preceding month, confirmed by an affidavit or a solemn declaration;
- (c) must, after the expiry of the said period of one year, supply the liquidator annually with a return of his or her income and expenses for the preceding year, likewise sworn to or confirmed;
- (d) must, within seven days after a written request from the liquidator, supply the liquidator with particulars of income received and expenses incurred by him or her for the period indicated by the liquidator, notwithstanding the fact that the debtor has complied with paragraphs (a) to (c);

(6) The liquidator may at all reasonable times inspect the records referred to in subsection 4(a) and may require the debtor to supply proof in support of such records and of expenses which he or she claims to have incurred for his or her own support or that of his or her dependents.

(7) No benefit in terms of any pension law or the rules of a fund which is claimable by a debtor who is a natural person and is paid after the date of liquidation of his or her estate, and no social benefit which is so claimable and paid, may form part of the debtor's insolvent estate.

(8) The liquidator may issue from the magistrates Court of the district in which a debtor who is a natural person resides, carries on business or is employed, a notice calling on the debtor to appear at a hearing before the magistrate in chambers on a date specified in such notice to give evidence on, and supply proof of, all assets or income received by the debtor or his or her dependents from any source whatsoever, and his or her estimated expenses for his or her own support and that of his or her dependents.

(9) The notice, substantially in the form of Form E1 of the First Schedule to this Act, must be signed by the liquidator and issued by the clerk of the Court and be served by the sheriff or messenger of court on the debtor at least seven days before the date specified in the notice for the hearing.

(10) The magistrate may at any time in the presence of the debtor postpone the proceedings to such date as he or she may determine, and may order the debtor to produce documents at the hearing on the date determined.

(11) On the appearance of the debtor the magistrate must call upon the debtor to give evidence under oath or affirmation on the matters contemplated in paragraph (a), and the magistrate may receive such further evidence as may be adduced either orally or by affidavit or in such other manner as the magistrate may order.

(12) After the hearing the magistrate must issue a certificate indicating which proportion of the debtor's future earnings, if any, is not required for support and must accrue to his or her insolvent estate.

(13) The liquidator may send a copy of a certificate contemplated in paragraph (e) to the insolvent's employer by standard notice, whereupon the employer is obliged to transmit the amount stated therein to the liquidator in accordance with the certificate.

(14) Any property which the debtor obtains after the date of the first liquidation order with earnings that do not in terms of a certificate contemplated in paragraph (e) accrue to his or her insolvent estate, do not form part of the insolvent estate.

(15) If garnishee order issued by a Court in respect of a judgment debtor prior to the date of liquidation of his or her estate is in force when his or her estate is liquidated, such order remains in force for a period of six months from the date of the first liquidation order and the employer upon whom the emoluments attachment order was served must in accordance with the order make payments to the liquidator for the benefit of the insolvent estate.

(16) A debtor who is a natural person may—

- (a) sue or be sued in his or her own name without reference to the liquidator of his or her estate in any matter relating to status or any right in so far as it does not affect his or her insolvent estate or in respect of any claim due to or against him or her under this section, but no cession of his or her earnings after the date of liquidation of his or her estate, whether made before or after the issuing of the first liquidation order, is of any effect so long as his or her estate is under liquidation;
- (b) be sued in his or her own name for any delict committed by him or her after the date of liquidation of his or her estate, and his or her insolvent estate shall not be liable therefor;
- (c) for his or her own benefit recover any compensation for any loss or damage which he or she may have suffered, whether before or after the date of liquidation of his or her estate, by reason of any defamation or personal injury:

Provided that where such compensation recovered by the debtor includes medical or other expenses a creditor in respect of such expenses is entitled to be paid out of the compensation or recover the compensation from the debtor even though the claim for such expenses arose before

the date of liquidation of the estate and the debtor may not without leave of the Court institute any action against the liquidator of his or her estate on the ground of malicious prosecution or defamation.

(17) Any property claimable by the liquidator from the debtor under this section may be recovered from the debtor by warrant of execution to be issued by the registrar upon the production to him or her of a certificate by the Master that the property stated therein is so claimable.

(18) The debtor in the case of a debtor who is a natural person, the partners in the case of a debtor which is a partnership and the management of any other debtor must, at the request of the liquidator, assist the liquidator to the best of his or her ability in collecting, taking charge of or realising any property belonging to the insolvent estate and, in the case of a natural person, the liquidator must during the period of such assistance, give to the debtor out of the insolvent estate such an allowance in money or in goods as is, in the opinion of the Master, necessary to support the debtor and his or her dependents.

(19) A debtor who is a natural person must keep the liquidator informed in writing of his or her postal and residential address.

(20) If a notice is to be conveyed to a debtor who is a natural person in terms of this Act, notice must be sent to such debtor at the address contemplated in subsection (18).

## PART VII

### IMPEACHABLE DISPOSITIONS

#### **22 Alienation by debtor of property to third party who is in good faith**

If a debtor, without the consent of the liquidator of his or her estate, alienates for value any property which he or she acquired after the date of liquidation of his or her estate and which forms part of his or her insolvent estate, or any right to such property, to a person who proves that he or she was not aware and had no reason to suspect that the estate of the debtor was under liquidation, the alienation is nevertheless valid.

#### **23 Presumptions relating to property in possession of debtor**

(1) Whenever a debtor has acquired the possession of property and the liquidator of his or her estate claims that property for the benefit of the insolvent estate, that property must be regarded as forming part of the insolvent estate, unless the contrary is proved.

(2) If any person who became a creditor of the debtor after the date of liquidation of the debtor's estate alleges against the debtor or the liquidator that property acquired by the debtor does not belong to the insolvent estate and claims any right thereto, then it must be presumed, unless the contrary is proved, that the said property does not form part of the insolvent estate.

#### **24 Disposition without value**

(1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by the debtor within two years before the presentation of the application for liquidation of his or her estate to the registrar, or within three years before the presentation of the application for liquidation to the registrar if the disposition was made in favour of an associate:

Provided that if it is proved by someone opposing the setting aside of the disposition that the liabilities of the debtor at any time after the making of the disposition exceeded his or her assets by less than the value of the property disposed of, the disposition may be set aside only to the extent of such excess.

(2) A disposition of property not made for value, which was set aside under subsection (1) or which was not completed by the debtor does not give rise to any claim in competition with the creditors of the debtor's estate:

Provided that in the case of a disposition of property not made for value which was not completed by the debtor, and which—

(a) was made by way of suretyship, guarantee or indemnity; and

(b) has not been set aside under subsection (1);

the beneficiary in question may compete with the creditors of the debtor's estate for an amount not exceeding the amount by which the value of the debtor's assets exceeded his or her liabilities immediately before the making of that disposition.

#### **25 Antenuptial contracts**

(1) In this section—

“immediate benefit” means a benefit given by a transfer, delivery, payment, cession, pledge, or special bond of property completed before the expiration of a period of three months as from the date of the marriage.

(2) No immediate benefit under a duly registered antenuptial contract given in good faith by one spouse to the other or to any child to be born of the marriage may be set aside as a disposition without value, unless the application for the liquidation of the estate of the spouse who gave the benefit was presented to the registrar within two years of the registration of that antenuptial contract.

## **26 Voidable preferences**

(1) Every disposition of his or her property made by a debtor which has the effect that any one of his or her creditors receives a benefit to which he or she would not have been entitled had the debtor's estate been under liquidation at the time of the making of the disposition may be set aside by the court if—

- (a) the debtor's liabilities exceeded the value of his or her assets immediately after the making of the disposition; and
- (b) the disposition was made within six months before the presentation of the application for liquidation of the debtor's estate to the registrar, or within 12 months before the said presentation in the case where the disposition was made to an associate of the debtor;

unless the person for whose benefit the disposition was made proves that it was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above the other, and if he or she is an associate of the debtor, also proves that he or she was not aware and had no reason to suspect that the debtor's liabilities would exceed the value of his or her assets immediately after the making of the disposition.

(2) For the purposes of subsection (1) it is presumed, unless the contrary is proved, that a disposition was made not in the ordinary course of business if—

- (a) it was made by way of payment of a debt that was not due and payable or not legally enforceable;
- (b) it embodied payment in an unusual form or a form other than that originally agreed upon.

(3) Any disposition of his or her property by a debtor at a time when his or her liabilities exceed his or her assets, made with the intention of preferring one of his or her creditors above another, may be set aside by the court if the application for the liquidation of the estate of the debtor is presented to the registrar within three years after the making of the disposition.

(4) For the purposes of this section a surety of a debtor, or a person by law in a position analogous to that of a surety, is deemed to be a creditor of the debtor.

(5) Every disposition of property made under a power of attorney, whether revocable or irrevocable is, for the purposes of this section, deemed to have been made at the time at which the transfer or delivery or mortgage of such property took place.

## **27 Collusive dealings for prejudicial disposition of property**

(1) Any transaction entered into by a debtor before or after the liquidation of his or her estate in collusion with another person for disposing of property belonging to the debtor or the debtor's estate in a manner which had the effect of prejudicing his or her creditors or preferring one creditor above another, may after the liquidation of his or her estate be set aside by the court.

(2) Any person who was a party to such collusion is liable to make good any loss thereby incurred by the insolvent estate and must pay for the benefit of the estate, by way of penalty, such sum as the court may determine, which sum may not be more than the amount by which he or she would have benefited if the disposition had not been set aside, and if he or she is a creditor he or she also forfeits his or her claim against the insolvent estate.

(3) The compensation and penalty referred to in subsection (2) may be recovered in any proceedings for the setting aside of the transaction in question.

## **28 Application of sections 22, 24 and 25 to certain debtors**

(1) Sections 24, 26 and 27 apply to a debtor other than a natural person or partnership if such debtor has been liquidated in terms of this Act and is unable to pay its debts, or after the commencement of corporate rescue proceedings in terms of Part XXIII.

(2) For the purposes of applying sections 24, 26, 27 and 33(4) to a debtor that is a debtor other than a natural person or partnership, the event that is deemed to correspond to the presentation of the application for liquidation of a debtor is—

- (a) where the liquidation order has superseded a voluntary liquidation, the registration of the special resolution or resolution, as the case may be, to liquidate the debtor; and
- (b) where the liquidation order has superseded a voluntary liquidation by creditors in terms of section 9, the giving of standard notice to creditors of the liquidation resolution to liquidate the debtor; and



(c) in the case of a voluntary liquidation by resolution in terms of section 9, the giving of standard notice to creditors to liquidate the debtor by resolution.

(3) For the purposes of applying sections 24, 26, 27 and 33(4) to a debtor subject to corporate rescue under Part XXIII, the event which is deemed to correspond with the presentation of the application for liquidation of a debtor is the date of the commencement of corporate rescue proceedings.

(4) Any cession or assignment by a debtor which is not a natural person or partnership of all of its property to trustees for the benefit of all its creditors is void.

### **29 Attachment of property in possession of associate**

(1) If a liquidator suspects that a disposition of property by the debtor to an associate of the debtor may be liable to be set aside the liquidator may instruct the sheriff to attach such property.

(2) The sheriff—

(a) must take into his or her personal custody all cash, share certificates, bonds, bills of exchange, promissory notes and other securities and compile a specified list thereof;

(b) must without delay deposit in a banking account contemplated in section 94(1)(a) or (b) all cash taken into his or her custody;

(c) must as soon as possible leave all other movable property which he or she has attached other than animals in a properly locked storage place or appoint a suitable person to keep the said property in his or her custody, in which case he or she shall hand to such person a copy of an inventory of the property left in his or her custody and he or she shall draw that person's attention to the offence contemplated in section 149(2)(f) in respect of the unauthorised disposition of property under attachment;

(d) is entitled to fees according to Tariff A in the Second Schedule, which may be amended by the Minister from time to time, by way of notice in the *Gazette*.

(3) The sheriff must release the property if instructed to do so by the liquidator.

(4) The liquidator must instruct the sheriff to release property as soon as it is evident that attachment of the property is not required to safeguard the interests of the estate in the setting aside of a disposition of property.

(5) An associate may apply to the court for appropriate relief if property of the associate is attached or held under attachment without reasonable cause.

(6) The costs of attachment of the property shall form part of the costs of liquidation, unless the court orders otherwise.

### **30 Certain rights not affected by improper disposition**

(1) A person who in return for any disposition which is liable to be set aside in terms of section 24, 26 or 27 has parted with any property or security which he or she held or who has lost any right against another person may not, if he or she acted in good faith, be obliged to restore any property or other benefit received under such disposition, unless the liquidator has indemnified him or her for parting with such property or security or for losing such right.

(2) Sections 24, 26 and 27 do not affect the rights of any person who acquired property in good faith and for value from any person other than a person whose estate was subsequently liquidated.

(3) The setting aside of a disposition made by a debtor in terms of section 24, 26 or 27 shall not discharge a surety for the debtor.

### **31 Set-off**

Where—

(a) two persons have entered into a transaction the result whereof is a set off, wholly or in part, of debts which they owe one another and the estate of one of them is liquidated within a period of six months after the taking place of the set off; or

(b) a person who had a claim against another person (hereinafter in this section referred to as the debtor) has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is liquidated;

then the liquidator of the insolvent estate may in either case abide by the set off or may, if the set off was not effected in the ordinary course of business, disregard it and call upon the person in question to pay to the estate the debt which he or she would have owed it but for the set off, and thereupon that person is obliged to pay that debt and may prove a claim against the estate as if no set off had taken place.

### **32 Payment of debt to debtor after liquidation**

If on or after the date of liquidation of a debtor's estate a debtor of the insolvent pays to the insolvent a debt that was due before the date of liquidation, or otherwise fulfils any obligation towards the insolvent the cause of which arose before the date of liquidation, such payment or such fulfillment is of no force or effect, unless the debtor proves that it was made or done in good faith without knowledge on his or her part of the liquidation.

### **33 Institution of proceedings on behalf of insolvent estate**

(1) Proceedings for the setting aside of any disposition of property made by a debtor or for the recovery of any debt, asset, compensation, penalty or benefit of whatever kind for the benefit of the insolvent estate of the debtor may be instituted by the liquidator and, if the liquidator fails to take any such steps, they may be taken by any creditor on behalf of the insolvent estate upon having indemnified the liquidator against all costs thereof to the reasonable satisfaction of the liquidator.

(2) If any creditor has taken proceedings under subsection (1), no creditor who was not a party to the proceedings may derive any benefit from any moneys or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every creditor who was a party to such proceedings have been paid in full.

(3) In any such proceedings the debtor, or the management of a debtor, may be compelled to give evidence on a subpoena issued on the application of any party to the proceedings, or he or she may be called upon by the court to give evidence and section 57(6) applies with the necessary changes to the giving of evidence at such proceedings.

(4) In any such proceedings under section 24 or 26 it is presumed, until the contrary has been proved, that the liabilities of the debtor exceeded the value of his or her assets at any time within one year before the date of the presentation of the application for liquidation.

(5) When the court sets aside any disposition of property it must declare the liquidator entitled to recover the alienated property, or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher, and the court may in any case where the court sets aside a disposition order that interest must be paid at the rate, on the amount and for the period ordered by the court.

## **PART VIII**

### **EFFECT OF LIQUIDATION UPON CERTAIN CONTRACTS**

### **34 Uncompleted acquisition of immovable property by debtor**

(1) If before the date of liquidation of his or her estate a debtor had entered into a contract for the acquisition of immovable property by him or her and such property had not yet been transferred to him or her at the date of liquidation, the liquidator of the insolvent estate may elect either to abide by the contract or to abandon it.

(2) The other party to the said contract may call upon the liquidator by written request to exercise his or her choice and if the liquidator fails to exercise his or her choice and to notify the other party thereof by standard notice within six weeks after he or she has received the written request the other party may apply to the court for an order for the cancellation of the contract and for restoring the immovable property which came in possession or under the control of the debtor or the liquidator by virtue of the contract.

(3) The court may, in respect of an application referred to in subsection (2), make any order it finds just.

(4) This section does not affect any right that the other party may have to establish against the insolvent estate a concurrent claim for any loss suffered by him or her as a result of the non-fulfilment of the contract.

### **35 Securities Market Transactions**

(1) In this section—

“rules” has the definition given to it in section (2) of the Securities and Exchange Act [*Chapter 24:25*];

“transaction” means any securities market transaction to which the rules apply;

(2) If upon the date of liquidation of the estate of a market participant the obligations of such market participant in respect of any securities market transaction entered into prior to the date of liquidation have not been fulfilled, market infrastructure (stock exchange Central Securities Depository wired transfer or electronic transfer) in respect of any obligation owed to it or any other market participant in respect of ob-

ligations owed to such market participant shall be completed in accordance with the applicable market rules.

(3) The Market Infrastructure shall in accordance to the rules applicable to any such transaction be entitled to terminate transactions or revoke settlement and the liquidator of the insolvent estate of the market participant is bound by such termination or revocation.

(4) No claim as a result of the termination of any transactions as contemplated in subsection (1) may exceed the amount due upon termination or revocation in terms of the rules in question.

(5) Any rules and the practices there under which provide for—

- (a) the netting of a market participant's position; or
- (b) set-off in respect of transactions concluded by the market participant; or
- (c) the opening or closing of a market participant's position; or
- (d) the revocation of settlement instructions;

are upon the date of liquidation of the estate of the market participant binding on the liquidator in respect of any transaction or contract concluded by the market participant prior to such date of liquidation or settlement which was overdue on the date of liquidation.

(6) If upon the liquidation of the estate of a debtor who is a licensed market participant, the assets held in nominee accounts or any such assets managed on behalf of third parties, shall not form part of the assets of the debtor.

(7) Sections 22 and 24 of this Act do not apply to property disposed of in accordance with the rules.

### **36 Agreements providing for termination and netting**

(1) In this section 'master agreement' means—

(a) an agreement in accordance with standard terms published by the International Swaps and Derivatives Association, the International Securities Lenders Association, the Bond Market Association or the International Securities Market Association, or any similar agreement, which provides that, upon the liquidation of one of the parties—

(i) all unperformed obligations of the parties in terms of the agreement—

- A. terminate or may be terminated; or
  - B. become or may become due immediately;
- and

(ii) the values of the unperformed obligations are determined or may be determined; and

(iii) the values are netted or may be netted, so that only a net amount (whether in the currency of Republic of Zimbabwe or any other currency) is payable to or by a party and which may further provide that the values of assets which have been transferred as collateral security for obligations under that agreement shall be included in the calculation of the net amount payable upon liquidation;

or

(b) any agreement declared by the Minister, after consultation with the Minister responsible for Finance, by notice in the *Gazette* to be a master agreement for the purposes of this section.

(2) Notwithstanding any common law rule to the contrary, all unperformed obligations arising out of one or more master agreements between the parties, or obligations arising from such agreement or agreements in respect of assets in which ownership has been transferred as collateral security, shall, upon the liquidation of the estate of a party to such master agreement, terminate automatically at the date of liquidation.

(3) The values of obligations referred to in subsection (2) shall be calculated at market value as at that date and such values so calculated shall be netted and the net amount shall be payable.

(4) The provisions of this section shall not apply to—

- (a) a transaction contemplated in Section 35; or
- (b) a netting arrangement contemplated in the National Payment System Act [*Chapter 24:23*].

(5) Sections 24, 26, 27 and 185(2) of this Act shall not apply to dispositions in terms of a master agreement.

### **37 Effect of liquidation of estate of seller under reservation of ownership contract**

The liquidation of the estate of a seller under a reservation of ownership contract does not give a right to the liquidator of the estate to reclaim property sold under the contract.

### **38 Goods purchased not on credit but not paid for**

(1) If a debtor, before the date of liquidation of his or her estate, received delivery of movable property bought by him or her and the purchase price of such property had not been paid in full at the time of the

delivery despite a term of the contract that the purchase price is to be paid on delivery of the property, the seller may, after the liquidation of the purchaser's estate, reclaim the property if within 14 days after the delivery thereof he or she has given standard notice to the purchaser or the liquidator or the Master that he or she reclaims the property.

(2) If the liquidator disputes the seller's right to reclaim the property he or she must, within 14 days after having received notice of the claim, notify the seller by standard notice that he or she disputes the claim, whereupon the seller may within 14 days after the receipt of the said notice, institute legal proceedings to enforce his or her right.

(3) For the purposes of subsection (1) a contract of purchase and sale is deemed to provide for the payment of the purchase price upon delivery of the property in question to the purchaser, unless the seller has agreed that the purchase price or any part thereof is not payable before or at the time of such delivery.

(4) The liquidator of the purchaser's insolvent estate is not obliged to restore any property reclaimed by the seller in terms of subsection (1) unless the seller refunds to him or her every part of the purchase price already received by him or her.

(5) Except as provided in this section a seller is not entitled to recover any property which he or she sold and delivered to a purchaser whose estate was liquidated after the sale, only by reason of the fact that the purchaser failed to pay the purchase price.

### **39 Effect of liquidation upon lease**

(1) This section does not apply to a financial lease.

(2) A lease of movable or immovable property is not terminated by the liquidation of the estate of the lessee, but the liquidator of the insolvent estate may, without prior notice, terminate the lease by standard notice to the lessor with the approval of the Master or in terms of a resolution of creditors taken at a meeting of creditors of the insolvent estate.

(3) The lessor may claim from the insolvent estate compensation for any loss which he or she may have sustained by reason of the non-performance of the terms of the lease.

(4) If the liquidator does not within three months of his or her appointment notify the lessor by standard notice that he or she continues the lease on behalf of the insolvent estate, he or she is regarded as having terminated the lease at the end of the said three months.

(5) The rent due in terms of the lease from the date of liquidation of the estate of the lessee to the termination or cession of the lease by the liquidator, must be included in the cost of the liquidation.

(6) The termination of the lease by the liquidator in terms of this section deprives the insolvent estate of any right to compensation for improvements, other than improvements made in terms of an agreement with the lessor, to the leased property during the period of the lease.

### **40 Effect of liquidation on contract of service**

(1) The contracts of service of employees whose employer has been liquidated are terminated with effect from the date of liquidation.

(2) An employee whose contract of service has been terminated in terms of subsection (1), is entitled to claim compensation from the insolvent estate of his or her former employer for loss suffered by reason of the termination of a contract of service prior to its expiration.

(3) An employee whose contract of service has been terminated in terms of this section is entitled to claim termination benefits from the estate of the insolvent employer in accordance with the Labour Act [*Chapter 28:01*].

## **PART IX**

### **APPOINTMENT OF LIQUIDATOR**

#### **41 Appointment of liquidator**

(1) In this section—

“qualified person” means a properly registered and licensed insolvency practitioner under Parts IHA and IV of the Estate Administrators Act [*Chapter 27:20*].

(2) The Master must as soon as possible, but no longer than forty-eight hours, after receipt of the first liquidation order, or, in the case of a voluntary liquidation by resolution in terms of sections 9 or 10, after receipt of a duly adopted liquidation resolution, or after the time when a liquidator ceases to function as liquidator according to sections 78 or 19(3), appoint a qualified person as liquidator.

(3) No person may be appointed as liquidator under this section unless he or she has given security to the satisfaction of the Master for the proper exercise of his or her powers and performance of his or her

duties as liquidator, and has lodged an affidavit stating that he or she is not disqualified in terms of section 74.

(4) In determining who should be appointed as liquidator, the Master may have regard to the wishes of the creditors of the estate.

(5) A liquidator appointed in terms of subsection (1) is, before the first meeting of creditors of the insolvent estate, obliged to give effect to any direction given to him or her by the Master.

## PART X

### POWERS AND DUTIES OF LIQUIDATORS

#### **42 Liquidator to serve first liquidation order on debtor and attach property belonging to insolvent estate**

(1) In the case of a liquidation by the Court the liquidator must immediately after his or her appointment serve a copy of the first liquidation order on—

- (a) the debtor and in the case of a natural person debtor, if the name of the insolvent's spouse appears on the order he or she must also serve a copy of the order on the spouse;
- (b) the debtor's employees, by affixing a copy of the order to any notice board to which the employees have access inside the debtor's premises; or if there is no access to the premises by the employees, by affixing a copy of the application to the front gate of the premises, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application.

(2) When a copy of a first liquidation order is served on a debtor he or she must be supplied with two copies of the form referred to in section 43(1)(b).

(3) When serving the first liquidation order the liquidator must in so far as it is possible, obtain the following particulars in respect of the debtor, if applicable, namely—

- (a) the full name, date of birth and identity number or registration number;
- (b) where applicable, the debtor's marital status.

(4) If the name, date of birth, identity number or registration number of the debtor which appears on the first liquidation order is incorrect, or if any of these particulars are not stated, the liquidator shall note the correct particulars on the copy of the first liquidation order and he or she shall send a copy thereof by standard notice to the registrar of every deeds registry in Zimbabwe together with a copy of his or her letter of appointment, and he or she shall also send a copy of the order on which the particulars have thus been noted by standard notice, to the applicant, the Master and to the registrar of the court.

(5) Service of a copy of a liquidation order may be effected by the liquidator's clerk or by the sheriff, if requested thereto by the liquidator, in which event the provisions of subsections (3) and (4) relating to the particulars which must be endorsed on the copy of the order apply to the said clerk or sheriff, as the case may be.

(6) Service of a copy of a liquidation order must be carried out in accordance with the Rules of court:

Provided that if the debtor has been absent from his or her usual place of residence or his or her business in Zimbabwe during a period of 21 days, the Court may be approached for directions with regard to some other mode of service.

(7) The liquidator must after appointment attach all the movable and immovable property in the possession of the debtor and he or she shall compile a full inventory thereof but property in respect of which a person allegedly has a right of pledge or a right of retention or which is under judicial attachment may not be attached but must be shown on the inventory.

(8) The liquidator must—

- (a) take into his or her personal custody all books of account invoices vouchers business correspondence and any other records relating to the affairs of the debtor and make a specified list of all such books, documents and other records;
- (b) if the debtor or a director member officer or trustee of the debtor is present ask him or her whether the list referred to in paragraph (a) is a complete list of all books and records relating to his or her affairs and note the reply on the list;
- (c) note on the list any explanation which the debtor or management of a debtor gives with regard to the books, documents and other records relating to his or her affairs or in respect of any books, documents or other records which he or she is unable to supply;
- (d) take into his or her personal custody all cash, share certificates, bonds, bills of exchange, promissory notes and other securities and compile a specified list thereof;

- (e) without delay deposit in a banking account as contemplated in section 94(1)(a) or (b) all cash which he or she has taken into his or her custody;
- (f) in so far as is possible leave all other movable property which he or she has attached, other than animals, in a properly locked storage place or appoint a suitable person to keep the said property in his or her custody, in which case he or she must hand to such person a copy of an inventory of the property left in his or her custody and he or she must draw that person's attention to the offence contemplated in section 150(2)(f) in respect of the unauthorised disposal of property under attachment.

(9) The liquidator may perform the attachment himself or herself or he or she may cause the attachment to be performed in whole or in part by the Sheriff who is entitled to fees which may be prescribed by the Minister from time to time, by way of notice in the *Gazette*.

(10) Any person who has an interest in the insolvent estate or in any property which is attached is entitled to be present or may authorise a person to be present on his or her behalf when property of the insolvent estate is attached and when an inventory in respect thereof is compiled.

(11) If the debtor or his or her representative is present, he or she must sign the inventory and a copy thereof must be handed to him or her and any comment which he or she may have with regard to the inventory or with regard to any assets, books or records of the debtor not included in the inventory must be attached to the inventory.

(12) The liquidator must send a copy of the inventory to the Master by standard notice.

(13) The liquidator must cause the property attached to be valued by an appraiser or some other person approved by the Master and the liquidator must send the Master a copy of the valuation by standard notice.

(14) In the case of debtor which is not a natural person or partnership—

- (a) the court may at any time after making a liquidation order, or after notice for the voluntary liquidation of a debtor in terms of section 9 of this Act has been given, order any director, member, trustee, banker, agent or officer of the debtor in question to pay, deliver, convey, surrender, or transfer to the liquidator of the debtor forthwith, or within such time as the Court directs, any money, property or books and papers in his or her hands to which the debtor is on the face of it entitled;
- (b) the court may order any director, member, trustee, purchaser or other person by whom money is due to any such debtor which is being liquidated, to pay the same into a banking institution registered under the Banking Act [*Chapter 24:20*], to be named by the Court for the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had ordered payment to the liquidator;
- (c) all moneys paid into a banking institution as aforesaid in the event of liquidation by the Court are subject in all respects to the orders of the Court.

#### **43 Debtor to hand over books to liquidator and submit statement of affairs to Master and liquidator**

(1) When a liquidation order is served upon a debtor as contemplated in section 42(1), the debtor must—

- (a) immediately hand over to the liquidator all books of account, invoices, vouchers, business correspondence and any other records relating to his or her affairs and obtain from him or her a specified receipt in respect thereof;
- (b) in the case of a debtor who is a natural person or partnership—
  - (i) within seven days after the service of the said order send to the Master and the liquidator by standard notice one copy each of a statement of affairs as on the date of liquidation, compiled in a form substantially corresponding to Form A of the First Schedule and which shall contain the particulars provided for in that Form, which particulars must be confirmed by affidavit;
  - (ii) the management of a debtor, and if required by the Master persons who participated in its formation, at any time within three years before the first liquidation order or adoption of the liquidation resolution, must within seven days after the service of the said order or adoption of the resolution send to the Master by standard notice two copies of a statement of affairs as on the date of liquidation, compiled in a form substantially corresponding to Form A of the First Schedule and which contain the particulars provided for in that Form, which particulars must be confirmed by affidavit:

Provided that the Master may exempt any person referred to in this paragraph from the obligation to comply with such requirement if such person satisfies him or her by affidavit that he or she is unable to make out or cause to be made out or to verify such statement as to the affairs of the debtor in question.

(2) All stock in trade enumerated in a statement of affairs contemplated in subsection (1) must be valued at cost price or at the market value thereof at the time of the making of the sworn statement, whichever value is the smallest.

(3) If the Master is satisfied that the debtor was unable to draw up the statement of affairs that was sent he or she may allow a person who has assisted the debtor or his or her spouse, where applicable, to draw up the statement of affairs to recover from the insolvent estate the costs which the Master determines.

#### **44 Liquidator may obtain search warrant**

(1) If the liquidator suspects that any book, document or record relating to the affairs of the debtor or any property belonging to the debtor is being concealed or otherwise unlawfully withheld from him or her, he or she may apply to the magistrate within whose area of jurisdiction such book, document, record or property is suspected to be or a magistrate who presided at a questioning in terms of section 57 58 or 60, for a search warrant.

(2) If it appears to a magistrate to whom such application is made on the ground of an affidavit or evidence given at a questioning in terms of section 57 58 or 60 or answers to questions contemplated in section 59(3)(b) that there is substantial reason to suspect that a book, document or other record relating to the affairs of the debtor or property belonging to the insolvent estate is being concealed in possession of a person or at a place or on a vehicle or vessel or in a container of whatever nature or is otherwise unlawfully withheld from the liquidator, within the area of jurisdiction of the said magistrate, he or she may issue a warrant authorising the liquidator or a police officer to search a person, or place or vehicle, vessel or container mentioned in the warrant and to take possession of such book, document, record or property.

(3) Sections 50, 54, 56 and 57 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], are applicable with the necessary changes with regard to the execution of a warrant referred to in subsection (2).

#### **45 Registration of name and address with liquidator**

(1) Any person who claims to be a creditor of the estate may register his or her name and address in Zimbabwe with the liquidator of the estate and may indicate property which he or she claims to hold as security for a claim.

(2) The liquidator must send by liquidator's notice—

- (a) to that address a notice of every meeting of creditors of the estate, a copy of every report contemplated in section 46(1), and a copy of every notice in terms of section 98; and
- (b) notice of the sale of property to a person who indicated that he or she holds the property as security in terms of subsection (1).

(3) The liquidator must send by standard notice a copy of an account which has been advertised to lie open for inspection to a person registered in terms of this section upon request and payment of the reasonable costs of making a copy of the account.

(4) Failure on the part of the liquidator to comply with a provision of this section constitutes a failure to perform his or her duties but does not invalidate anything done under this Act.

#### **46 Liquidator's report**

(1) The liquidator must investigate the affairs of the debtor and the business transactions entered into by him or her before the liquidation of his or her estate and must at the first meeting of creditors of the insolvent estate or, if that is not possible, at a special meeting of creditors, submit a full written report on those affairs and transactions and on any matter of importance relating to the debtor or the insolvent estate.

(2) The liquidator in the report referred to in subsection (1) must in particular report on—

- (a) the assets and liabilities of the insolvent estate;
- (b) whether there is a risk of a contribution by creditors in terms of section 104, or indicate why he or she is unable to express an opinion on the matter;
- (c) the cause of the debtor's insolvency;
- (d) in the case of a debtor other than a company, private business corporation or a co-operative, the bookkeeping relating to the debtor's affairs, the question whether proper bookkeeping in respect of his or her business transactions was carried out and, if not, in what respect it is defective, insufficient or incorrect;
- (e) in the case of a debtor which is a company, private business corporation or a co-operative, whether or not the debtor has kept the accounting records required by sections 173 and 259 of the Companies Act [*Chapter 24:31*], or section 94 of the Co-operative Societies Act [*Chapter*

24:05], and, if not, in what respects the requirements of those sections have not been complied with;

- (f) whether the debtor appears to have contravened any provision of this Act or to have committed any other offence, in particular—
  - (i) whether the debtor has failed to send a statement of affairs and, in the case of a natural person, of his or her income and expenses as required by this Act;
  - (ii) whether the debtor has contravened the provisions of Income tax Act [*Chapter 23:06*] or section 150(f) of this Act;
- (g) where applicable, the monthly income and expenses of the insolvent, any allowance made by the liquidator to the insolvent by way of maintenance for himself or herself and his or her family, and the assistance given to the liquidator during the period for which the allowance was paid;
- (h) any business carried on by or on behalf of the insolvent estate and the result thereof;
- (i) any legal proceedings instituted by or against the debtor which were suspended by the liquidation of the estate and any other legal proceedings that are pending or may be instituted against the insolvent estate;
- (j) any transaction entered into by the debtor before the liquidation of his or her estate in respect of the acquisition of immovable property which was not transferred to him or her, or any transaction entered into by the debtor as lessee;
- (k) the names of secured creditors with the amounts of the secured claims and steps taken or envisaged to investigate the validity of the security;
- (l) any other matter relating to the administration or the realisation of the assets of the insolvent estate requiring the direction of the creditors;
- (m) in the case of a debtor which is a company, or another debtor with directors, whether there are or appear to be any grounds for an order by the Court under the Companies Act [*Chapter 24:31*], to declare a person delinquent;
- (n) in the case of a debtor other than a natural person or partnership, whether or not any trustee, director, officer or member or former trustee, director, officer or member appears to be personally liable for damages or compensation to the debtor or for any debts or liabilities of the debtor as provided for in this or any other Act;
- (o) whether or not further enquiry is desirable in regard to any matter relating to the promotion, formation or failure of the debtor or the conduct of its business.

(3) If the report is submitted before the granting of the final order, report whether any of the following, where applicable, are more appropriate than liquidation—

- (a) corporate rescue proceedings in terms of Part XXIII;
- (b) scheme of arrangement in terms of section 191 of the Companies Act [*Chapter 24:31*];
- (c) compromise in terms of section 148;
- (d) pre-or post-liquidation composition in terms of section 119 or 120.

(4) The liquidator must supply the Zimbabwe Commissioner of Police with an affidavit containing a report relating to any offence that the debtor committed and must send a copy of the report by standard notice to the Master and on request of the Commissioner supply further particulars.

#### **47 Recovery of debts due to estate**

(1) The liquidator must in the notification of his or her appointment by publication in the *Gazette*, and any local newspaper widely circulating, call on all persons indebted to the estate of which he or she is liquidator to pay their debts within the period and at the place stated in the notice.

(2) If any person fails to pay a debt due to the estate timeously the liquidator must recover payment from him or her, if need be by legal process.

#### **48 Remuneration of liquidator**

(1) A liquidator is entitled to a reasonable remuneration for his or her services and for expenses incurred by him or her in the administration of an insolvent estate.

(2) The remuneration and expenses referred to in subsection (1) must be taxed by the Master in accordance with the Second Schedule item 1.

(3) Every liquidator must keep time sheets with the level of experience and expertise of persons doing the work and lodge them with the Master if the amount of the remuneration becomes an issue.

(4) The liquidator may apply to the Master for an increase in remuneration after giving at least 14 days liquidator's notice to proved creditors who will be affected by the increase.

(5) The Master may for good cause increase or decrease the liquidator's remuneration, in particular to compensate him or her for the time spent in assisting with criminal prosecutions or investigating the affairs



of the debtor, or disallow his or her remuneration either wholly or in part, by reason of any failure of or delay in the discharge of his or her duties or on account of any improper performance of his or her duties.

(6) The Minister may by notice in the *Gazette* amend the First, Second and Third Schedule.

(7) Any person who employs the liquidator or who is a fellow employee of or who is ordinarily in the employment of the liquidator is not entitled to any remuneration out of the insolvent estate for services rendered to the estate, and a liquidator or his or her partner is not entitled to remuneration out of the estate for services rendered to the estate, except the remuneration to which he or she is under this Act entitled as a liquidator.

(8) A liquidator is not entitled to receive any remuneration before the liquidation account making provision for the remuneration has been confirmed in terms of section 103.

#### **49 General duties and powers of liquidator**

(1) The liquidator of an insolvent estate must proceed forthwith to recover and take into his or her possession all the assets and property of the insolvent estate and must apply the said assets and property, in satisfaction of the costs of the administration of the estate and the claims of creditors of the estate and if any cash balance remains, he or she must deal therewith in accordance with section 103.

(2) The liquidator may perform any act which is necessary for the proper administration and distribution of the estate and, except where otherwise provided by this Act, he or she needs not obtain formal authorisation for the performance of any such act.

(3) The liquidator may, in particular—

- (a) execute in the name of and on behalf of the estate all deeds, receipts and other documents;
- (b) prove a claim in the estate of any debtor of the insolvent estate and receive payment or a dividend in respect thereof;
- (c) draw, accept, make or endorse any bill of exchange or promissory note in the name of, or on behalf of the estate:

Provided that any such act by which the estate is burdened with additional liabilities requires the authorisation of the Master or the creditors of the estate;

- (d) carry on the business of the debtor or any part thereof but, until authorised otherwise by the Master or the creditors, only in so far as it is necessary to enable expenses of the estate to be paid or that necessary expenses be incurred in order to avoid loss to the estate;
- (e) obtain credit for the payment of necessary expenses which he or she is obliged to incur before funds for the payment thereof are available;
- (f) convene a meeting of creditors of the estate;
- (g) take any other necessary measures for the protection and the administration of the estate.

(4) The liquidator may, if authorised thereto by the Master or by resolution of a meeting of creditors of the estate—

- (a) institute or defend any legal steps in civil proceedings by or against the estate and to settle such proceedings;
- (b) submit to determination of arbitrators any dispute concerning the estate;
- (c) compromise or admit any claim lodged for proof at a meeting of creditors of the estate, including any unliquidated claim;
- (d) disallow or reduce a claim in terms of section 67;
- (e) carry on the business or part of the business of the debtor in accordance with the directions of the Master or the creditors of the estate;
- (f) exercise his or her election in respect of contracts entered into before liquidation, including his or her election in terms of section 34 or 39;
- (g) sell or alienate property of the insolvent estate, subject to the directions of the Master or the creditors of the estate:

Provided that—

- (i) if such property or a portion thereof is subject to rights of a secured creditor the secured creditor must give his or her consent in writing;
- (ii) the liquidator must attempt to sell assets as a going concern if at all appropriate;
- (h) engage the services of a legal practitioner or any other professional person or employ any other person to render services on behalf of the insolvent estate;
- (i) dispose of a debt owing to the estate or accept payment of a reasonable part of a debt in full settlement of the debt or give a reasonable extension of time for payment of a debt or part thereof;
- (j) draw, accept, make or endorse any bill of exchange or promissory note by which the estate is burdened with liabilities;

- (k) in the case of a debtor who is a natural person make available to the debtor or his or her dependants a sum of money or assets for his or her maintenance or that of his or her dependants;
- (l) make available to a debtor who is a natural person assets of the insolvent estate in excess of the values referred to in section 19(7) or the amounts fixed in terms of section 19(8)
- (m) if the liquidator determines that preservation of the business as a going concern value by continued operation of the business will benefit creditors, obtain finance for the continuation of the business—
  - (i) payable as costs of liquidation; or
  - (ii) payable with security over the assets of the estate without priority ahead of any existing security interest over the same assets, unless the liquidator obtains the agreement of the existing secured creditor.

(5) The Master must authorise the liquidator only if the authority is required so urgently that the liquidator cannot obtain a resolution at a first meeting.

(6) Before a final order for the liquidation of a debtor's estate has been issued the powers set out in subsection (4) may only be exercised with the consent of the debtor, the management of the debtor or the Court.

(7) A liquidator or a debtor who disagrees with the assets made available in terms of subsection (4)(l) by resolution of a meeting of creditors may refer the matter to the Master for his or her decision.

(8) A liquidator may at any time approach the Court in regard to any matter arising from the liquidation and the Court may give directions or grant the liquidator the powers necessary for the proper administration, liquidation and distribution of the insolvent estate in question.

(9) Notwithstanding any law relating to taxes or duties, the liquidator of an insolvent estate may—

- (a) inspect any return or other document submitted to the Zimbabwe Revenue Authority by or on behalf of a debtor or the spouse of a debtor, where applicable, in connection with taxes or duties;
- (b) make copies of any such return;
- (c) have any such copy, certified as correct by or on behalf of the Zimbabwe Revenue Authority;
- (d) in writing request the Zimbabwe Revenue Authority to state the basis for any estimated assessment made in terms of any revenue law.

(10) A liquidator may, before or after the rehabilitation of a debtor who is a natural person, with the written consent of the Master, by standard notice to the officer charged with the registration of title to immovable property in Zimbabwe, cause a caveat to be entered against the transfer of immovable property, registered in the name of the debtor, or the cancellation or cession of a bond on such property.

(11) The notice referred to in subsection (10) must be accompanied by the written consent of the Master and must identify sufficiently the person in respect of whom and the property or bond in respect of which the caveat is to be entered.

(12) The caveat remains in force until the date indicated by the Master in his or consent.

(13) If any entry in a return contemplated in subsection (9) is relevant in any civil or criminal proceedings in which the debtor or the insolvent estate is involved, that return or a copy thereof, purporting to be certified as contemplated in subsection (9), is admissible in those proceedings on its mere production by any person and such certified copy has the same evidentiary value as the original return.

(14) No provision in any contract, including the Memorandum or Articles of Association of a company, which purports to regulate the manner in which property belonging to a debtor may be disposed of on or after his or her insolvency, or which on his or her insolvency limits a person's power to dispose of his or her rights to property as he or she wishes, binds the liquidator of such person's insolvent estate.

## PART XI

### MEETINGS AND EXAMINATION OF DEBTOR AND OTHER PERSONS

#### 50 First meeting of creditors

(1) A liquidator appointed in terms of Section 41 must by notice in the *Gazette* and in a newspaper widely circulating in the district in which the business is carried on, and after consultation with the Master regarding the time and place of the meeting, convene a first meeting of creditors to be held within 60 days of his or her appointment.

(2) The notice referred to in subsection (1) must state the time and place of the meeting and the matters that will be dealt with and must be published in the *Gazette* not less than 14 days before the date fixed for the meeting.

(3) The liquidator must, at least 14 days before the date determined in the *Gazette* for the holding of the first meeting of creditors of the estate, send by liquidator's notice to every creditor whose name and address are known to him or her or which he or she can reasonably obtain—

- (a) a copy of the notice of the meeting;
- (b) a copy of the report contemplated in section 46(1);
- (c) a copy of the inventory contemplated in section 42(6);
- (d) a copy of the valuation contemplated in section 42(11);
- (e) a written draft of any resolution or direction which in his or her opinion should be taken or given at that meeting;
- (f) a copy of the notice contemplated in subsection (2);
- (g) a copy of any composition which is to be considered.

(4) The liquidator must lodge with the Master or magistrate who is to preside at the meeting on or before the second working day before the date determined for the meeting of creditors—

- (a) a copy of the report contemplated in section 46(1); and
- (b) a copy of the documents contemplated in subsection (3)(c), (d) and (e); and
- (c) an affidavit containing a list of the names and addresses of the creditors to whom the documents referred to in subsection (3) have been sent.

(5) The meeting may deal with the—

- (a) proof of claims against the estate;
- (b) examination of any person in terms of the Act;
- (c) consideration of the report of the liquidator;
- (d) nomination and appointment of one or more co-liquidators;
- (e) consideration of a composition;
- (f) giving of directives to the liquidator with regard to any matter affecting the liquidation of the estate.

(6) If the first meeting of creditors is held before a final liquidation order is given the question whether the liquidation of the debtor's estate is likely to be to the advantage of his or her creditors must be considered at the said meeting or at a subsequent meeting of creditors, and the liquidator must send a report by direct notice to the Court and the applicant on this question before the Court considers whether a final liquidation order should be made.

(7) If the liquidator is unable to convene a meeting in the manner contemplated in subsection (1) he or she must obtain the Master's permission to convene the meeting within the time determined by the Master.

(8) If the liquidator fails to convene a meeting as contemplated in subsections (1) or (7), the Master may take any steps he or she considers necessary to force the liquidator to convene a meeting of creditors of the insolvent estate.

(9) If the majority in value or number of creditors voting at the meeting reject the liquidator's report the liquidator must submit a report to an adjourned or subsequent meeting or refer the report to the Master who may give such directions in regard to the report as the Master considers appropriate.

### **51 Special meeting of creditors**

(1) The liquidator of an insolvent estate may at any time and must, if requested thereto by not less than one quarter in value of creditors who have proved claims against the estate, or at the request of the Master, or whenever a composition has to be considered, convene a special meeting of creditors of the estate:

Provided that the liquidator must convene a special meeting for the proof of claims if requested to do so by a creditor who tenders payment of the costs occasioned by the meeting.

(2) A special meeting of creditors may deal with—

- (a) the proof of claims against the estate;
- (b) the examination of any person in terms of the Act;
- (c) the consideration of a composition;
- (d) directives to the liquidator with regard to any matter affecting the liquidation of the insolvent estate.

(3) The liquidator must publish in the *Gazette* not less than 14 days before the date set for the meeting referred to in subsection (1) a notice of the time and place of the meeting and the matters to be dealt with.

(4) The liquidator must, not less than fourteen days before the date determined in the *Gazette* for the holding of the meeting, send by liquidator's notice to every creditor whose name and address are known to him or her or which he or she can reasonably obtain and to the head office of every registered trade union which has notified the liquidator that it represents employees of the debtor—

- (a) a copy of any composition which is to be considered;

- (b) a copy of any report contemplated in section 46(1) to be considered at the meeting;
- (c) a written draft of any resolution or direction which in his or her opinion should be taken or given at that meeting;
- (d) a copy of the notice contemplated in subsection (3).

(5) The liquidator must on or before the time of day advertised for the meeting on the second working day before the date set for the meeting, lodge with the person who is to preside at the meeting copies of the documents sent to creditors in terms of subsection (4) together with a list of the names and addresses of the persons to whom they were sent.

(6) The liquidator may at any time after his report has been accepted by creditors or by the Master, by notice in the *Gazette* fix a date after which creditors who have not proved claims against the estate will be excluded from participation in any distribution in terms of an account lodged with the Master within two weeks after that date.

(7) The said notice must be published not less than four weeks before the date so fixed, and before such publication a copy thereof must be sent by liquidator's notice to each unproved creditor whose name and address are known to the liquidator or which he or she can reasonably obtain.

## **52 Creditors' committee**

(1) If 10 or more unsecured creditors have proved claims against the estate the proved unsecured creditors present at the first meeting or a subsequent meeting must vote on the question whether a creditors' committee, consisting of proved unsecured creditors, should be appointed.

(2) Three members of the creditors committee must be nominated at the meeting by proved unsecured creditors, two by creditors who have a majority in number and one by creditors who have a majority in value.

(3) The nominated creditors must elect a chairperson who must convene meetings of the committee at a place most convenient for the members after 10 days' standard notice to members.

(4) The chairperson or another person elected by members present at a meeting presides at a meeting and draws up a summary of the discussion and decisions taken at a meeting.

(5) The quorum for a meeting is three persons, or the person or persons present at an adjourned meeting with at least three days' standard notice of the adjourned meeting.

(6) Members are entitled to costs to attend meetings regarded as reasonable by the liquidator and payable by the liquidator as costs of liquidation.

(7) Members are not entitled to remuneration or fees for work done or attendance of meetings.

(8) The functions of the Committee are to—

- (a) be consulted by the liquidator and give its views on all non-routine matters;
- (b) be heard on key decisions and proceedings;
- (c) make available information to creditors and the liquidator.

(9) Committee members must treat information obtained in the course of their duties as members of the committee, as confidential.

(10) A person ceases to be a member upon death, written resignation handed to the Chairperson of the committee, or removal by other members for failing to fulfil obligations or for other good cause.

(11) Committee members are replaced by another member nominated by a majority of proved creditors at a meeting convened with the nomination of a member as part of the agenda, or nominated by the liquidator or another member of the committee and not objected to by a majority of unsecured creditors after 10 days direct notice of the proposed appointment of the member.

(12) Members of a creditor committee are exempt from liability for their actions in their capacity as members of the committee, unless they are found to have acted fraudulently or to be guilty of wilful misconduct.

## **53 General provisions relating to meetings of creditors**

(1) A meeting must, subject to subsection (8), be convened—

- (a) in the magisterial district where the debtor had his main place of business at the time of liquidation; or
- (b) if the debtor did not carry on a business or if it is unclear where the debtor's main business was situated in the magisterial district where the debtor had his ordinary residence or registered office at the date of liquidation; or
- (c) if the debtor did not have his ordinary residence or registered office within Zimbabwe, or it is unclear where the ordinary residence or registered office was, within the magisterial district of the Court that issued the liquidation order.

(2) The Master or an officer of his or her office appointed by the Master must, subject to subsection (4), preside at a meeting of creditors convened within a magisterial district in which the Master has an office.

(3) If a meeting of creditors is to take place in a magisterial district where the Master has no office, the magistrate of the district in question or a person appointed by the magistrate must, subject to subsection (4), preside at the meeting.

(4) A liquidator may convene any meeting to be held before him or her at any place within the magisterial district contemplated in subsection (2), but no examination may take place at such a meeting and if an examination must be held or if any person who avers that he or she is a creditor of the insolvent estate demands, before or during the meeting, that the meeting must be held or continued before the Master or a magistrate, the meeting must be continued before the Master or the magistrate contemplated in subsection (1).

(5) In the circumstances contemplated in subsection (4) the liquidator must announce at the meeting when and where the meeting will be continued or must convene the meeting to be held before the Master or the magistrate.

(6) The presiding officer at a meeting of creditors must keep a record of the proceedings, which he or she must certify at the conclusion of the meeting and, if he or she is not the Master, he or she must send the record to the Master by standard notice.

(7) A meeting of creditors may, if necessary, be adjourned from time to time.

(8) A meeting may after an adjournment be presided over by a different presiding officer, and a meeting before the Master may be adjourned to take place before a magistrate.

(9) With the consent of the Master—

(a) a meeting may be convened in a magisterial district other than the district contemplated in subsection (1); and

(b) a meeting may after an adjournment take place at a different place, including a place in another magisterial district.

(10) The place where a meeting of creditors is held must, subject to section 57(4), be accessible to the public.

(11) The publication of any statement made by any person or any evidence given at a meeting of creditors is privileged to the same extent as the publication of evidence given in a Court of law.

(12) A meeting of creditors, if duly convened, is for the purposes of this Act deemed to be a meeting of creditors even though no creditor or only one creditor or his or her representative attended the meeting personally.

#### **54 Voting at meeting of creditors**

(1) Every creditor of an insolvent estate who has proved a claim against the estate is, subject to subsection (3), entitled to vote at a meeting of creditors of the estate.

(2) A creditor may vote on all matters relating to the administration of the estate, but may not vote on matters relating to the distribution of the assets of the estate or the payment of costs of liquidation.

(3) A creditor may not vote—

(a) in respect of any claim which was ceded to him or her after commencement of the proceedings for the liquidation of the debtor's estate, or after the giving of notice of the intention to pass a liquidation resolution in terms of section 9; or

(b) on the question as to whether steps should be taken to contest his or her claim or preference.

(4) Voting by creditors takes place according to the value of claims except where this Act provides that voting must take place according to number of creditors and the value of their claims.

(5) In the case of voting according to number, the number of votes brought Out in favour of a resolution and those brought out against the resolution are determined without taking into account the value represented by the votes.

(6) In the case of voting according to value, the aggregate value of votes brought out in favour of a resolution and the aggregate value of votes brought out against the resolution are determined without taking into account the number of votes for or against the resolution.

(7) A secured creditor is entitled to vote on the full value of his or her claim in respect of any matter affecting his or her security or on the election of a liquidator.

(8) A secured creditor may vote only if he or she had placed a monetary value on his or her security when proving his or her claim, or the liquidator has obtained a valuation of the security, or the security has been realised.

(9) If a secured creditor's security has been realised, the creditor may vote on the amount by which his or her claim exceeds the proceeds of the realisation of the security.

(10) If the security has not been realised, the secured creditor may vote on the amount by which his or her claim exceeds—

- (a) the value placed by him or her on the security; or
- (b) the valuation of the security obtained by the liquidator;

whichever is the greater.

(11) A creditor may vote personally or through an agent appointed thereto by him or her by power of attorney.

(12) No person may vote as an agent of a creditor, unless he or she submits proof of his or her mandate.

(13) Every resolution taken at a meeting of creditors and the result of the voting on any matter must be recorded in the minutes of the meeting and in so far as a resolution contains a directive to a liquidator it is binding upon the liquidator.

(14) Any directive of creditors that infringes the rights of any creditor may be set aside by the Court on application by the creditor, or by the liquidator with the consent of the Master, within 90 days or such further period as the Court may allow for good cause shown.

(15) No resolution of creditors that a specific attorney, auctioneer or any other person be employed in connection with the administration of an insolvent estate is binding upon the liquidator, but creditors may by resolution recommend the employment of any such person and if the liquidator does not accept the recommendation the Master's decision in respect of such employment is final.

### **55 Debtor and other persons to attend meetings of creditors**

A debtor who is a natural person, a partner of a partnership, or part of the management of another debtor must attend all meetings of creditors of the insolvent estate in question of which he or she is notified by the liquidator by standard notice, or an adjourned meeting which he or she is directed by the presiding officer to attend, unless he or she is excused in writing by the liquidator, the Master or the person who is to preside at such meeting.

### **56 Summons to attend meeting of creditors and notice to produce document**

(1) if the officer who presides or is to preside at a meeting of creditors, or any Master or magistrate, has reasonable ground for believing that a person—

- (a) has or had in his or her possession or custody property belonging to the insolvent estate; or
- (b) is indebted to the insolvent estate; or
- (c) is able to give material information on any matter relating to the debtor or his or her business or affairs, whether before or after the liquidation of his or her estate, or concerning any property which at any time belonged to the insolvent estate; or
- (d) has in his or her possession or custody any book, document, or record relating to the debtor's affairs or property:

he or she may summon the said person to appear at a meeting of creditors of the insolvent estate at a time stated in the summons, in order to be questioned in terms of section 57 and, where applicable, to produce the books, documents, or records specified in the summons.

(2) A summons referred to in subsection (1) must be substantially in the form of Form E3 of Schedule 1 the First Schedule.

### **57 Examination of debtor and other persons**

(1) The presiding officer at a meeting of creditors of an insolvent estate may call upon the debtor, or any person summoned for questioning or the production of any book, document or record in terms of section 56, or any other person who is present and who possesses relevant information, to appear before him or her and to give evidence, to be questioned on all matters relating to the debtor or his or her business or affairs, whether before or after the liquidation of the estate, and concerning any property which at any time belonged to the insolvent estate, or to produce a book, document or record and the said presiding officer must administer to such person the oath or take from him or her an affirmation to speak the truth.

(2) A person who in terms of subsection (1) is called upon to testify or to produce a book, document, or record may be questioned by the presiding officer, the liquidator and a proved creditor on whose request that person was summoned or called upon to testify, or the representative of any of them, and the presiding officer may allow any other creditor to put questions to that person through the presiding officer to the extent that the presiding officer allows such questions.

(3) A person called upon in terms of subsection (1) to testify may be assisted by a representative and such representative may question the said person only in so far as it is necessary to clarify answers given by him or her.

(4) The place where proceedings under this section take place must be accessible to the public:

Provided that if it is necessary for the effective questioning of a person or for the maintenance of good order or the protection of the public interest, the presiding officer may order that the proceedings or any part thereof take place behind closed doors, or that any particular person or persons may not be present during any particular stage of the proceedings, or that the evidence given at proceedings or any part thereof may not be published.

(5) If a banker is summoned in terms of section 56, or ordered in terms of section 59 to produce documents, books or statements or give information, such banker is, notwithstanding the law relating to privilege, obliged to produce such documents, books or statements or give such information.

(6) Notwithstanding the provisions of any other law or the common law, but subject to the Court's power to avoid the examination being conducted in an oppressive, vexatious or unfair manner, no person questioned in terms of this section may refuse to answer a question on the grounds that the answer may prejudice him or her in any criminal or disciplinary proceedings which have been or may be instituted against him or her, or apply for a postponement of the examination until the criminal or disciplinary proceedings have been finalised:

Provided that evidence given by a person in terms of this section is not admissible against him or her in criminal or disciplinary proceedings, except in criminal proceedings where such person is charged in connection with evidence given during the examination with perjury, or the giving of false evidence under oath or affirmation, or a contravention of section 61(3) for refusal or failure to answer lawful questions put to him or her fully and satisfactorily.

(7) The debtor or management of a debtor may at an examination under this section be required to declare that he or she has disclosed all his or her affairs or the affairs of the debtor fully and correctly.

(8) The presiding officer at proceedings in terms of this section—

(a) must disallow all questions that are irrelevant and may disallow questions that would prolong the proceedings unnecessarily;

(b) must record the proceedings or cause them to be recorded.

(9) A person who in answer to a summons issued in terms of section 56 attends a meeting of creditors, or a person called upon in terms of this section to testify at such meeting, or to produce books, documents, or records, including the debtor, is entitled to the witness fees to which he or she would have been entitled if he or she were a witness in civil proceedings before a Court of law.

(10) Subject to the proviso of subsection (6), any evidence given under this section is admissible in any proceedings instituted against the person who gave such evidence and any record of an examination introduced in such proceedings forms part of the record of the proceedings.

(11) The liquidator may in terms of an agreement with a creditor repay the creditor's costs and expenses in connection with an examination conducted by the creditor if sufficient money is recovered as a result of the investigation.

(12) In the absence of an agreement referred to in subsection (11), the Court or the Master may order that the whole or any part of such costs or expenses form part of the costs of liquidation.

## **58 Examination by commissioner**

(1) The liquidator or any creditor of an insolvent estate may at any time after the liquidation of the debtor's estate apply to the Court or the Master for an order—

(a) that a person known or suspected to have in his or her possession any property belonging to the insolvent estate, or to be indebted to the insolvent estate, or to be able to give material information regarding the affairs of the debtor or of his or her property, be summoned to appear before a commissioner for examination; and

(b) that a suitable person be appointed as commissioner to carry out the examination contemplated in paragraph (a).

(2) A creditor who makes an application contemplated in subsection (1) must furnish security to the satisfaction of the Court or the Master for all costs in connection with the examination.

(3) If the Court or the Master grants an application referred to in subsection (1) the Court or the Master—

(a) must appoint a magistrate or any other person considered suitable, as commissioner to carry out the examination in terms of this section; and

(b) may summon a person referred to in subsection (1)(a) to appear before the said commissioner and to produce any books, documents or records in his or her custody or under his or her control relating to the debtor, on a date and at a place stated in the summons in order to be questioned with regard to the affairs of the debtor.

(4) A summons referred to in subsection (3) must be substantially in the form of Form E4 of the First Schedule.

(5) A commissioner appointed in terms of subsection (3) must administer the oath or an affirmation to speak the truth to the person who appears before him or her for examination.

(6) A commissioner may summon witnesses and question them and require the production of documents.

(7) If a commissioner has been appointed—

(a) by the Master, he or she must, in such manner as the Master may direct, report to the Master; and

(b) by the Court, he or she must, in such manner as the Court may direct, report to the Master and the Court.

(8) Section 57(2), (3), (5), (6), (7), (8) and (9) apply with the necessary changes in regard to the giving of evidence and the production of documents in terms of this section.

(9) A witness who has given evidence in terms of this section is at his or her own cost entitled to a copy of the record of his or her evidence.

(10) A creditor at whose request an examination is carried out in terms of this section is liable for all costs and expenses incurred in connection with the examination:

Provided that the Court or the Master may order that the whole or any part of such costs or expenses be regarded as costs of the liquidation.

(11) An examination in terms of this section and any application therefor is private and confidential, unless the Court or the Master, either generally or in respect of any particular person, directs otherwise.

### **59 Liquidator may put written questions or call for accounts, books, documents, records or information**

(1) The liquidator of an insolvent estate may obtain information concerning the affairs of the debtor by means of written questions and answers instead of oral evidence given at a meeting of creditors of the estate contemplated in section 56, or an examination in terms of section 57 or section 58, and the liquidator may send such written questions by standard notice to the debtor, or the persons responsible for the management of such debtor, or a creditor or to any other person, to be answered by him or her.

(2) Questions contemplated in subsection (1)—

(a) may be put to the debtor or such other person with regard to all matters relating to his or her business or affairs, whether before or after the liquidation of his or her estate, and with regard to any property which at any time belonged to the insolvent estate;

(b) may be put to a creditor of the estate with regard to a claim proved by him or her against the estate or a claim offered for proof;

(c) may be put to—

(i) any other person with regard to any transaction which such person had with the debtor; or

(ii) concerning any property, books, documents or records of the debtor which such person had in his or her possession within 36 months before the date of liquidation of the estate of the debtor.

(3) Standard notice of the questions contemplated in subsection (1) must be given to the person to whom they are put.

(4) The written answers to the questions must be sworn to or affirmed and be sent to the liquidator by standard notice within 14 days after receipt of the questions.

(5) Sections 57(5) and (6) is applicable with the necessary changes with regard to the written answers to questions referred to in this section.

(6) The answers to questions referred to in this section must be regarded as evidence given in terms of section 57.

(7) The provision of answers to questions referred to in this section, or a refusal to provide such answers, does not prevent a person from being summoned in terms of section 56, or from being examined in terms of section 57 or section 58, and does not absolve a person from the obligation to give evidence when called upon to do so.

(8) The liquidator of an insolvent estate may by standard notice order any person with whom the debtor or his or her spouse had an account or transactions within 12 months before the date of the liquidation of



the debtor's estate, to furnish the liquidator within seven days or such longer period as the liquidator may allow with a statement reflecting the state of the said account or the debits, credits and balance due in respect of the transactions during the said period of 12 months.

(9) The liquidator may by standard notice order any person whom he or she has reason to believe to be in possession or control of any book, document, record or material information relating to the affairs of the debtor or his or her spouse, before or after the liquidation of the debtor's estate or of property belonging or which did belong to the debtor or his or her spouse, to make the book, document, record information or property specified in the said notice available to the liquidator within seven days of the date of the said notice, or within such longer time as the liquidator may allow, and such person must allow the liquidator or someone on behalf of the liquidator to make copies of or extracts from any such book, document or record.

### **60 Examination by or on behalf of the Master**

(1) If at any time after the liquidation of a debtor's estate, and before his or her rehabilitation or dissolution, as the case may be, the Master is of the opinion that the debtor or the liquidator of the insolvent estate or any other person is able to give information or is in possession of books, documents or records which the Master considers desirable to obtain, concerning the debtor or his or her insolvent estate or the administration of the estate or concerning any demand made against the estate, the Master may by notice in writing delivered to the debtor or the liquidator or such other person, summon him or her to appear before the Master or before a magistrate at a place and on a date and time stated in the notice, and to furnish all the information within his or her knowledge concerning the debtor or his or her estate or the administration of the estate and produce the books, documents or records specified in the notice.

(2) The notice referred to in subsection (1) must be substantially in the form of Form E5 of the First Schedule.

(3) The Master may at any time appoint a person to investigate the books, documents, records and vouchers of the liquidator and direct the liquidator to deliver to the person so appointed or to the Master any book, document, or record relating to or property belonging to the insolvent estate of which he or she is the liquidator;

(4) The reasonable costs incurred in performing such an investigation must, unless the Court otherwise orders, be regarded as part of the costs of liquidation, and if the liquidator is removed from office consequent upon such an investigation, the costs must be paid by the liquidator out of his or her own funds.

(5) After having questioned the person summoned in terms of subsection (1), the Master or the magistrate may deliver to him or her a notice to appear again before the Master or the magistrate at a place and time stated in the notice and to furnish such further information or to produce any book, document, or record specified in such notice.

(6) A person summoned in terms of subsection (1) may be questioned by the Master or the magistrate presiding at the proceedings and, if a person other than the liquidator is summoned in terms of the said subsection, the liquidator or his or her representative may cross-examine the person in question with regard to evidence given by him or her and to the extent that the presiding officer allows any person having an interest in the estate or the administration thereof, that person or his or her representative may question the person in question.

(7) The reasonable costs of such examination must, unless the Court otherwise orders, be regarded as part of the costs of liquidation, and if the liquidator is removed from office consequent upon such an examination, the costs must be paid by the liquidator out of his or her own funds.

(8) Section 57(3), (5), (6), (7) and (8) apply with the necessary changes to examination under this section.

(9) Section 57(9) applies with the necessary changes, but the liquidator of the insolvent estate is not entitled to witness fees.

(10) Proceedings under this section are private and confidential, and without the permission of the presiding officer no person whose attendance at the proceedings is not necessary may be present at the proceedings and no publication of the evidence given at the proceedings may take place without the permission of the said presiding officer.

### **61 Enforcing summons and giving of evidence**

(1) If a person summoned under section 56, 58 or 59 fails to appear at a meeting of creditors or examination in answer to a summons, or if a debtor or management of such debtor fails to attend a hearing in terms of section 21(6)(a) or a meeting of creditors in terms of section 55, or fails to remain in attendance at that hearing or meeting, any magistrate for the district where the meeting, questioning or hearing was scheduled to be held who may hold a Court under the Magistrates Court Act [*Chapter 7:10*], may issue a

warrant, authorising any member of the police force to apprehend the person summoned or the debtor, as the case may be, and to bring him or her before the said magistrate.

(2) Unless the person summoned or the debtor, as the case may be, satisfies the said magistrate that he or she had a reasonable excuse for his or her failure to appear at or attend such meeting, examination or hearing, or for absenting himself or herself from the meeting, hearing or examination, the said magistrate may commit him or her to prison to be detained there until such time as the said magistrate may determine, and the officer in charge of the prison to which the said person or debtor was committed, must detain him or her and produce him or her at the time and place determined by the magistrate for his or her production.

(3) If a person summoned as aforesaid appears in answer to the summons but fails to produce any book, document or record which he or she was summoned to produce, or if any person who may be examined at a meeting of creditors in terms of section 57 or during an examination in terms of section 58 or 60 or a hearing in terms of section 21 (6)(a) refuses to be administered the oath or make an affirmation to speak the truth at a meeting of creditors, examination or hearing at which he or she is called upon to give evidence, or refuses to answer any question lawfully put to him or her under the said sections or does not answer the question fully and satisfactorily, the said magistrate may issue a warrant committing the said person to prison, where he or she must be detained until he or she has undertaken to do what is required of him or her, but subject to subsection (5).

(4) If a person who has been released from prison after having undertaken in terms of subsection (3) to do what is required of him or her, fails to fulfil his or her undertaking, the magistrate may commit the person to prison as often as may be necessary to compel him or her to do what is required of him or her.

(5) Any person committed to prison under this section may apply to the Court for his or her discharge from custody, and the Court may order the discharge if it finds that the person was wrongfully committed to prison or is being wrongfully detained.

(6) The magistrate who issued the warrant of apprehension or committal to prison under this section enjoys the same immunity enjoyed by a judicial officer in connection with any act performed by him or her in the exercise of his or her functions.

(7) The magistrate may upon the request of the liquidator, the Master, a Commissioner or a proved creditor, and after giving the witness or the debtor the opportunity to be heard, order the witness or the debtor to pay costs occasioned by failure contemplated in subsection (1) and the costs to have him or her brought before the magistrate in the amount determined by the Magistrate. -

## **62 Suspected commission of offence must be reported to Commissioner of Police**

(1) If it appears from an answer or statement given by a person who is examined under section 56, 57, 58 or 59, that there are reasonable grounds for believing that any person has committed an offence, the presiding officer at the proceedings, or the liquidator in the case of proceedings under section 58, must submit the answer or statement or a certified copy thereof with supporting documents, if any, and report such suspicion to the Commissioner of Police and set out the grounds on which the suspicion rests and, if the presiding officer is not the Master, a copy of the report, answer or statement and supporting documents, if any, and the report to the Commissioner of Police, shall be sent to the Master by standard notice.

(2) The said Commissioner shall with due consideration of the provisions of section 57(6) investigate whether criminal proceedings should be instituted in the matter.

## **63 Proof of record of proceedings of meetings of creditors**

(1) Any record purporting to be a record of the proceedings at a meeting of the creditors of an insolvent estate or an examination held under this Act and purporting to have been signed by a person describing himself or herself as Master or magistrate or other presiding officer or commissioner shall, upon its mere production in judicial proceedings, unless the contrary is proved, be proof of the proceedings recorded therein.

(2) Unless the contrary is proved, it shall be presumed that any meeting of creditors or any questioning referred to in subsection (1) was duly convened and held and that all acts performed thereat were validly performed.

## **PART XII**

### **CLAIMS**

## **64 Claim by partnership creditor against estate of insolvent partner**

When the estate of a partner is liquidated without the partnership being placed in liquidation—

(a) the partnership is dissolved; and

- (b) until the debts of the partnership have been settled in terms of the dissolution of the partnership, any claim by a creditor of the partnership against that estate of the partner must be tendered as an unliquidated claim in terms of section 66(10).

### **65 Claims against partnerships**

When the estate of a partnership and the estates of the partners are under liquidation—

- (a) a claim for a partnership debt must be proved against the partnership estate despite liability of a partner for the debt; and
- (b) a shortfall on the claim against the partnership is admitted without formal proof as a claim against each of the estates of the partners who are liable for the debt; and
- (c) any balance in the partnership estate after payment of the debts is distributed amongst the estates of the partners in so far as the partner would have been entitled to such a balance upon the dissolution of the partnership.

### **66 Proof of claims**

(1) Any person who has a liquidated claim against an insolvent estate, the cause of which arose on or before the date of liquidation of the estate, or the authorised agent of that person, may at any time before the final distribution of the estate, but subject to section 67, prove that claim against the estate.

(2) A claim against an insolvent estate must be admitted at a meeting of creditors of the estate if it has been proved to the satisfaction of the presiding officer on the face of the claim form, documents in connection with the claim submitted by the creditor or another person, if any, and on the evidence, if any, by the creditor.

(3) If the claim has not been proved in this manner, the presiding officer must reject it.

(4) A creditor who holds security for his or her claim must place a monetary value on his or her security, or have his or her voting rights limited in terms of section 54(5).

(5) The rejection of a claim does not, subject to section 20, debar the claimant from proving the claim at a later meeting of creditors or by an action at law.

(6) Every claim must be proved by an affidavit in a form corresponding substantially with Form B or C of the First Schedule and, subject to subsections (10) and (11), no oral evidence may be received in support of any claim.

(7) The affidavit contemplated in subsection (5) and all documents submitted in support of the claim or a copy thereof must be lodged with the person who is to preside at the meeting of creditors before the time of day advertised for the commencement of the meeting on or before the second working day before the date of the meeting, failing which the claim may not be admitted at that meeting unless the presiding officer is of the opinion that the creditor had a reasonable excuse for his or her failure to lodge the claim timeously.

(8) Where appropriate the amount of a claim may be expressed in a foreign currency, but all claims in a foreign currency must be paid in its equivalent in functional currency and the conversion date of functional currency to a foreign currency is the date of liquidation.

(9) A claimant who has proved a claim that is deficient in any respect may at a subsequent meeting of creditors prove a corrected claim.

(10) The documents referred to in subsection (6) may be perused free of charge by the liquidator, the debtor and any creditor of the insolvent estate or the representative of any of them during office hours at the office of the person who is to preside at the meeting, and the liquidator debtor or creditor may submit motivated objections to the proof of a claim at the meeting where the claim is lodged for proof or to the presiding officer before the meeting.

(11) Any person who has an unliquidated claim against an insolvent estate may tender such claim for proof at a meeting of creditors, but such claim may not be admitted to proof until it has been accepted by the liquidator by way of compromise or proved in an action at law.

(12) When such claim is compromised or proved in an action at law it must be regarded as having been proved and admitted against the estate at the meeting where it was lodged for proof, unless the creditor informs the liquidator by standard notice within seven days of the compromise or judgment that he or she abandons the claim.

(13) The presiding officer at the meeting of creditors may on his or her own motion or at the request of the liquidator or his or her representative or any creditor who has proved a claim at a meeting of creditors or the representative of such creditor call upon any person present at the meeting who wishes to prove a claim or who has proved a claim against the estate to submit to examination by the presiding officer the liquidator or his or her representative or any such creditor or his or her representative in regard to such

claim and for purposes of such examination the presiding officer must administer to the said person the oath or take from him or her a solemn declaration to speak the truth:

Provided that a creditor who has proved a claim at a meeting may not question a creditor who wishes to prove a claim at the same meeting before the claim of such creditor has been admitted or rejected.

(14) Any person who wishes to prove or who has at any time proved a claim against an insolvent estate and who is absent from a meeting of creditors may be summoned in writing by the presiding officer, in a summons substantially in the form of Form E2 of the First Schedule to this Act, to appear before him or her at a place and time stated in the summons for the purpose of being questioned by the presiding officer, the liquidator or a creditor who has proved a claim against the estate, or the representative of the liquidator or such creditor in regard to such claim, and subsection (12) with regard to the administering of the oath or the taking of a solemn declaration applies with the necessary changes with regard to the giving of evidence by such person.

(15) If a person who wishes to prove a claim is called upon to be questioned in terms of subsection (13) and fails without reasonable excuse to appear or refuses to take the oath or make a solemn declaration or to submit to questioning or to answer fully and satisfactorily any lawful question put to him or her, his or her claim may be rejected.

### **67 Liquidator shall examine claims**

(1) The person who presided at a meeting of creditors must if he or she is not the liquidator, after the meeting deliver to the liquidator every claim proved against the insolvent estate at that meeting and every document submitted in support of any claim.

(2) The liquidator must examine the claims and supporting documents referred to in subsection (1) and all available books, documents or records relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed, and the liquidator may require the claimant to submit additional supporting proof of his or her claim and, in the case where the claim is based on an estimate, the basis on which the estimate was arrived at.

(3) If the liquidator disputes a claim after it has been proved at a meeting of creditors, he or she may, with the authority of the Master or creditors in terms of section 49(4) and after having afforded the claimant the opportunity of substantiating his or her claim or any part thereof, reduce or disallow the claim, and he or she must forthwith notify the claimant and the Master by standard notice of such reduction or disallowance of the claim.

(4) The reduction or disallowance of a claim in terms of subsection (3) does not, subject to section 20(5), debar a claimant from establishing his or her claim by means of an action at law.

### **68 Late proof of claims**

(1) Subject to subsection (2) and section 89(17), a creditor of an insolvent estate who has not proved his or her claim against the estate before a date fixed in terms of section 5 1(6) is not entitled to share in the distribution of the assets reflected in an account lodged with the Master within two weeks after the said date.

(2) If the Master is satisfied that a creditor referred to in subsection (1) has a reasonable excuse for the delay in proving his or her claim, the Master may permit him or her to prove the claim before the confirmation of the account contemplated in subsection (1) and the Master may order the liquidator to draw up a new account in which provision is made for the claim so proved, if the creditor tenders all costs in connection with the drawing-up of the new account, including wasted advertisement costs, if any.

(3) A creditor of an insolvent estate who has proved a claim against the estate and who was not in terms of subsection (1) permitted to share in the assets reflected in an account is, in so far as available funds allow, entitled to be awarded out of any subsequent distribution account the amount to which he or she would have been entitled under the earlier distribution account if he or she had proved his or her claim in time.

(4) A creditor who delayed proving his or her claim pending the outcome of proceedings for the setting aside of any disposition of property made by a debtor or for the recovery of any debt, asset, compensation, penalty or benefit of whatever kind for the benefit of the insolvent estate of the debtor, is not entitled to share in the distribution of any money or the proceeds of property recovered as a result of such proceedings.

### **69 Conditional claims**

(1) A creditor who has a claim against an insolvent estate which is dependent upon the fulfilment of a condition, may request the liquidator to place a value on the claim.

(2) If a liquidator places a value on a claim referred to in subsection (1), he or she must indicate in writing the grounds on which he or she arrived at the valuation.

(3) The valuation of a conditional claim by a liquidator is subject to review by the Court on application of the creditor.

(4) After a conditional claim has been valued as contemplated in this section, the claim may be proved by the creditor for the amount of the valuation.

(5) If the condition upon which a claim is dependent is fulfilled before the inclusion of the amount referred to in subsection (4) in a proposed distribution account, the claim may be proved in full.

(6) If the condition is fulfilled after provision has already been made in a distribution account for the claim contemplated in subsection (4), the balance of the claim may be proved in terms of the provisions relating to the late proof of claims.

#### **70 Arrear interest and debt due after liquidation**

(1) A creditor may prove a claim against an insolvent estate in respect of a capital debt and interest thereon which has accrued at the date of liquidation.

(2) No claim may be proved for interest which accrues after the date of liquidation, but such interest is payable in the circumstances set out in sections 84(2) and 89(15).

(3) The capital amount of a debt that becomes payable after the date of liquidation must be reduced by twelve per cent of that amount per annum compounded monthly on completed months from the date of liquidation to the date on which the debt becomes payable.

#### **71 Withdrawal of claim**

(1) A creditor who has proved a claim against an insolvent estate may withdraw his or her claim by standard notice to the liquidator.

(2) A liquidator who receives a notice of withdrawal of a claim must give standard notice of the withdrawal to the Master.

(3) A creditor who has withdrawn his or her claim remains liable for his or her *pro rata* share of the costs of liquidation up to the date when the notice of withdrawal was received by the liquidator.

(4) A creditor who has withdrawn his or her claim may by standard notice to the liquidator cancel the withdrawal, but if he or she does so he or she is not entitled to payment of his or her claim out of the estate until all other creditors who have proved claims have been paid in full.

(5) If a creditor cancels his or her withdrawal as contemplated in subsection (4), he or she is not liable for liquidation costs for which he or she was not liable at the time of the cancellation of the withdrawal of his or her claim.

#### **72 Creditor may not recover debt from insolvent estate which is recovered from another source**

(1) A creditor who has proved a claim against an insolvent estate and who after the date of liquidation of the insolvent estate has received payment of that debt in whole or in part from a source other than the insolvent estate, must notify the liquidator of such payment by standard notice within 60 days of receiving payment.

(2) If a creditor fails to comply with subsection (1) and an amount is paid to him or her out of the insolvent estate to which he or she is not entitled, the liquidator may recover double that amount from him or her.

### **PART XIII**

#### **ELECTION, APPOINTMENT AND DISQUALIFICATION OF LIQUIDATORS**

#### **73 Election of liquidator**

(1) Any creditor of an insolvent estate who has proved claims against the estate may vote for one liquidator at the first meeting of creditors or at a subsequent meeting convened to elect a liquidator.

(2) A registered union may vote in number for employees represented by the union.

(3) An employee who has not voted as a creditor and who has not been voted for by a registered union and who has lodged a declaration that he or she was employed by the debtor at the date of liquidation may vote in number.

(4) A director or former director of a company shall have no voting right in respect of the nomination of a liquidator on the basis of his or her—

(a) loan account with the company; or

(b) claims for arrear salary, travelling expenses or allowances due by the company; or

(c) claims paid by such director or former director on behalf of the company.

(5) A liquidator is elected by the majority in number and in value of the votes of creditors who were entitled to vote and who voted at such meeting.

(6) If one candidate obtained a majority of votes in value and another a majority in number, both candidates are deemed to be elected as liquidators.

(7) If two or more candidates receive the same number of votes in number and this is the most votes in number received by any candidate, the candidate who obtained the most votes in value is considered to have obtained the majority in number.

(8) If no liquidator is elected at a meeting of creditors the liquidator appointed by the Master in terms of section 41 is the liquidator of the estate.

(9) If it is necessary for the proper administration of an insolvent estate, the Master may at any time appoint one additional liquidator after forty eight hours' notice to each liquidator appointed or to be appointed in terms of subsection (5) or (6), furnishing reasons for the additional appointment.

(10) Where a liquidator has been elected by creditors, the creditors must submit the name of such liquidator to the Master.

(11) Subject to sections 74 and 75, the Master must appoint the elected person as liquidator.

#### **74 Persons disqualified from being liquidators**

A person is disqualified from being elected or appointed as a liquidator if he or she—

- (a) is not registered in terms of the Estate Administrators Act [*Chapter 27:20*];
- (b) is an insolvent;
- (c) does not reside or have a place of business in Zimbabwe;
- (d) is the spouse of the debtor in question;
- (e) is related or deemed to be related to the debtor or to his or her spouse in the first, second or third degree of consanguinity relationship;
- (f) is a minor or any other person under legal disability;
- (g) is declared under section 79 to be disqualified;
- (h) is not a natural person;
- (i) has been convicted, whether in Zimbabwe or elsewhere, of an offence involving dishonesty and if he or she was sentenced to imprisonment without the option of a fine;
- (j) was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he or she undertook that he or she would, when performing the functions of a liquidator, grant or attempt to grant to, or obtain or attempt to obtain for any debtor or creditor any benefit not provided for by law;
- (k) has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to nominate him or her as liquidator, to vote for him or her as liquidator or to effect or assist in effecting his or her election as liquidator of any insolvent estate;
- (l) at any time during a period of five years immediately preceding the date of liquidation acted as the bookkeeper, accountant or auditor of the debtor;
- (m) has a proven interest that is opposed to the general interest of the creditors of the insolvent estate.

#### **75 Master may refuse to appoint elected liquidator**

(1) The Master may on any one or more of the following grounds refuse to appoint as liquidator a person elected in terms of section 73 who—

- (a) was not properly elected;
- (b) is in terms of section 74 disqualified from being appointed as liquidator or as liquidator of the insolvent estate in question;
- (c) has failed to give security, within seven days after his or her election or within such longer period as the Master may allow, to the satisfaction of the Master for the proper performance of his or her duties as liquidator.

(2) The Master must notify a person whom he or she refuses to appoint as liquidator by direct notice, providing the reason for his or her refusal.

(3) Any person aggrieved by the appointment of a liquidator or the refusal of the Master to appoint a person elected as liquidator, may within ten days from the date of such appointment or refusal apply to the Court for a review of the Master's decision.

(4) Whenever the Master refuses to appoint as liquidator a person elected as such, or the Court has set aside an appointment of a liquidator by the Master, the Master must direct the liquidator appointed in terms

of section 41 to convene a meeting of creditors of the insolvent estate for the purpose of electing another person as liquidator in the place of such person or liquidator.

(5) The notice of the meeting referred to in subsection (4) must—

- (a) state that the purpose of the meeting is to elect a liquidator;
- (b) set out the reason why the Master has refused to appoint the person elected as liquidator, or state that the appointment of the liquidator has been set aside by the Court, as the case may be;
- (c) be published in the *Gazette* not less than 14 days and not more than 21 days before the date fixed for the meeting;
- (d) be sent by liquidator's notice to every creditor who has proved a claim against the estate.

(6) The meeting mentioned in subsection (4) must be held as if it were the continuation of a first meeting of creditors held after an adjournment.

(7) If the Master refuses to appoint as liquidator a person elected at a meeting convened in terms of subsection (4), he or she must notify that person by direct notice and state the reason for his or her refusal and may, if it is necessary for the proper administration of the estate, appoint as liquidator any person whom the Master regards as a suitable person for appointment.

### **76 Appointment of liquidator and security**

(1) When a final liquidation order has been made and a person elected as liquidator has given security to the satisfaction of the Master for the proper performance of his or her duties and lodged an affidavit stating that he or she is not disqualified in terms of section 74, the Master must, subject to section 75, appoint him or her as liquidator and issue him or her with a letter of appointment, which is valid throughout Zimbabwe.

(2) After the receipt of his or her letter of appointment the liquidator must make known his or her appointment and his or her address by notice published in the *Gazette*.

(3) The costs to the liquidator of giving security must be included as part of the costs of the liquidation, up to the maximum amount which the Master considers reasonable.

(4) The Master may at any time call for additional security, or reduce the security given by the liquidator if the liquidator has to the satisfaction of the Master accounted for any property in the estate and the reduced security will suffice to indemnify the estate or the creditors against any maladministration by the liquidator of the remaining property in the estate.

### **77 Joint liquidators to act jointly**

(1) Where more than one liquidator has been appointed in respect of an insolvent estate the liquidators must act jointly in performing their functions as liquidators and each of them is jointly and severally liable for every act performed by them jointly.

(2) Whenever liquidators of an insolvent estate disagree on any matter relating to the estate, they must refer the matter to the Master who must determine the question in issue or give directions as to the procedure to be followed for the determination thereof.

### **78 Vacation of office by liquidator**

(1) A liquidator must vacate his or her office if—

- (a) his or her estate is liquidated;
- (b) he or she is received and detained in an institution in terms of the Mental Health Act [*Chapter 15:12*], or if he or she is declared by a competent Court to be incapable of managing his or her own affairs;
- (c) he or she is convicted in Zimbabwe or elsewhere of an offence involving dishonesty and is sentenced to imprisonment without the option of a fine or to a fine not exceeding level five.

(2) Whenever a liquidator of an insolvent estate vacates his or her office, any legal proceedings pending against the estate do not lapse merely by reason of the vacation of office and may, with the permission of the Court, be continued in the name of any remaining or newly appointed liquidator.

### **79 Removal of liquidator from office by Master**

(1) The Master must remove a liquidator from office—

- (a) if he or she was not qualified for appointment as liquidator or if his or her appointment was unlawful;
- (b) if the majority in value and the majority in number of the creditors who have proved claims against the estate—
  - (i) have requested the Master in writing to do so; or

- (ii) have at a meeting of creditors of the estate, after notice of the intended resolution was given, resolved that the liquidator must be removed from office;
  - (c) if he or she resigns from the office of liquidator;
  - (d) if he or she is temporarily absent from Zimbabwe for a period longer than 60 days without the permission of the Master, or contravenes any conditions set by the Master when he or she gave permission;
  - (e) if after his or her appointment he or she becomes disqualified from being a liquidator.
- (2) The Master may remove a liquidator from office on the ground that he or she has failed to perform satisfactorily any duty imposed upon him or her by this Act or has failed to comply with a lawful demand of the Master.
- (3) The Master may suspend a liquidator from office and appoint an interim liquidator if necessary for the preservation of the costs of the estate pending the outcome of an investigation—
- (a) if the liquidator has been charged with committing an offence; or
  - (b) if the Master has received a complaint on affidavit; or
  - (c) if evidence given at an examination in terms of section 57, 58 or 60, or written answers in terms of section 59 justifies a suspension.
- (4) The Master must in the case of a complaint; evidence or written answers without delay carry out an investigation.
- (5) The Master must set aside the suspension if the result of the investigation or prosecution, as the case may be, exonerates the liquidator and may remove the liquidator from office if the result of the investigation or prosecution justifies such removal.
- (6) No person may be appointed as interim liquidator unless he or she has given security to the satisfaction of the Master for the proper exercise of his or her powers and performance of his or her duties as interim liquidator and has lodged an affidavit stating that he or she is not disqualified in terms of section 74.
- (7) The interim liquidator must after his or her appointment proceed to recover and take into possession all the assets of the insolvent estate and all books of account, invoices, vouchers, business correspondence and any other records relating to the affairs of the debtor and may apply for a search warrant in terms of section 44.
- (8) The interim liquidator must give effect to any directions by the Master and may without the authorisation of the Master as contemplated in section 49 perform any act which is necessary for the preservation of the estate until the suspension of the liquidator is set aside or another liquidator is appointed.
- (9) The interim liquidator is entitled to remuneration taxed by the Master in accordance with Tariff A in the Second Schedule.
- (10) The interim liquidator vacates his or her office when the suspension of the liquidator is set aside or a new liquidator is appointed in the place of the removed liquidator and must deliver the assets, property, books, documents or records to, and give account to, the liquidator or the new liquidator.

### **80 Court may declare liquidator disqualified or remove liquidator**

If it is in the interests of the proper administration of an insolvent estate, the Court may, on the application of the Master or any other interested party—

- (a) declare any person disqualified from being a liquidator of the estate; and
- (b) remove from office any person who has been appointed as liquidator; and
- (c) declare such a person disqualified from being elected or appointed as liquidator under this Act during his or her lifetime or for such other period as it determines.

### **81 Election of new liquidator**

(1) When it is necessary to fill a vacancy in the office of liquidator of an insolvent estate or when a majority of proved creditors, in value, of an insolvent estate request the appointment of a further liquidator, the Master must direct any remaining liquidator, or failing such liquidator the liquidator appointed in terms of section 41, to convene a meeting for the election of one or more liquidators, as the case may be.

(2) Section 50(2) applies with the necessary changes to any meeting contemplated in subsection (1).



## PART XIV

## RIGHTS AND DUTIES OF CREDITORS

**82 Realisation of security**

(1) A secured creditor of an insolvent estate shall notify the liquidator by standard notice of the nature and extent of his or her security and the amount of his or her claim as soon as he or she becomes aware of the liquidation of the estate.

(2) If the property consists of securities as defined in section 38 of the Securities and Exchange Act [*Chapter 24:25*], which are listed, the creditor may, subject to subsection (4)(b), after giving the notice mentioned in subsection (1) and subject to the provisions of the Securities and Exchange Act [*Chapter 24:25*], sell the listed securities through an authorised user as defined in section 38 of that Act or if the creditor is an authorised user, sell it through another authorised user.

(3) A creditor who has realised property contemplated in subsection (2) must forthwith pay over to the liquidator the proceeds after deduction of the reasonable costs of realisation and furnish the liquidator with vouchers in support of the realisation of the property and the costs of realisation.

(4) A secured creditor with—

(a) security other than property contemplated in subsection (2), must as soon as possible after liquidation place the liquidator in possession of the security;

(b) security contemplated in subsection (2) which has not been realised by the creditor before the first meeting of creditors, must within five days after the commencement of that meeting or within such longer period as the liquidator may allow, place the liquidator in possession of the security;

(5) The liquidator must cause the security to be valued by an appraiser or some other person approved by the Master, and the liquidator must supply the Master with a copy of the valuation.

(6) A creditor who has placed the liquidator in possession of property held by him or her as security does not thereby lose the security to which he or she is entitled in respect of such property.

(7) Subject to subsection (8) and section 49(4), the liquidator must realise the property made available to him or her pursuant to subsection (6) for the benefit of a creditor whose claim is secured by such property.

(8) A liquidator may, if authorised thereto by the Master or by resolution at a meeting of creditors of the estate, sell property constituting the security of a creditor whose claim ranks first in preference and who has proved his or her claim against the estate, to such creditor at a value agreed upon between the liquidator and the creditor.

(9) After proof of his or her claim and the realisation of the security, a secured creditor is entitled to payment of his or her secured claim if he or she has furnished security to the satisfaction of the liquidator for the repayment of the payment with interest at the rate prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*], if according to the confirmed account the creditor is not entitled to the payment or a part thereof.

(10) A secured creditor may request the Court to grant permission to sell security for the claim, subject to proper accounting to the liquidator for the sale, on grounds that—

(a) the security is not necessary in respect of a prospective reorganisation or sale of the debtor's business; and

(b) the value of the security is diminishing as a result of the commencement of insolvency proceedings; and

(c) the secured creditor is not protected against that diminution of value.

**83 Attachment of property upon failure to deliver to liquidator**

(1) If a creditor has failed to place the liquidator in possession of the property constituting his or her security as contemplated in section 82(4), the liquidator shall send to him or her demand by direct notice to place the liquidator in possession within seven days after such demand.

(2) If the creditor fails to comply with the demand the liquidator may obtain from the magistrate of the district where the property is situated a warrant directing the sheriff to attach that property and to place the liquidator in possession thereof.

(3) The creditor in question is liable for all costs resulting from his or her failure to place the liquidator in possession of the property, and if such costs cannot be recovered from the said creditor they form part of the costs of realising the security in terms of section 84(4).

## 84 Application of proceeds of security

(1) A secured creditor is entitled to share in the distribution of the proceeds of his or her security only if he or she has proved a claim against the insolvent estate.

(2) Any interest due in respect of a secured claim in respect of any period not longer than two years before the date of liquidation is secured as if it were part of the capital debt.

(3) If the claim of a secured creditor exceeds the sum payable to him or her in respect of his or her security, he or she is entitled to rank against the estate in respect of the excess as a concurrent creditor, unless when proving his or her claim he or she had indicated that he or she relies solely on his or her security for the fulfilment of his or her claim.

(4) The costs of maintaining, conserving and realising any security must be paid out of the proceeds of that security if sufficient and, if insufficient, the costs must be paid by the secured creditor.

(5) The costs of realisation of any security include—

- (a) the liquidator's remuneration in respect of that security and a proportionate share of any excess of minimum liquidator's remuneration over the ordinary tariff; and
- (b) a proportionate share of the costs incurred by the liquidator in giving security for his or her proper administration of the estate; and
- (c) a proportionate share of the Master's fees, calculated on the proceeds of the security; and
- (d) if the property is immovable, any assessment rates as defined in subsection (7) which are or will become due thereon in respect of any period not exceeding two years immediately preceding the date of the liquidation and in respect of the period from that date to the date of the transfer of that property by the liquidator of that estate, with any interest or penalty which may be due on the said assessment rates in respect of any such period.

(6) Notwithstanding any law which prohibits the transfer of immovable property unless assessment rates as defined in subsection (7) due thereon or other amounts have been paid, that law shall not debar the liquidator of an insolvent estate from transferring any immovable property in that estate for the purpose of liquidating the estate, if the liquidator has paid or offered reasonable security for payment of the assessment rates which are due in respect of the periods mentioned in subsection (5) and no preference, either as costs of liquidation or otherwise, may be accorded to any other claim for such assessment rates or such other amounts.

(7) For the purposes of subsections (5) and (6) "assessment rates" in relation to immovable property means any amount payable periodically in respect of that property to an organ of State if that liability is an incident of the ownership of that property, but does not include any amount payable for services rendered in respect of such property.

(8) After payment of the costs referred to in subsection (4), the balance of the proceeds of the security must be applied in satisfying, in order of preference of secured creditors, first the capital sums of claims secured by the said security, and thereafter simple interest on the capital sums at the rate prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*], or a higher rate of interest by virtue of a lawful stipulation in writing, from date of liquidation to the date of payment.

(9) Any balance of the proceeds of the security remaining must be added to the free residue of the insolvent estate.

(10) If a creditor whose claim is secured by a special bond has not proved his or her claim and the liquidator is satisfied that the debt in question has not been discharged or abandoned, he or she must deposit with the Master for payment into the Guardians' Fund the proceeds of the sale of the former mortgagee's security to an amount not exceeding the capital amount of the mortgage and arrears of interest for which the mortgagee would have been a secured creditor, after deduction of an amount equal to the costs which the secured creditor would have had to pay if he or she had proved a claim and had stated in the affidavit lodged in support of his or her claim that he or she relied for the satisfaction of his or her claim solely on the proceeds of the sale of the said property.

(11) The amount so deposited or the part thereof to which the former mortgagee is entitled must be paid to him or her if, within a period of one year after confirmation of the relevant distribution account, he or she applies therefor to the Master and the Master is satisfied that he or she is entitled to the amount or part thereof.

(12) Any amount deposited with the Master in terms of subsection (10) which has not been paid out to the former mortgagee in terms of that subsection must, after the expiry of the year mentioned in that subsection, be distributed among the creditors who have proved claims against the insolvent estate prior to the confirmation of the said distribution account, as if the amount had, at the time of such confirmation, been available for distribution among them.

(13) Any creditor claiming to be entitled to share in the said distribution must apply in writing to the Master for payment of his or her share, and the Master may pay out to such creditor or may hand the money to the liquidator, if any, for distribution among the creditors entitled thereto, or, if there is no liquidator, may appoint a liquidator on such conditions as the Master may think fit for the purpose of making such distribution.

(14) Any liquidator charged with the duty of making such a distribution must lodge with the Master a supplementary account in respect thereof and the provisions of this Act relating to an account apply in respect of such supplementary account.

### **85 Security in respect of reserved ownership or financial lease**

(1) If a creditor could immediately before the liquidation of the estate of a debtor assert his or her ownership or security interest to property delivered to a debtor under a reservation of ownership contract or a financial lease, the property is, subject to the rights of other secured creditors, upon the liquidation of the estate of the debtor deemed to be held by the creditor or his or her successor in title (herein referred to as the creditor) as security for the amount outstanding in respect of the purchase price of the property or the balance owing on the financial lease.

(2) If property referred to in subsection (1) was returned by the debtor to the creditor within three months before the date of liquidation of the debtor's estate, the liquidator may demand from the creditor that he or she deliver to the liquidator the property or its value at the date when it was returned to him or her, subject to payment to the creditor by the liquidator or to deduction from the value (as the case may be) of the difference between the total amount payable under the transaction and the total amount actually paid.

### **86 Security in respect of landlord's hypothec**

(1) A landlord's hypothec confers a preference with regard to the property which is subject to the hypothec for rent due in respect of the period immediately prior to the date of liquidation, but not exceeding rent for a period of—

- (a) three months, if the rent is payable monthly or at shorter intervals than one month; or
- (b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months; or
- (c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months; or
- (d) fifteen months, if the rent is payable at intervals exceeding six months.

(2) A tacit or legal hypothec other than a landlord's hypothec in subsection (1) does not confer any preference against an insolvent estate.

### **87 Certain mortgages afford no security or preference**

A special bond or a general bond over movables other than a kustingsbrief, or a general clause in a special bond over movables or a security interest over, movables in terms of the Movable Property Security Interests Act [*Chapter 14:35*], passed or taken for the purpose of securing the payment of an existing unsecured debt or obtaining a preference for an existing concurrent debt which was incurred more than two months prior to the lodging of the bond with the registrar of deeds, or with the Collateral Registry created under Movable Property Security Interests Act [*Chapter 14:35*], in question for registration, or for the purpose of securing the payment of a debt or obtaining a preference for a debt incurred in novation of or substitution for any such first-mentioned debt, does not confer any security or preference if the application for the liquidation of the estate of the debtor is lodged with the Registrar within nine months after such lodging of the said bond with the registrar of lands or with the Collateral Registry:

Provided that a bond or security interest shall be deemed not to have been lodged as aforesaid if it was withdrawn from registration.

## **PART XV**

### **COSTS OF LIQUIDATION AND APPLICATION OF FREE RESIDUE**

### **88 Costs of liquidation**

(1) The costs of liquidation include—

- (a) the sheriff's charges incurred since the date of liquidation;
- (b) fees payable to the Master in connection with the liquidation;
- (c) the costs, as taxed by the registrar of the Court, incurred in connection with the application by a debtor for the liquidation of his or her estate or of a creditor for the liquidation of a debtor's es-

tate, excluding the costs of opposition to such application, unless the Court has ordered that such costs be included in the costs of liquidation;

- (d) the amount determined by the Master for the preparation of a statement of his or her affairs by the debtor as required by section 43;
- (e) the remuneration of the liquidator, including the costs incurred by the liquidator in giving security for the proper administration of the estate;
- (f) any expenses incurred by the Master or by a presiding officer in carrying out the provisions of this Act, unless otherwise ordered by the Master or the Court and subject to the provisions of section 60(3);
- (g) the salary, wages or fees of any person who was engaged or appointed by the liquidator in connection with the administration of the estate;
- (h) such costs incurred in the administration of a deceased estate before the liquidation of the estate as the Master may allow;
- (i) all other costs of the administration and the liquidation of the estate of the debtor.

(2) The taxed fees of the sheriff in connection with proceedings stayed in terms of section 20 must be regarded as costs of liquidation of the estate.

(3) The costs of liquidation referred to in subsections (1) and (2) rank *pari passu* and abate in equal proportion, if necessary.

### **89 Application of free residue**

(1) The free residue of an insolvent estate must be applied in the first place to defray the costs of liquidation contemplated in section 88, but excluding the costs referred to in section 84(4).

(2) In the second place the balance of the free residue must be applied to pay—

- (a) to an employee who was employed by the debtor—
  - (i) any salary or wages, for a period not exceeding three months, due to an employee;
  - (ii) any payment in respect of any period of leave or holiday due to the employee which has accrued as a result of his or her employment by the debtor in the year in which liquidation occurred and the previous year, whether or not payment thereof is due at the date of liquidation;
  - (iii) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract, wage-regulating measure or as a result of termination in terms of section 40; and
- (b) any contributions that were payable by the debtor, including contributions which were payable in respect of any of his or her employees, and which were, immediately prior to the liquidation of the estate, owing by the debtor, in his or her capacity as employer, to any pension, provident, medical aid, sick pay, holiday, unemployment or training scheme or fund, or any similar scheme or fund under any law or to such a fund administered by a bargaining or statutory council recognised in terms of the Labour Act [*Chapter 28:01*], and which does not exceed \$750 in respect of any individual employee.

(3) The claims contemplated in subsection (2)(a) may not exceed the amount of—

- (a) \$750 per employee in respect of subparagraph (i) and \$750 in respect of subparagraph (iii); and
- (b) \$250 per employee in respect of subparagraph (ii).

(4) The Minister may amend an amount mentioned in paragraph (a) or subsection 2(b) by notice in the *Gazette*.

(5) The claims referred to—

- (a) in subsection (2)(a)(i) must be preferred to the claims referred to in subsections (2)(a)(ii) and (iii) and (2)(b) and must rank equally and abate in equal proportions, if necessary;
- (b) in subsection (2)(a)(iii) must be preferred to the claims referred to in subsections (2)(a)(ii) and (2)(b) and must rank equally and abate in equal proportions, if necessary;
- (c) in subsection (2)(a)(ii) must be preferred to the claims referred to in subsection (2)(b) and rank equally and abate in equal proportions, if necessary;
- (d) in subsection (2)(b) rank equally and abate in equal proportions, if necessary.

(6) For the purposes of this section—

- (a) “salary and wages” includes all cash earnings which the employee is entitled to receive from the employer, but excludes other benefits;

(7) The Minister may by notice in the *Gazette* exclude from the operation of this section a category of employees, schemes or funds specified in the notice by reason of the fact that there exists another type of guarantee which affords the employees, schemes or funds protection which is equivalent to the protection provided by this section.

(8) A director of a liquidated company, or a member of a private business corporation, employed by the company is not entitled to payment in terms of this section.

(9) In the third place any balance of the free residue must be applied to pay maintenance due by a natural person debtor in terms of a Court order and which is in arrear at the date of liquidation of the estate, for a period not exceeding three months subject to the maximum amount of \$750.

(10) The Minister may amend the amount mentioned in paragraph (a) by notice in the *Gazette*.

(11) In the fourth place any balance of the free residue must be applied to pay simple interest from the date of liquidation to the date of payment on the claims paid in terms of subsections (1) to (9) in their order of preference at the rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

(12) In the fifth place any balance of the free residue may be applied to pay—

- (a) any tax due from the insolvent in respect of any period prior to the date of liquidation of his or her estate, whether or not that tax has become due and payable after that date; and
- (b) in the case of an insolvent partnership, so much of any tax referred to in paragraph (i) due and payable by any partner as is referable to the taxable income derived by him or her from the partnership, the amount so referable being deemed to be a sum which bears to the total amount due by him or her as the aforesaid tax the same ratio as his or her taxable income derived from the partnership bears to his or her total taxable income from all sources; and
- (c) any amount due from the insolvent in terms of the Capital Gains Tax Act [*Chapter 23:01*], in respect of any capital gain received by or accrued to or in favour of the insolvent prior to the date of liquidation of his or her estate, whether or not that amount has become due and payable after that date;
- (d) any amount due from the insolvent in terms of the Value Added Tax Act [*Chapter 23:08*], in respect of any transaction made within the period of 18 months immediately preceding the date of the liquidation of his or her estate, whether or not that amount has become due and payable after that date;
- (e) in paragraph (a) “tax” means any tax payable under the Income Tax Act [*Chapter 23:06*], other than any additional amounts of tax payable under section 46 of that Act.

(13) The claims referred to in subsection (12)(a) to (c) rank equally and abate in equal proportions, if necessary.

(14) In the sixth place the balance of the free residue must be applied to pay—

- (a) which constitutes the proceeds of any crop any statutory charges, with interest thereon calculated in the manner provided in section 113(2), relating to such crop or its proceeds:
  - Provided that—
  - (i) a notarial bond over movable property registered prior to the date of the application of the Farmers’ Stop-order Act [*Chapter 18:11*], to the class of crop concerned, shall rank prior to such statutory charges, unless the holder of such bond has registered with the Registrar of Farmers’ Stop-orders and the Registrar of Deeds a waiver of such priority. Upon registration any such waiver shall be irrevocable and shall apply in respect of all statutory charges relating to all crops of the insolvent;
  - (ii) if the trustee sells any land with standing crops thereon forming part of the estate of the insolvent in respect of which there are claims under statutory charges, the trustee and the purchaser shall agree upon a figure to represent the value of such crops;
- (b) no payments made out of the free residue in terms of subsections (1) to (11) shall be made out of that portion of the free residue which constitutes the proceeds of any crop, unless the remainder of the free residue is insufficient;
- (c) any claims under statutory charges relating to a crop shall for the purposes of section 117 [costs to which securities are subject] be deemed to be secured claims, and that section shall apply with the necessary changes, accordingly;
- (d) in this subsection “statutory charges” means prescribed costs, addressee’s fees, registered stop-orders and special stop-orders as defined in the Farmers’ Stop-order Act [*Chapter 18:11*], ranking in order of preference between themselves as provided in that Act, and the terms “crop” and “proceeds” have the meanings respectively given to them by that Act.

(15) In the seventh place the balance of the free residue must, subject to any maximum amount in terms of a bond, be applied to pay the proved claims of creditors who are holders of a general bond over movables, registered in the deeds registry, in their order of preference with simple interest from the date of

liquidation to the date of payment at the rate of interest prescribed under the Prescribed Rate of Interest Act [*Chapter 8:10*], or a higher rate of interest by virtue of a lawful, stipulation agreed upon in writing.

(16) In the eighth place any balance of the free residue must be applied to pay the concurrent claims of creditors proved against the estate, in proportion to the amount of each claim.

(17) When the concurrent claims have been paid in full, any balance of the free residue must be applied to pay simple interest on such claims from the date of liquidation to the date of payment, in proportion to the amount of each such claim.

(18) The interest referred to in subsection (15) must be calculated at the rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*], unless the amount of the claim bears interest at a higher rate of interest by virtue of a lawful stipulation agreed upon in writing.

(19) An employee of the debtor is entitled to payment in terms of subsection (2)(a) even though he or she has not proved a claim against the estate in respect thereof, but the liquidator may require the employee to submit an affidavit indicating the amount due to him or her.

## **90 Costs incurred in respect of legal services and forensic investigation**

(1) Subject to subsection (2)—

- (a) costs incurred to engage the services of legal practitioner to perform legal work on behalf of the estate except costs awarded against the estate in legal proceedings, are not subject to taxation by the taxing master of the court if the liquidator has entered into any written agreement in terms of which the fees of any legal practitioner are to be determined in accordance with a specific tariff;
- (b) costs incurred to engage the services of a forensic investigator to perform forensic investigation work on behalf of the estate are subject to taxation by the taxing master of the court.

(2) If the liquidator has not entered into an agreement contemplated in subsection (1), or there is any dispute as to the fees payable in terms of such an agreement, the costs must be taxed by the taxing master of the High Court having jurisdiction or, where the costs are not subject to taxation by the said taxing master, such costs must be assessed by the Law Society of Zimbabwe in question or, where the legal practitioner in question is not a member of the Law Society of Zimbabwe.

(3) No bill of costs based upon an agreement entered into under subsection (1) may be accepted as costs of liquidation of the estate, unless such bill is accompanied by a declaration under oath or affirmation by the liquidator stating that—

- (a) he or she had been duly authorised by either the creditors or the Master, as the case may be, to enter into such an agreement;
- (b) any legal work specified in such bill has been performed to the best of his or her knowledge and belief;
- (c) any disbursements specified in such bill have been made to the best of his or her knowledge and belief; and
- (d) to the best of his or her knowledge and belief, the legal practitioner in question has not overreached him or herself.

(4) Notwithstanding anything to the contrary contained in this Act, the Master may disallow any costs incurred under this section if any such costs are excessive, unnecessary, incorrect or improper, or if the liquidator acted in bad faith, negligently or unreasonably in incurring any such costs.

(5) If it appears to the Court that a legal representative or legal adviser has, with intent to benefit himself or herself, improperly given legal advice or acted with intent to benefit himself or herself, whether for or against an insolvent estate, or has caused any unnecessary expense in that regard, the Court may order that such expense or any part thereof be borne by that legal representative or legal adviser personally.

## **PART XVI**

### **SPECIAL PROVISIONS RELATING TO SALE OF PROPERTY BELONGING TO INSOLVENT ESTATE**

## **91 Non-compliance with provisions of Act in sale of property of insolvent estate**

(1) If property of an insolvent estate is sold without this Act having been complied with, the sale is void unless the purchaser proves that he or she acquired the property in good faith and for value and, where applicable, that a Court order authorising the sale was not a prerequisite.

(2) Any person who disposes of property of an insolvent estate in contravention of this Act is liable to make good to the estate twice the amount of the loss that the estate might have sustained as a result of such disposition.

## **92 Bona fide sale of property in possession of debtor**

(1) The owner of movable property which was in the possession or custody of a debtor immediately before the date of liquidation of that debtor's estate is, subject to section 84, not entitled to recover that property if it has, in good faith, been sold as part of the debtor's insolvent estate, unless the owner has, by standard notice in writing given before the sale to the liquidator or the Master, demanded the return of that property.

(2) If property contemplated in subsection (1) has been sold as part of the insolvent estate, the former owner of the property may recover from the liquidator, before the confirmation of the liquidator's account as contemplated in section 100, the net proceeds of the sale of that property, unless he or she has recovered the property itself from the purchaser, and thereupon he or she shall lose any right to reclaim the property as contemplated in subsection (1).

## **93 Persons incompetent to acquire property from insolvent estate**

The liquidator or an auctioneer employed to sell property of the insolvent estate in question or an employer, employee or associate of such liquidator or auctioneer may not acquire any property of the insolvent estate unless the acquisition is authorised by an order of the Court.

## **PART XVII**

### **BANKING ACCOUNTS, INVESTMENTS AND MONEYS BELONGING TO INSOLVENT ESTATE**

## **94 Banking accounts and investments**

(1) The liquidator of an insolvent estate—

- (a) must open a cheque account in the name of the estate with a bank within Zimbabwe and deposit therein all moneys received by him or her on behalf of the estate;
- (b) may open a savings account in the name of the estate with a bank within Zimbabwe and may transfer thereto from the account referred to in paragraph (a) moneys not immediately required for the payment of any claim against the estate;
- (c) may place moneys deposited in an account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a bank within Zimbabwe.

(2) The Master may request the liquidator to, in writing, furnish him or her with—

- (a) the bank and the office; or
- (b) branch office; or
- (c) agency of the bank; or
- (d) bank statement; or
- (e) any particulars the Master may require;

in relation to the accounts which he or she has opened or placed a deposit referred to in subsection (1).

(3) All cheques or orders drawn upon an account referred to in subsection (1) must contain the name of the payee and the cause of payment and must be drawn to order and be signed by every liquidator or his or her authorised agent.

(4) The Master and any surety for the liquidator, or any person authorised by such surety, has the same right to information in regard to an account referred to in subsection (1) as the liquidator himself or herself has, and may examine all vouchers relating thereto, whether in the hands of the bank or the liquidator.

(5) The Master may, after direct notice to the liquidator, direct, by notice, the manager of any office, branch office or agency at which an account referred to in subsection (1) has been opened by standard notice, to pay over into the Guardian's Fund all moneys standing to the credit of that account at the time of the receipt by the said manager of that direction, and all moneys which may thereafter be paid into that account, and the said manager must carry out that direction.

## **95 Recording of receipts by liquidator**

(1) The liquidator of an insolvent estate must immediately after his or her appointment open a record in which all moneys, goods, accounts and other documents received by him or her on behalf of the estate are recorded.

(2) The Master may at any time direct the liquidator in writing to produce the said record for inspection and every creditor who has proved a claim against the estate and, if the Master so orders, every person claiming to be a creditor or surety for the liquidator, may inspect the said record at all reasonable times.

## **96 Unlawful retention of moneys or use of property by liquidator**

(1) A liquidator who without lawful cause retains any money exceeding \$10 belonging to the insolvent estate of which he or she is liquidator, or knowingly permits his or her co-liquidator to retain such a sum of

money longer than the earliest day after its receipt on which it was possible for him or her or his or her co-liquidator to pay that money into a bank, or who uses or knowingly permits his or her co-liquidator to use any property of the insolvent estate, except for the benefit of the estate, may be ordered, in addition to any other penalty to which he or she may be liable, to pay into the estate an amount equal to double the amount so retained or double the value of the property so used, as the case may be.

(2) The amount which a liquidator is liable to pay in terms of subsection (1) may be deducted from any remuneration to which he or she is entitled out of the insolvent estate, or may be recovered from him or her by action in a Court of law at the instance of his or her co-liquidator or the Master or any creditor who has proved a claim against the estate.

## PART XVIII

### ESTATE ACCOUNTS, DISTRIBUTION AND CONTRIBUTION

#### 97 Estate Accounts

(1) Subject to subsections (5), (6) and (7), a liquidator must within six months from the date of his or her appointment as liquidator in terms of section 73(1) lodge—

- (a) a liquidation account and a distribution account with the Master of the proceeds of the property in the insolvent estate available for payment to creditors; or
- (b) if any surplus is required for the payment of claims, costs and charges or interest, a distribution account of such surplus; or
- (c) if all realisable property in the insolvent estate has been realised and brought into account and the proceeds are insufficient to cover the costs and charges referred to in section 88, a contribution account apportioning the liability for the deficiency among creditors who are liable to contribute.

(2) The accounts referred to in subsection (1) must be substantially in the form set out in Form D of the First Schedule:

Provided that the Master may insist on strict compliance with any item of the said Form.

(3) If a liquidation account is not a final account the liquidator must, at six monthly intervals or from time to time as the Master may direct, lodge with the Master periodical accounts in the form and in all other respects similar to the accounts mentioned in subsection (2).

(4) If the estate of a partnership is under liquidation, separate accounts must be lodged in respect of the partnership and the estate of each partner whose estate is under liquidation.

(5) If a liquidator is unable to lodge an account to the Master within the period of six months as required by subsection (1) or (3), he or she must before the expiration of such period, or within the further period that the Master may allow, send to the Master by standard notice an affidavit in which he or she sets out—

- (a) the reasons for his or her inability to lodge the account in question; and
- (b) an explanation of those affairs, transactions or matters relating to the debtor or the insolvent estate as the Master may require; and
- (c) the amount of money available for payment to creditors or, if there is no free residue or if the free residue is insufficient to meet all costs referred to in section 87, the deficiency the creditors are liable to make good.

(6) The Master may, after considering the affidavit, extend such period to a date determined by him or her.

(7) If the Master extends the period in terms of subsection (6) the liquidator must inform proved creditors of the extension by liquidator's notice and enclose a copy of the affidavit in terms of the subsection.

(8) If a liquidator fails to lodge an account within the period required by subsection (1) or before the date determined by the Master in terms of subsection (6), the Master may, subject to subsection (9), send a standard notice to the liquidator in which he or she is required to lodge the account in question to the Master or if he or she is unable to lodge such account, to send an affidavit contemplated in subsection (6) to the Master, within a period of 14 days from the date of the notice.

(9) The Master may, if the account in question is not lodged or the said affidavit is not sent to him or her, after the expiration of the said 14 days extend such period to a date determined by him or her.

(10) If the Master refuses to extend the period as contemplated in subsection (9), the liquidator may apply by motion to the Court, after having given the Master direct notice of his or her intention to make the application, for an order extending the said period and the Court may thereupon make such order as it considers appropriate.



(11) If, before the expiration of the period contemplated in subsection (1) or (2), a liquidator has funds in hand which, in the opinion of the Master, ought to be distributed and the liquidator has not lodged with the Master a plan for the distribution of those funds, the Master may direct him or her in writing to lodge such a plan.

(12) If any liquidator fails to lodge an account to the Master as and when required by or under this Act, or to lodge any vouchers in support of such account upon the request of the Master, or to perform any other duty imposed upon him by this Act or to comply with any reasonable demand of the Master for information or proof required in connection with the liquidation or distribution of an estate, the Master or any person having an interest in the liquidation or distribution of the estate may, after giving the liquidator not less than 14 days' standard notice, apply to the Court for an order directing the liquidator to lodge such account or any vouchers in support thereof or to perform such duty or to comply with such demand.

(13) The costs awarded to the Master or to such person must, unless otherwise ordered by the Court, be payable by the liquidator *de bonis propriis*.

### **98 Copies of liquidator's accounts to be open for inspection**

(1) A liquidator must within five days after he or she has lodged an account with the Master as contemplated in section 97, lodge a copy of the account with the magistrate of the district in which the debtor resided or carried on business before his or her liquidation if there is no Master's office in that district.

(2) The liquidator must give notice by publication in the *Gazette* that the account will lie open for inspection by any person having an interest in the estate at the place and for the period stated in the notice and must give liquidator's notice to each creditor who has proved a claim against the estate; employees who are entitled to payment in terms of section 89(19); and to any registered trade union which has notified the liquidator that it represents employees of the debtor.

(3) Every such account and every copy thereof lodged with a magistrate must be open for inspection by any person having an interest in the estate in question at the office of the Master and of such magistrate for a period of 14 days from the date of the publication of the notice in the *Gazette*.

(4) A magistrate who has received a liquidator's account must cause a notice to be affixed in a public place in or about his or her office that the account will lie open for inspection at his or her office during the period stated in the notice.

(5) After the expiration of the said period the magistrate must endorse upon the account a certificate that the account was open for inspection at his or her office as provided for in subsection (3), and must send the account by standard notice to the Master.

### **99 Objections to liquidator's account**

(1) The debtor or any person having an interest in the estate may at any time after the commencement of the period contemplated in section 98 and until the liquidator's account is confirmed in terms of section 100 lodge with the Master in writing any objection to that account, stating the reasons for such objection.

(2) If the Master is of the opinion that any such objection is well founded or if, apart from any objection, he or she is of the opinion that the account is in any respect incorrect or that it contains any improper charge or that the liquidator acted mala fide, negligently or unreasonably in incurring any costs included in the account and that the account should be amended, he or she may direct the liquidator to amend the account or may give such other direction in connection therewith as he or she may think fit.

(3) Any person, including the liquidator, who feels aggrieved by the direction of the Master or by the Master's refusal to sustain an objection so lodged may within 14 days from the date of the Master's direction apply to the Court for relief and the Court may consider the merits of the matter, hear evidence and make any order it considers appropriate.

(4) If the direction by the Court affects the interests of a person who has not lodged an objection, the account so amended must again lie open for inspection by creditors in the manner and with the notice prescribed by section 98, unless the person affected consents in writing to the immediate confirmation of the account.

### **100 Confirmation of liquidator's accounts**

When a liquidator's account has been open to inspection as prescribed by this Act and—

- (a) no objection has been lodged; or
- (b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection, if necessary, and no application for relief has been made to the Court in terms of section 99(3); or
- (c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to Court for relief;

the Master must confirm the account and his or her confirmation, notwithstanding mistakes in the account, is final save as against a person who may have been permitted by the Court before any dividend has been paid under the account, to reopen it.

### **101 Distribution of estate and collection of contributions**

(1) Immediately after the confirmation of a liquidator's account the liquidator must publish notice of the confirmation in the *Gazette* and must state in that notice that a dividend to creditors, and where applicable, shareholders or other persons, is in the course of payment or that a contribution is in the course of collection from creditors, as the case may be, and that every creditor liable to contribute is required to pay to the liquidator the amount for which he is liable.

(2) If any contribution is payable the liquidator must specify fully in that notice the address at which payment of the contribution is to be made and he or she must send a copy of the notice by liquidator's notice to every creditor who is liable to contribute.

(3) Immediately after the confirmation of a liquidator's account, but not later than two months after such confirmation, the liquidator must distribute the estate or collect from each creditor who is liable to contribute, the amount for which he or she is liable.

### **102 Liquidator to produce acquittances for dividends or pay over unpaid dividends to Master**

(1) The liquidator shall within three months after the confirmation of the account lodge with the Master the receipts for dividends paid to creditors and, if there is a contribution account, the vouchers necessary to complete the account:

Provided that a cheque purporting to be drawn payable to a creditor in respect of a dividend due to him or her and paid by the banker on whom it is drawn, or a statement by a bank that the bank of the creditor has credited or has been instructed to credit the account of the creditor with the amount of the dividend, shall be accepted by the Master in lieu of any such receipt.

(2) If any such dividend has at the expiration of a period of two months from the confirmation of the account under which it was payable not been paid to the creditor or other person who is entitled to it, the liquidator must within three months after confirmation of the account pay the dividend over to the Master who must deposit it in the Guardian's Fund on account of the creditor or other person.

### **103 Surplus to be paid into Guardian's Fund**

(1) If after the confirmation of a final account there is a surplus in an insolvent estate that is not required for the payment of claims, costs, charges or interest, the liquidator must after the confirmation of that account deal with the surplus in the manner provided for in this section.

(2) In the case of a debtor who is a natural person, the liquidator must pay the surplus over to the Master who must deposit it in the Guardian's Fund and after the rehabilitation of the insolvent pay it out to the debtor at his or her request.

(3) In the case of a debtor which is a trust, the liquidator must pay the surplus over to the trustees of the trust or, if there are no trustees, to the Master who must deposit it in the Guardian's Fund and upon application by the capital beneficiaries as determined by the trust deed, pay it out to them:

Provided that if the conditions for the capitalisation of the trust as determined by the trust deed have not yet been satisfied the Master may, after having appointed new trustees in the trust in question, pay such funds to the new trustees so appointed.

(4) In the case of a debtor which is a company, the liquidator must distribute such surplus among the shareholders according to their rights and interests in the company:

Provided that such distribution is subject to any contrary provisions contained in the memorandum or articles of such company.

(5) In the case of a debtor which is a private business corporation, the liquidator must distribute such surplus among the members according to their rights and interests in the corporation:

Provided that such distribution is subject to any contrary provisions contained in the founding statement of such corporation.

(6) In the case of a debtor which is a co-operative, the liquidator must apply such surplus as provided in section 109 of the Co-operative Societies Act [*Chapter 24:05*].

(7) In the case of debtor which is an association of persons, the liquidator must distribute such surplus among the members according to their rights and interests in the association:

Provided that such distribution is subject to any contrary provisions contained in the founding statement, constitution, memorandum or articles of association of such association.

(8) In the case of a debtor that is a partnership, section 65 applies.

## **104 Contribution by creditors towards cost of liquidation**

(1) Where there is no free residue in an insolvent estate, or where the free residue is insufficient to meet all the costs mentioned in section 88, the rules set out in this section apply with regard to the liability of creditors to pay contributions towards defraying any such deficiency.

(2) The creditor upon whose application the liquidation order was made, whether or not he or she has proved a claim against the estate, is liable to contribute not less than the amount he or she would have had to contribute if he or she had proved a claim for the amount stated in his or her application for liquidation and where he or she is a secured creditor, without reliance on his or her security.

(3) Each concurrent creditor is liable to pay a contribution in proportion to his or her concurrent claim.

(4) If a creditor has withdrawn his or her claim, he or she is liable to pay a contribution only so far as is provided in section 7, and if a creditor withdraws his or her claim within five days after the date of any resolution of creditors he or she must be regarded as having withdrawn the claim before anything was done in pursuance of that resolution.

(5) If a claim has been reduced or disallowed by a liquidator in terms of section 67(4) the creditor is, unless the claim is subsequently admitted by means of compromise or proved in action at law, liable to pay a contribution, in respect of costs incurred before the date of notice referred to in the said subsection on the amount of the claim before the claim was reduced or disallowed, and in the case of a reduced claim in respect of costs incurred after the date of the said notice, on the amount to which the claim was reduced by the liquidator.

## **105 Enforcing payment of contribution**

(1) If a creditor who is liable to contribute in terms of an account has failed to pay the amount of his or her liability within a period of 30 days after the date of the sending or delivery to him or her of a notice referred to in section 101(2), the liquidator may take out a warrant of execution for the amount of the creditor's liability in the magistrate's Court in which the creditor could have been sued for the contribution in question.

(2) Whenever a creditor who is liable to contribute in terms of an account is unable to pay the contribution for which he or she is liable, or whenever the liquidator has incurred expenses in connection with the recovery of any contribution, which expenses are irrecoverable, the liquidator must as soon as practicable and in any event within such period as the Master may prescribe, frame and lodge with the Master a supplementary contribution account wherein he or she must apportion the share of the creditor who is unable to pay or the expenses in question among the other creditors who are able to pay.

(3) Subsection (2) applies with the necessary changes whenever a creditor who is liable to contribute in terms of a first or further supplementary account is unable to pay the contribution for which he or she is liable, or whenever the liquidator has incurred expenses in connection with the recovery of a contribution in terms of a first or further supplementary account which is irrecoverable by the liquidator.

(4) The liquidator may in lieu of complying with section 98 in connection with any supplementary contribution account, send a copy of that account by liquidator's notice to every creditor who is liable to contribute and thereupon subsection (1) applies with the necessary changes.

## **PART XIX**

### **REHABILITATION OF NATURAL PERSONS**

## **106 Rehabilitation**

(1) A debtor who is a natural person may, subject to subsection (2), apply to the Court for an order for his or her rehabilitation—

- (a) at any time after the confirmation by the Master of a distribution account providing for the full payment of all claims proved against the estate, with interest thereon from the date of liquidation, calculated in terms of section 89(15) and (16) and all costs of liquidation; or
- (b) at any time after the Master has issued a certificate of acceptance of a composition as contemplated in section 120; or
- (c) in any other case after the expiration of four years from the date of the confirmation by the Master of the first liquidation account in the estate.

(2) In the case where a debtor has been convicted, in respect of the existing or any prior insolvency, of an offence referred to in section 150(1)(a), (b), (d), (e) or (g) or 2(e) or (f) or of any other fraudulent act, the debtor may not apply to the Court for an order for his or her rehabilitation before a period of five years has elapsed from the date of the conviction in question.

(3) The Master may on the request of the debtor recommend to the Court that an application referred to in subsection (1)(c) may be made before the expiration of the said period of four years, but no such application may be made within a period of 12 months from the said date or, in the case where the debtor's estate was liquidated prior to the liquidation in respect of which he or she applies for rehabilitation, within a period of three years from the said date.

(4) A debtor who wishes to apply for a rehabilitation order must—

- (a) send a standard notice of his or her intended application—
  - (i) in the case of an application contemplated in subsection (1)(a), to the Master and the liquidator, not less than four weeks before the date of the intended application; or
  - (ii) in the case of an application contemplated in subsection (1)(b), (c) or (d), to the Master and the liquidator, not less than six weeks before the date of the intended application, and by way of the publication of a notice in the *Gazette*, and he or she must send a copy of the said notice by standard notice to every creditor of the estate whose name and address are known to him or her or which he or she can readily obtain; and
- (b) furnish security to the registrar of the Court in the amount of or to the value of \$500 in respect of the costs of any person who may oppose the application for rehabilitation, and who may be awarded costs by the Court.

(5) The Minister may amend the amount mentioned in subsection (4)(b) by notice in the *Gazette* so as to take account of subsequent fluctuations in the value of money.

(6) The notice referred to in subsection (4)(a)(i) or (ii) must state the estimated value and reflect full details of the assets of the debtor at the time of the application.

(7) A debtor must in support of his or her application for rehabilitation submit an affidavit stating that he or she has made a complete surrender of his or her estate and that he or she has not granted or promised any benefit to any person or entered into any secret agreement with intent to induce the liquidator of the estate or any creditor not to oppose the application for rehabilitation.

(8) The said affidavit must contain a statement of his or her assets and liabilities and of his or her earnings, and his or her own as well as his or her spouse's contribution to his or her household on the date of the application.

(9) The Court must be apprised of the dividend, if any, paid to his or her creditors, what further assets in the insolvent estate are available for realisation and the estimated value thereof, the total amount of all claims proved against the estate, and the total amount of his or her liabilities at the date of liquidation of his or her estate.

(10) If application is made for rehabilitation pursuant to subsection (1)(b), the debtor must set out the particulars of the composition and state whether there are or are not creditors whose claims against the estate have not been proved, and if there are such creditors, state their names and addresses and particulars of their claims.

(11) A liquidator who has received a notice contemplated in subsection (4)(a) must report to the Master any facts that would justify the Court in refusing, postponing or qualifying, the debtor's rehabilitation.

(12) A partnership whose estate has been liquidated may not be rehabilitated.

### **107 Opposition to rehabilitation or refusal of rehabilitation by Court**

(1) In an application for rehabilitation—

- (a) the Master must report to the Court on the merits of the application and furnish a copy of the report to the applicant or the applicant's legal practitioner;
- (b) the Master, the liquidator or any other person having an interest in the estate may appear in person or through a legal representative to oppose the application.

(2) If the Court is satisfied on the strength of a certificate by the Master or on any other evidence that the debtor has intentionally impeded, obstructed or delayed the administration of the insolvent estate by—

- (a) failing to submit a statement of affairs in accordance with the requirements of the Act; or
- (b) failing to make available to the liquidator of the estate, in accordance with written directives by the liquidator or the Master, property belonging to the insolvent estate which was in his or her possession or custody or under his or her control or any book, document or record relating to his or her affairs which was in his or her possession or custody or under his or her control; or
- (c) failing to notify the liquidator of the estate of the existence of any book, document, or record relating to his or her affairs which was not in his or her possession or custody or under his or her control, and as to where such book, document, or record could be found, or of any property belonging to his or her insolvent estate which was not mentioned in his or her statement of affairs, and as to where such property could be found; or

- (d) failing to keep the liquidator of the estate informed of any change of his or her address during the period of three years after the liquidation of his or her estate; or
- (e) failing to comply with section 21(3); or
- (f) by means of any other act or omission;

the Court must refuse to grant a rehabilitation order until the expiry of a period of 10 years after the date of liquidation of the debtor's estate.

(3) The court may—

- (a) refuse the application or postpone the hearing of the application or grant the application for rehabilitation subject to any condition it may think fit;
- (b) order the debtor to consent to judgment against him or her for the unpaid portion of a debt proved against the estate or which could have been proved against the estate or for such lesser amount as the Court may determine;
- (c) apart from such judgment, impose any other condition with regard to any property or income which may in future accrue to the debtor;
- (d) the Court may order the debtor to pay the costs of any opposition to the application for rehabilitation, unless the Court is satisfied that the opposition is vexatious.

(4) If the Court makes an order in terms of paragraph (b) no execution may take place in terms of the judgment, save with permission of the Court and after proof that the debtor has since the date of liquidation of the estate acquired property or income which is available for the payment of his or her debts.

(5) When granting an order for rehabilitation in respect of an application made in terms of section 106(1)(b), the Court may order that any obligation incurred by the applicant on or before the date of liquidation of his or her estate and which but for the order would be discharged as a result of the rehabilitation, remains of full force and effect notwithstanding the rehabilitation.

(6) The registrar of the Court must forthwith give standard notice to the Master of every order for rehabilitation which is granted by the Court.

### **108 Rehabilitation by effluxion of time**

(1) Any natural person debtor not rehabilitated by the Court within a period of 10 years from the date of liquidation of his or her estate, is regarded as having been rehabilitated after the expiry of that period unless a Court upon application by an interested person and after standard notice to the debtor, orders otherwise prior to the expiration of the period of 10 years.

(2) If a Court makes an order under subsection (1), the registrar of the Court must send a copy of the order by standard notice to the Master and every officer charged with the registration of titles to immovable property in Zimbabwe and the Master must send a copy of the order to the liquidator by standard notice.

(3) Whenever such officer receives such order he or she must enter a caveat against the transfer of all immovable property and the cancellation of every bond registered in the name of the debtor or which belongs to the debtor.

(4) The *caveat* remains in force until the date on which the debtor is rehabilitated.

### **109 Effect of rehabilitation**

(1) Subject to subsection (2) and any conditions that the Court may have imposed when granting an order for rehabilitation, the rehabilitation of a debtor has the effect—

- (a) of putting an end to the liquidation;
- (b) of discharging all debts of the debtor which were due, or the cause of which had arisen, on or before the date of liquidation, and which did not arise out of any fraud on his or her part or the commission by him or her of any offence referred to in section 149(1)(e) or section 149(1)(c) in respect of a previous liquidation; and
- (c) of relieving the debtor of every disability resulting from the liquidation.

(2) The rehabilitation of a debtor does not affect—

- (a) the rights of a liquidator or of creditors under a composition;
- (b) the powers or duties of the Master or the duties of the liquidator in connection with a composition;
- (c) the right of the liquidator or of creditors to any part of the debtor's estate which is vested in the liquidator but as yet not distributed by him or her;
- (d) the liability of a surety for the debtor;
- (e) the liability of any person to pay any penalty or suffer any punishment under any provision of this Act.

(3) Evidence of a conviction on any offence contemplated in subsection (1)(b) is admissible in subsequent civil proceedings as *prima facie* evidence that the debtor committed the offence in question.

### **110 Penalties for unlawful inducement to accept compromise or in connection with rehabilitation**

(1) It is unlawful for any person to offer or promise to any other person a benefit in order to induce him or her to accept an offer of composition or to agree to or to refrain from opposing an application for the rehabilitation of a debtor, or as a consideration for his or her acceptance of an offer of composition or for supporting or refraining from opposing an application for the rehabilitation of a debtor.

(2) Any person who has accepted or agreed to accept any such benefit, whether for himself or herself or for any other person, is liable to pay, by way of penalty, for the benefit of the other creditors of the insolvent estate—

- (a) a sum equal to the amount of any claim proved by him or her against the estate; and
- (b) the amount or value of the benefit promised or given; and
- (c) in the case of a composition, the amount paid or to be paid to him or her under the composition.

(3) The liquidator is competent to enforce the penalty referred to in subsection (1) and if he or she fails to do so any creditor of the estate may enforce the penalty in the name of the liquidator, if he or she indemnifies the liquidator against all costs in connection with such action.

## **PART XX**

### **SPECIAL PROVISIONS RELATING TO TRUSTS, COMPANIES AND OTHER DEBTORS IN LIQUIDATION OTHER THAN NATURAL PERSONS OR PARTNERSHIPS**

### **111 Provisions relating to contributories in case of company limited by guarantee or a non-profit company**

(1) In the case of a liquidation by the Court or of a creditors' voluntary liquidation by resolution of a company incorporated in terms of the Companies Act [*Chapter 24:31*], limited by guarantee, the liquidator must, if necessary, settle a list of contributories.

(2) A former member of a company limited by guarantee is not liable to contribute to its assets unless at the commencement of the liquidation there is unsatisfied debt or liability of the company contracted before he or she ceased to be a member.

(3) As soon as the liquidator has settled the list of contributories, he or she must send a liquidator's notice to every person included in the list, stating that fact and the extent of the liability of that person.

(4) Any person who objects to his or her inclusion in the list, is entitled within 14 days from the date of the notice to lodge an objection with the liquidator in the form of an affidavit giving full reasons why he or she should not be included in the list.

(5) The liquidator may accept the objection and amend the list of contributories or may reject such objection and, if the objection is rejected, must notify the person in question accordingly by standard notice.

(6) A person whose objection has been rejected, may within 14 days from the date of the notice provided for in subsection (3), apply to the Master for a ruling as to whether his or her name should be included in the list, and the Master must direct the liquidator to include his or her name or to exclude it from the said list.

(7) A liquidator must recover from the contributories such proportion of their liability as may be required from time to time, taking into consideration the probability that some of the contributories may partly or wholly fail to pay the amount demanded from them.

(8) In the event of the death of any contributory or the insolvency of his or her estate, the liquidator may recover the contribution from the contributor's estate in question.

(9) The liability for the payment of any amount by a contributory to the company is a debt due by him or her to the company as from the date on which the amount was demanded by the liquidator.

(10) A contributory may not set off against his or her liability any amount due by the company in respect of dividends, profits or directors' remuneration.

(11) The liquidator must adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

(12) A letter of demand by the liquidator to a contributory for the payment of a contribution is *prima facie* evidence of the amount due.

(13) All books and papers of the company and of the liquidator are, as between the contributories and the company, *prima facie* evidence of the truth of all matters recorded therein.

### **112 The Prosecutor-General may make application to Court for disqualification of director**

In the circumstance contemplated in the relevant provisions of the Companies Act [*Chapter 24:03*], the Prosecutor-General must consider an application for an order declaring a person delinquent in terms of that Act.

### **113 Registrar of Companies to keep register of directors of dissolved companies and members of other bodies corporate**

(1) The Registrar of Companies must establish and maintain a register of directors of companies and members of private business corporations or other bodies corporate which have been dissolved and which were liquidated in terms of this Act, and cause to be entered therein, in respect of each such director or member—

- (a) his or her full forenames and surname, and any former forenames and surname, his or her nationality, if not Zimbabwean, his or her occupation, his or her date of birth and his or her last known residential and postal addresses;
- (b) the name of the company, private business corporation or body corporate of which he or she was a director or member, as the case may be, when such company or body corporate was dissolved and, where more than one company, private business corporation or body corporate was dissolved at the same time, the names of those companies, private business corporation or bodies corporate;
- (c) the date of his or her appointment as director or the date on which he or she became a member;
- (d) the date of dissolution of the company, private business corporation or body corporate.

(2) The liquidator must, within 14 days after the date of the certificate referred to in section 112(1), send by standard notice to the Registrar of Companies on a prescribed form, in duplicate, in respect of each director of the company or member of the private business corporation or body corporate who was a director or member within two years before the commencement of the liquidation, the particulars referred to in subsection (1)(a) to (d), together with a statement as to which director or member was the effective cause of the company or body corporate being liquidated in terms of this Act.

(3) The Registrar of Companies must, under cover of a prescribed form, send to each director or member by standard notice one copy of the particulars furnished in terms of subsection (2) in respect of that director or member.

(4) A director or member may, within one month of the date of the form referred to in subsection (3), object by affidavit or otherwise, to his or her name being entered in the register referred to in subsection (1).

(5) If after considering any objections made by or on behalf of a director or member the Registrar of Companies intends to enter the name of a director or member in the register, he or she must send a standard notice to such director or member accordingly.

(6) Any person aggrieved by the decision contemplated in subsection (5) may, within one month of the date of such decision, apply to the Court for relief.

(7) The Registrar of Companies must on the expiration of one month after the date of his or her decision under subsection (5) or, if an application under subsection (6) is pending, after the application has been disposed of and if the Court has not ordered otherwise, enter the name of the director or member in the register.

(8) Any liquidator who fails to comply with the provisions of subsection (2), is guilty of an offence and liable on conviction to fine not exceeding level 5 or imprisonment for a period not exceeding six months or both to such fine and imprisonment.

### **114 Change of address by directors and secretaries and certain former directors and secretaries**

(1) Every director and secretary of a company, and every member of a private business corporation, which is being liquidated and who, before the liquidator's final account has in terms of section 100 been confirmed, changes his or her residential or postal address must notify the liquidator by standard notice of the new address, within 14 days after such change.

(2) If the liquidator has not been appointed on the date of such change, the director or secretary or member must notify the liquidator within 14 days after the appointment of the liquidator.

(3) Any person who fails to comply with any requirement of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding level 5 or imprisonment for a period not exceeding six months or to both a fine and imprisonment.

### **115 Restoration of property and payment of compensation**

Where in the course of the liquidation of a company or of a private business corporation incorporated in terms of the Companies Act [*Chapter 24:31*], it appears that a person who has taken part in the formation or promotion of the company, or any past or present director or an officer of the company, or past or present member or officer of the private business corporation, has misapplied or retained or become liable or accountable for any money or property of the company or private business corporation, or has been guilty of any breach of faith or trust in relation to the company or private business corporation, the Court may, on the application of the Master or of the liquidator or of any creditor or shareholder or member or contributory of the company or private business corporation, enquire into the conduct of the promoter, director, member or officer in question, and may order him or her to repay or restore the money or property or any part thereof, with interest at a rate determined by the Court, or to contribute such sum to the assets of the company or private business corporation by way of compensation in respect of the misapplication, retention, breach of faith or trust as the Court considers appropriate.

### **116 Private prosecution of directors and others**

(1) If it appears in the course of the liquidation of a trust, company, private business corporation, cooperative or another debtor other than a natural person or partnership, that any past or present trustee, director, shareholder, member or officer of the debtor has been guilty of an offence for which he or she is criminally liable, the liquidator must cause all the facts known to him or her which appear to constitute the offence to be laid before the Prosecutor-General in question and, if the Prosecutor-General declines to prosecute, the liquidator may, subject to section 49 institute and conduct a private prosecution in respect of such offence.

(2) The Court may, on application by the liquidator, order the whole or any portion of the costs and expenses incidental to such private prosecution to be paid out of the assets of the debtor in priority to all other liabilities.

## **PART XXI**

### **PERSONAL LIABILITY FOR FRAUDULENT, RECKLESS OR INSOLVENT TRADING**

### **117 Liability for fraudulent or reckless conduct of business**

When a debtor is liquidated and it appears that any business of the debtor was or is being carried on recklessly or with intent to defraud creditors of the debtor or creditors of any other person or for any fraudulent purpose, the Court may, on the application of the Master, the liquidator, any creditor, shareholder, member or contributory of the debtor, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, is responsible, without any limitation of liability, for such of the debts or other liabilities of the debtor as the Court may direct irrespective of whether the debtor can pay the debts or other liabilities.

### **118 Insolvent trading**

(1) If a debtor is liquidated the Court may, upon application, declare that any person responsible for the management of the debtor who caused or allowed the debtor to incur a debt at a time when he or she knew or had reasonable grounds to suspect that the debtor would not be able to pay such debt as well as its other debts as they fell due, is liable for such of the debts or other liabilities of the debtor as the Court may direct.

(2) The Court must determine the amount payable with reference to the loss that was or will be suffered by the creditors on account of the insolvent trading.

(3) The amount so determined must be paid to the applicant for distribution among the creditors represented in the application, or for distribution in such other manner as the Court considers appropriate in the circumstances.

(4) In determining the amount and its fair distribution among the creditors, the Court must have regard to the extent to which a particular creditor negligently or intentionally contributed to his or her own loss.

(5) The facts which a person referred to in subsection (1) ought to know or ascertain, the conclusions which he or she ought to reach and the steps which he or she ought to take are those which would be known or ascertained or reached or taken by a reasonable diligent person having both—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out similar functions as are entrusted to and carried out by that person in relation to the debtor; and

(b) the general knowledge, skill and experience that such person has.

(6) Proof that—



- (a) the liabilities (including prospective and contingent liabilities) of the debtor exceeded its assets, fairly valued, when the debt was incurred; or
- (b) that the particular person committed an offence in respect of the accounting records of the debtor in respect of the period during which the debt was incurred; or
- (c) that the particular person failed to take all reasonable steps to ensure that the accounting records in respect of the period during which the debt was incurred are surrendered or transferred to the liquidator;

is proof until the contrary is proved that the particular person, at the time the debt was incurred, had reasonable grounds to believe that the debtor would not be able to pay its debts as they fell due.

(7) Without prejudice to the defences that may be raised against an application under this section, a person, if he or she establishes one or more of the following defences, will not be held liable in terms of subsection (1) where, at the time the debt was incurred—

- (a) he or she had no knowledge of the transaction and could not reasonably be expected to have had knowledge of such a transaction; or
- (b) he or she believed that the debtor would be able to repay the debt because a competent and reliable person was responsible for monitoring the solvency of the debtor and for reporting to him or her and was fulfilling that responsibility satisfactorily; or
- (c) he or she did not take part in the management of the debtor on account of illness or for some other good reason; or
- (e) he or she took all reasonable steps to prevent the debtor from incurring such debt; or
- (f) he or she took all reasonable steps to ensure that the creditor is informed that the debtor had reasonable grounds to believe that it would not be able to repay that debt when it fell due.

(8) The provisions of this section shall apply notwithstanding that the person or persons in question may be criminally liable in respect of the matters on which the declaration by the Court is based.

## PART XXII

### COMPOSITIONS

#### **119 Pre-liquidation composition with creditors**

(1) Any debtor with debts less than \$20 000, other than a debtor who is a company, who cannot pay his or her debts and who wants to offer his or her creditors a composition, may lodge a signed copy of the composition and a complete sworn statement in the form prescribed in the Third Schedule with an administrator—

- (a) who is not disqualified from being a liquidator in terms of section 74; and
- (b) has agreed to act in the matter; and
- (c) has furnished security to the satisfaction of the Master within whose area of jurisdiction the debtor is resident for the amount determined by the Master.

(2) If the composition provides for the immediate payment of a cash amount for distribution among creditors, the debtor must, pending the outcome of the offer of composition, pay the cash to the administrator to invest the amount in an interest-bearing savings account.

(3) If a debtor incurs debt during the period between lodging the composition and the date on which the creditors vote on the composition, he or she must inform the creditor who offers him or her credit of the pending composition and provide the insolvency practitioner with full particulars concerning any such debt incurred by him or her.

(4) A debtor may not alienate, encumber or voluntarily dispose of any property that is made available to creditors in terms of the composition, or do anything that can impede compliance with the composition.

(5) A debtor who contravenes this section is guilty of an offence and is liable on conviction to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(6) On receipt of the composition and statement, the administrator must determine a date for the questioning of the debtor and the consideration of the composition by the creditors.

(7) The administrator must—

- (a) convene a hearing at a place which is accessible and convenient to creditors; and
- (b) at least 14 days before the hearing send creditors and the Master a standard notice with the time date and place of the hearing, and a copy of the composition and of the statement.

(8) At the hearing—

- (a) a creditor may, whether he or she has received notice or not, prove a debt or object to a debt listed in the statement by the debtor;

- (b) every debt listed by the debtor in the said statement is, subject to any amendments to it by the administrator, deemed to be proved, unless a creditor objects to it or the administrator rejects it or requires that it be corroborated by evidence;
- (c) a creditor whose debt is being objected to by the debtor or another creditor or who is required by the administrator to corroborate his or her debt with evidence, must prove the debt;
- (d) the administrator may defer the proof of a debt and the consideration of the composition, or allow the other creditors to vote on the composition, and if a composition is accepted, the debt may be added to the listed debts at a later stage when it is proved;
- (e) the debtor or management of such debtor may be questioned by the administrator and by any creditor whose debt has been acknowledged or proved, or by any other interested party with the permission of the administrator, about—
  - (i) his or her assets and liabilities;
  - (ii) where applicable, his or her present and future income and that of his or her spouse living with him or her;
  - (iii) where applicable, his or her standard of living and the possibility of living more frugally;
  - (iv) any other matter which the administrator considers to be relevant.

(9) If it appears to the administrator at the hearing that a debt, other than a debt that is based upon or derives from judgment debt, is disputed between the debtor and the creditor or between the creditor and another creditor of the debtor, the administrator may, after investigation of the objection, admit or disallow the debt or part thereof.

(10) Any person whose debt has been disallowed in terms of subsection (8) may institute an action or continue with an action that has already been instituted in respect of such debt.

(11) If a person contemplated in subsection (10) obtains judgment in respect of a debt contemplated in that subsection, the amount of the judgment must be added to the list of proved debts.

(12) A creditor may by written power of attorney authorise any person to appear at a hearing on his or her behalf and to do everything at such hearing which the creditor would have been entitled to do.

(13) The hearing may be deferred by the administrator, and the proposed composition may be amended or revoked with the permission of the debtor.

(14) A composition may not be accepted if a creditor demonstrates to the satisfaction of the administrator that it accords a benefit to one creditor over another creditor to which he or she would not have been entitled on liquidation of the debtor's estate.

(15) If the composition is accepted by the majority in number and two-thirds in value of the concurrent creditors who vote on the composition, the administrator must send a certificate that the composition has been accepted as such by standard notice to the Master and creditors, and thereafter the composition is binding on all creditors who received notice of the hearing or who appeared at the hearing, but the right of a secured or otherwise preferent creditor is not prejudiced by the composition, unless he or she consents to the composition in writing.

(16) The administrator must within six months after the acceptance of the composition and every six months thereafter until the composition has been implemented, send an account of receipts, expenses and payments by standard notice to creditors and the Master.

(17) If the Master is of the opinion that the account is in any respect incorrect or that it contains any improper charge or that the liquidator acted *mala fide*, negligently or unreasonably in incurring any costs included in the account and that the account should be amended, the Master may direct the administrator to amend the account or may give such other direction in connection therewith as he or she may think fit.

(18) The provisions of sections 94, 95, 96, 97(5), 97(7), 97(10), 97(11) and 192 applies with the necessary changes to an administrator.

(19) If the composition provides for payments by the debtor in determined instalments or otherwise, the acceptance of the composition has the effect of an order in terms of section 18 of the Magistrates Courts Act [*Chapter 7:10*] and shall be enforced by the Court upon registration by the interested party, in respect of the payments.

(20) Any person who in terms of the composition receives the payments on behalf of creditors, or if there is no such person, any creditor who is in terms of the composition entitled to a benefit out of the payments, has the rights which a judgment creditor would have in terms of that section.

(21) The administrator is entitled to the remuneration which is payable in terms of the composition.

(22) The administrator may—

- (a) at any time on application by the debtor or an interested person direct the debtor to appear for such further questioning as the Court may consider necessary, after standard notice to creditors of at least 14 days by the debtor or the interested person, as the case may be;
- (b) revoke the composition for reasons contemplated in subsection (23);
- (c) authorise a debtor who on reasonable grounds is not able to comply with his or her obligations in terms of the composition to lodge an amended composition to creditors in the manner and with the consequences contemplated in subsection (1).

(23) Reasons for which a composition may be revoked include—

- (a) failure by the debtor to comply with his or her obligations in terms of the composition; or
- (b) if the debtor renders false information in his or her statement or in the course of the questioning; or
- (c) if the debtor gives a benefit in respect of a claim that falls under the composition to a creditor on whom the composition is binding and who is not entitled to the benefit in terms of the composition.

(24) Any creditor who is entitled to a benefit in terms of the composition may, notwithstanding subsection (19), after 14 days standard notice to the debtor apply to the administrator to revoke the composition if the debtor does not comply with his or her obligations in terms of the composition.

(25) The creditor must lodge an affidavit in support of his or her application.

(26) The administrator must order that the composition be revoked if the debtor did not substantially comply with his or her obligations.

(27) If the composition is revoked, or if the estate of a debtor has been liquidated in terms of this Act before he or she complied with his or her obligations in terms of the composition, the claim of a creditor is restored to the extent that the claim has not been satisfied in terms of the composition.

(28) If a composition is not accepted by the required majority, and the debtor is unable to make available to creditors substantially more than that which he or she offered in the proposed composition—

- (a) the administrator must declare that the proceedings in terms of this clause have ceased and that the debtor is once again in the position he or she was prior to the commencement thereof and lodge a copy of the declaration with the Master and known creditors by standard notice; and
- (b) the Master may, upon application by the debtor, grant a discharge of debts of the debtor other than secured or preferred debts if—
  - (i) the debtor satisfies the Master that the administrator and all known creditors were given standard notice of the application for the discharge with a copy of the debtor's application at least 28 days before the application to the Master; and
  - (ii) the Master is satisfied after consideration of comments, if any, by creditors and the administrator and the application by the debtor—
    - A. that the proposed composition was the best offer which the debtor could make to creditors;
    - B. that the inability of the debtor to pay debts in full was not caused by criminal or inappropriate behavior by the debtor.

(29) Between the determination of a date for a hearing and the conclusion of the hearing, no creditor with a claim the cause of which arose before the determination of the date may without the permission of the Court institute any action against the debtor or apply for the liquidation of the estate of the debtor.

## **120 Post-liquidation composition**

(1) A debtor other than a company may at any time after the issuing of the first liquidation order but after he or she has sent his or her statement of affairs by standard notice as required by section 43, lodge with the liquidator of his or her estate a written offer of composition.

(2) If the liquidator is of the opinion that there is a likelihood that the creditors of the estate will accept the offer of composition, he or she must as soon as possible after the receipt of the offer send a copy thereof, together with his or her report and notice of the time and the place of the meeting at which the composition will be considered, by standard notice to every creditor whose name and address are known to the liquidator or which he or she can reasonably obtain.

(3) If a special meeting is convened to consider a composition the notice in the *Gazette* must be published not less than 14 days and not more than 21 days before the date fixed for the meeting.

(4) If the liquidator is of the opinion that there is no likelihood that creditors will accept the offer of composition, he or she must inform the debtor by standard notice that the offer is unacceptable and that he or she does not propose to send a copy thereof to the creditors.

(5) The debtor may thereupon require the Master to review the liquidator's decision and the Master may, after having considered the offer and the liquidator's report, direct the liquidator to submit the offer to the creditors of the estate in the manner provided for in subsection (2).

(6) If the offer is accepted by a majority in number and two-thirds in value of the concurrent creditors who have voted on the offer and payment under the composition has been made or security for such payment has been given as specified in the composition, the Master must issue a certificate to the debtor to the effect that the composition offer has been accepted.

(7) An offer of composition is invalid if it contains any condition under which any creditor would obtain as against another creditor a benefit to which he or she would not have been entitled if the estate had been distributed in the ordinary manner.

(8) Subject to subsection (7), a condition providing for the discharge of a provisional liquidation order or the setting aside of a final liquidation order upon the acceptance of an offer of composition, is not invalid.

(9) If the composition provides for the giving of security, the nature of the security must be specified fully and if it consists of a surety bond or guarantee, every surety must be named.

(10) If the offer of composition contained incorrect information which caused a majority of creditors to vote in favour of its acceptance, or if the debtor or another person has failed to give effect to any term of the composition or to comply with this section, the liquidator may, despite the absence of a resolution of creditors authorising him or her to do so, approach the Court for the cancellation of a composition, the setting aside of an order providing for the discharge of a first liquidation order or an order setting aside a final liquidation order, or other relief.

(11) An offer of composition which has been accepted is binding upon the debtor and upon all creditors of the insolvent estate in so far as their claims are not secured or preferent, but the right of any secured or preferent creditor is not prejudiced thereby except in so far as he or she has expressly and in writing waived his or her preference.

(12) If the composition is subject to the condition that any property in the insolvent estate must be restored to the debtor, the acceptance of the composition divests the liquidator of such property and vests it in the debtor as from the date on which such property is in terms of the composition to be restored to the debtor.

(13) A composition does not affect the liability of a surety for the debtor or any liability regarding transactions that are invalid or liable to be set aside.

(14) When the estate of a partnership and the estate of a partner in that partnership are simultaneously under liquidation, the acceptance of an offer of composition by the separate creditors of the partner does not take effect until the expiration of a period of six weeks as from the date of a standard notice of that acceptance given by the liquidator of the partner's separate estate to the liquidator of the partnership estate or, if the liquidator of the partner's estate is also the liquidator of the partnership estate, as from the date of the acceptance of the composition.

(15) The said notice must be accompanied by a copy of the deed embodying the composition.

(16) At any time during the period of six weeks referred to in subsection 12(a), the liquidator of the partnership estate may take over the assets of the estate of the insolvent partner if he or she fulfils the obligations of the insolvent partner in terms of the composition, other than obligations to render any service or obligations which only the insolvent partner can fulfil:

Provided that if the composition provides for the giving of any specific security, the Master need determine what other security the liquidator of the partnership estate may give in lieu thereof.

(17) Any moneys to be paid and anything to be done for the benefit of creditors in pursuance of a composition must be paid and done, as far as practicable, through the liquidator.

(18) Any creditor who has failed to prove his or her claim before the liquidator has made a final distribution among those creditors who have proved their claims, may recover direct from the debtor within six months from the confirmation by the Master of the account under which the distribution was made, any payments to which he or she may be entitled under the composition and the liquidator has no duty in regard thereto.

(19) After the said distribution the creditor has no claim against the insolvent estate.

(20) When a composition has been entered into between a debtor and the creditors of his or her estate and the liquidation order has not been discharged or set aside, the liquidator of that estate must frame a liquidation account and distribution account of the assets which are or will become available for distribution among the creditors under the composition.

(21) All the provisions of this Act that relate to a liquidation account and distribution account of assets among creditors apply in connection with the liquidation account and distribution account, and the assets.

## PART XXIII

### CORPORATE RESCUE

#### SUB-PART A — CORPORATE RESCUE PROCEEDINGS

### 121 Application

(1) In this Part—

- (a) “affected person”, in relation to a company, means—
  - (i) a shareholder or creditor of the company; and
  - (ii) any registered trade union representing employees of the company; and
  - (iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;
- (b) “corporate rescue” means proceedings to facilitate the rehabilitation of a company that is financially distressed by providing for—
  - (i) the temporary supervision of the company, and of the management of its affairs, business and property; and
  - (ii) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
  - (iii) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company;
- (c) “corporate rescue plan” means a plan contemplated in section 142;
- (d) “corporate rescue practitioner” means a person appointed, or two or more persons appointed jointly, in terms of this Part to oversee a company during business rescue proceedings and “practitioner” has a corresponding meaning;
- (e) “Court” means the High Court of Zimbabwe;
- (f) “financially distressed”, in reference to a particular company at any particular time, means that—
  - (i) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or
  - (ii) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;
- (g) “independent creditor” means a person who—
  - (i) is a creditor of the company, including an employee of the company who is a creditor in terms of section 137(2); and
  - (ii) is not an associate of the company, a director, or the practitioner, subject to subsection (2);
- (h) “rescuing the company” means achieving the goals set out in the definition of “corporate rescue” in paragraph (b);
- (i) “supervision” means the oversight imposed on a company during its business rescue proceedings;
- (j) “voting interest” means an interest as recognised, appraised and valued in terms of section 138(4) to (6).

(2) For the purpose of subsection (1)(g), an employee of a company is not an associate of that company solely as a result of being a member of a trade union that holds securities of that company.

### 122 Company resolution to commence corporate rescue proceedings

(1) Subject to subsection (2)(a), the board of a company may resolve that the company voluntarily begin corporate rescue proceedings and place the company under supervision, if the board has reasonable grounds to believe that—

- (a) the company is financially distressed; and
- (b) there appears to be a reasonable prospect of rescuing the company.

(2) A resolution contemplated in subsection (1)—

- (a) may not be adopted if liquidation proceedings have been initiated by or against the company; and

(b) has no force or effect until it has been filed with the Master of the High Court and—

- (i) the Registrar of Companies in the case of a company;
- (ii) the Registrar of Co-operative Societies in the case of a Co-operative Society.

(3) Within five business days after a company has adopted and filed a resolution, as contemplated in subsection (1), or such longer time as the Master, on application by the company, may allow, the company must—

- (a) give notice of the resolution, and its effective date, by standard notice to every affected person, including with the notice a sworn statement of the facts relevant to the grounds on which the board resolution was founded; and
- (b) appoint a corporate rescue practitioner who satisfies the requirements of section 131, and who has consented in writing to accept the appointment.

(4) After appointing a practitioner as required by subsection (3)(b), a company must—

- (a) file a notice of the appointment of a practitioner within two business days after making the appointment with the Master of the High Court and—
  - (i) the Registrar of Companies in the case of a company;
  - (ii) the Registrar of Co-operative Societies in the case of a Co-operative Society;
- (b) publish a copy of the notice of appointment to each affected person within five business days after the notice was filed.

(5) If a company fails to comply with any provision of subsection (3) or (4)—

- (a) its resolution to begin corporate rescue proceedings and place the company under supervision lapses and is a nullity; and
- (b) the company may not file a further resolution contemplated in subsection (1) for a period of three months after the date on which the lapsed resolution was adopted, unless a Court, on good cause shown on an urgent chamber application, approves the company filing a further resolution.

(6) A company that has adopted a resolution contemplated in this section may not adopt a resolution to begin liquidation proceedings, unless the resolution has lapsed in terms of subsection (5), or until the corporate rescue proceedings have ended as determined in accordance with section 125(2).

(7) If the board of a company has reasonable grounds to believe that the company is financially distressed, but the board has not adopted a resolution contemplated in this section, the board must deliver a written notice to each affected person, setting out the criteria referred to in section 121(1)(f) that are applicable to the company, and its reasons for not adopting a resolution contemplated in this section.

### **123 Objections to company resolution**

(1) Subject to subsection (2), at any time after the adoption of a resolution in terms of section 122, until the adoption of a corporate rescue plan in terms of section 146, an affected person may apply to a Court for an order—

- (a) setting aside the resolution, on the grounds that—
  - (i) there is no reasonable basis for believing that the company is financially distressed; or
  - (ii) there is no reasonable prospect for rescuing the company; or
  - (iii) the company has failed to satisfy the procedural requirements set out in section 122;
- (b) setting aside the appointment of the practitioner, on the grounds that the practitioner—
  - (i) does not satisfy the requirements of section 131; or
  - (ii) is not independent of the company or its management; or
  - (iii) lacks the necessary skills, having regard to the company's circumstances.

(2) An affected person who, as a director of a company, voted in favour of a resolution contemplated in section 122 may not apply to a Court in terms of—

- (a) subsection (1)(a) to set aside that resolution; or
- (b) subsection (1)(b) to set aside the appointment of the practitioner appointed by the company;

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

(3) An applicant in terms of subsection (1) must—

- (a) serve a copy of the application on the company and the Master; and
- (b) notify each affected person of the application by standard notice.

(4) Each affected person has a right to participate in the hearing of an application in terms of this section.

(5) When considering an application in terms of subsection (1)(a) to set aside the company's resolution, the Court may—

- (a) set aside the resolution—

- (i) on any grounds set out in subsection (1); or
  - (ii) if, having regard to all of the evidence, the Court considers that it is otherwise just and equitable to do so;
- (b) afford the practitioner sufficient time to form an opinion whether or not—
- (i) the company appears to be financially distressed; or
  - (ii) there is a reasonable prospect of rescuing the company;
- and after receiving a report from the practitioner, may set aside the company's resolution if the Court concludes that the company is not financially distressed, or there is no reasonable prospect of rescuing the company;
- (c) if it makes an order under paragraph (a) or (b) setting aside the company's resolution, may make any further necessary and appropriate order, including—
- (i) an order placing the company under liquidation; or
  - (ii) if the Court has found that there were no reasonable grounds for - believing that the company would be unlikely to pay all of its debts as they became due and payable, an order of costs against any director who voted in favour of the resolution to commence corporate rescue proceedings, unless the Court is satisfied that the director acted in good faith and on the basis of information that the director was entitled to rely upon.
- (6) If, after considering an application in terms of subsection (1)(b), the Court makes an order setting aside the appointment of a practitioner—
- (a) the Court must appoint an alternate practitioner who satisfies the requirements of section 131, recommended by, or acceptable to, the holders of a majority of the independent creditors' voting interests who were represented in the hearing before the Court; and
  - (b) the provisions of subsection (5)(b), if relevant, apply to the practitioner appointed in terms of paragraph (a).

#### **124 Court order to commence corporate rescue proceedings**

- (1) Unless a company has adopted a resolution contemplated in section 122, an affected person may apply to a Court at any time for an order placing the company under supervision and commencing corporate rescue proceedings.
- (2) An applicant in terms of subsection (1) must—
- (a) serve a copy of the application on the company, the Master and the Registrar of Companies; and
  - (b) notify each affected person of the application by standard notice.
- (3) Each affected person has a right to participate in the hearing of an application in terms of this section.
- (4) After considering an application in terms of subsection (1), the Court may—
- (a) make an order placing the company under supervision and commencing corporate rescue proceedings, if the Court is satisfied that—
    - (i) the company is financially distressed; or
    - (ii) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment-related matters; or
    - (iii) it is otherwise just and equitable to do so for financial reasons; and there is a reasonable prospect for rescuing the company; or
  - (b) dismissing the application, together with any further necessary and appropriate order, including an order placing the company under liquidation.
- (5) If the Court makes an order in terms of subsection (4)(a), the Court may make a further order appointing as interim practitioner a person who satisfies the requirements of section 131, and who has been nominated by the affected person who applied in terms of subsection (1), subject to ratification by the holders of a majority of the independent creditors' voting interests at the first meeting of creditors, as contemplated in section 140.
- (6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until—
- (a) the Court has adjudicated upon the application; or
  - (b) the corporate rescue proceedings end, if the Court makes the order applied for.
- (7) In addition to the powers of a Court on an application contemplated in this section, a Court may make an order contemplated in subsection (4), or (5) if applicable, at any time during the course of any liquidation proceedings or proceedings to enforce any security against the company.
- (8) A company that has been placed under supervision in terms of this section—

- (a) may not adopt a resolution placing itself in liquidation until the corporate rescue proceedings have ended as determined in accordance with section 125(2); and
- (b) must notify each affected person of the order within five business days after the date of the order.

### **125 Duration of corporate rescue proceedings**

(1) Corporate rescue proceedings begin when—

- (a) the company—
  - (i) files a resolution to place itself under supervision in terms of section 12(3); or
  - (ii) applies to the Court for consent to file a resolution in terms of section 122(5)(b);or
- (b) an affected person applies to the Court for an order placing the company under supervision in terms of section 124(1); or
- (c) a Court makes an order placing a company under supervision during the course of liquidation proceedings, or proceedings to enforce a security interest, as contemplated in section 124(7).

(2) Corporate rescue proceedings end when—

- (a) the Court—
  - (i) sets aside the resolution or order that began those proceedings; or
  - (ii) has converted the proceedings to liquidation proceedings; or
- (b) the practitioner has filed with the Master a notice of the termination of corporate rescue proceedings; or
- (c) a corporate rescue plan has been—
  - (i) proposed and rejected in terms of Sub-Part D of this Part, and no affected person has acted to extend the proceedings in any manner contemplated in section 145; or
  - (ii) adopted in terms of Sub-Part D of this Part, and the practitioner has subsequently filed a notice of substantial implementation of that plan.

(3) If a company's corporate rescue proceedings have not ended within three months after the start of those proceedings, or such longer time as the Court, on application by the practitioner, may allow, the practitioner must—

- (a) prepare a report on the progress of the corporate rescue proceedings, and update it at the end of each subsequent month until the end of those proceedings; and
- (b) deliver the report and each update by standard notice to each affected person, and to the—
  - (i) Court, if the proceedings have been the subject of a Court order; or
  - (ii) Master, in any other case.

### **126 General moratorium on legal proceedings against company**

(1) During corporate rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except—

- (a) with the written consent of the practitioner; or
- (b) with the leave of the Court and in accordance with any terms the Court considers suitable; or
- (c) as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the corporate rescue proceedings began; or
- (d) criminal proceedings against the company or any of its directors or officers; or
- (e) proceedings concerning any property or right over which the company exercises the powers of a trustee; or
- (f) proceedings by a regulatory authority in the execution of its duties after written notification to the corporate rescue practitioner.

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

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

### **127 Protection of property interests**

(1) Subject to subsections (2) and (3), during a company's corporate rescue proceedings—

- (a) the company may dispose, or agree to dispose, of property only—
  - (i) in the ordinary course of its business; or



- (ii) in a *bona fide* transaction at arm's length for fair value approved in advance and in writing by the practitioner; or
- (iii) in a transaction contemplated within, and undertaken as part of the implementation of, a corporate rescue plan that has been approved in terms of section 145;

and

- (b) any person who, as a result of an agreement made in the ordinary course of the company's business before the corporate rescue proceedings began, is in lawful possession of any property owned by the company may continue to exercise any right in respect of that property as contemplated in that agreement, subject to section 129; and
- (c) despite any provision of an agreement to the contrary, no person may exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the practitioner consents in writing.

(2) The practitioner may not unreasonably withhold consent in terms of subsection (1)(c), having regard to—

- (a) the purposes of this Part; and
- (b) the circumstances of the company; and
- (c) the nature of the property, and the rights claimed in respect of it.

(3) If, during a company's corporate rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company must—

- (a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest; and
- (b) promptly—
  - (i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person; or
  - (ii) provide security for the amount of those proceeds, to the reasonable satisfaction of that other person.

### **128 Post-commencement finance**

(1) To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment becomes due and payable by a company to an employee during the company's corporate rescue proceedings, but is not paid to the employee—

- (a) the money is regarded to be post-commencement financing; and
- (b) will be paid in the order of preference set out in subsection (3)(a).

(2) During its corporate rescue proceedings, the company may obtain financing other than as contemplated in subsection (1), and any such financing—

- (a) may be secured to the lender by utilising any asset of the company to the extent that it is not otherwise encumbered; and
- (b) will be paid in the order of preference set out in subsection (3)(b).

(3) After payment of the practitioner's remuneration and expenses referred to in section 135, and other claims arising out of the costs of the corporate rescue proceedings, all claims contemplated—

- (a) in subsection (1) will be treated equally, but will have preference over—
  - (i) all claims contemplated in subsection (2), irrespective of whether or not they are secured; and
  - (ii) all unsecured claims against the company;

or

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

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

### **129 Effect of corporate rescue on employees and contracts**

(1) Despite any provision of an agreement to the contrary—

- (a) during a company's corporate rescue proceedings, employees of the company immediately before the beginning of those proceedings continue to be so employed on the same terms and conditions, except to the extent that—
  - (i) changes occur in the ordinary course of attrition; or
  - (ii) the employees and the company, in accordance with applicable labour laws, agree different terms and conditions;

and

- (b) any retrenchment of any such employees contemplated in the company's corporate rescue plan is subject to the Labour Act [*Chapter 28:01*], and any other applicable employment related Legislation.

(2) Subject to subsection (3), and despite any provision of an agreement to the contrary, during corporate rescue proceedings, the practitioner may—

- (a) entirely, partially or conditionally suspend, for the duration of the corporate rescue proceedings, any obligation of the company that—
  - (i) arises under an agreement to which the company was a party at the commencement of the corporate rescue proceedings; and
  - (ii) would otherwise become due during those proceedings;

or

- (b) apply urgently to a court to entirely, partially or conditionally cancel, on any terms that are just and reasonable in the circumstances, any obligation of the company contemplated in paragraph (a).

(3) When acting in terms of subsection (2)—

- (a) a corporate rescue practitioner must not suspend any provision of—
  - (i) an employment contract; or
  - (ii) a financial contract to which the provisions of section 35 or 36 would have applied had the company been liquidated;

and

- (b) a court may not cancel any provision of—
  - (i) an employment contract, except as contemplated in subsection (1);
  - (ii) an agreement to which the provisions of section 35 or 36 would have applied had the company been liquidated;

and

- (c) if a corporate rescue practitioner suspends a provision of an agreement relating to security granted by the company, that provision nevertheless continues to apply for the purpose of section 127, with respect to any proposed disposal of property by the company.

(4) Any party whose agreement that has been suspended or cancelled, or any provision which has been suspended or cancelled, in terms of subsection (2), may assert a claim against the company only for damages.

(5) If liquidation proceedings have been converted into corporate rescue proceedings, the liquidator is a creditor of the company to the extent of any outstanding claim by the liquidator for any remuneration due for work performed, or compensation for expenses incurred, before the corporate rescue proceedings began.

### **130 Effect on shareholders and directors**

(1) During corporate rescue proceedings an alteration in the classification or status of any issued securities of a company, other than by way of a transfer of securities in the ordinary course of business, is invalid except to the extent—

- (a) that the Court otherwise directs; or
- (b) contemplated in an approved corporate rescue plan.

(2) During a company's corporate rescue proceedings the board of the company will be deemed to be dissolved, and each director of the company—

- (a) may no longer exercise the functions of director; and
- (b) may only exercise a management function within the company in accordance with the express instructions or direction of the corporate rescue practitioner, to the extent that it is reasonable to do so.

(3) During a company's corporate rescue proceedings, each director of the company at the time the corporate rescue proceedings commenced must attend to the requests of the corporate rescue practitioner at all times, and provide the corporate rescue practitioner with any information about the company's affairs as may reasonably be required.

(4) If, during a company's corporate rescue proceedings, one or more directors of the company at the time the corporate rescue proceedings commenced purports to take any action on behalf of the company, that action is void unless approved by the corporate rescue practitioner.

### 131 Qualifications of practitioners

- (1) A person may be appointed as the corporate rescue practitioner of a company only if the person—
- (a) is not disqualified to be appointed liquidator in terms of section 74;
  - (b) has been registered and licensed as an insolvency practitioner in terms of the Estate Administrators Act [*Chapter 27:20*];
  - (c) is not disqualified from acting as a director of the company in terms of the Companies Act [*Chapter 24:31*];
  - (d) does not have any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship;
  - (e) is not an associate of a person who has a relationship contemplated in paragraph (d);
  - (f) has provided security in an amount and on terms and conditions that the Master considers necessary to secure the interests of the company and any affected persons.

### 132 Removal and replacement of practitioner

- (1) A corporate rescue practitioner may be removed only—
- (a) by a Court order in terms of section 123; or
  - (b) as provided for in this section; or
  - (c) by the Master in terms of grounds set out in section 79.
- (2) Upon request of an affected person, or on its own motion, the Court may remove a corporate rescue practitioner from office on any of the following grounds—
- (a) incompetence or failure to perform the duties of a corporate rescue practitioner of the particular company;
  - (b) failure to exercise the proper degree of care in the performance of the corporate rescue practitioner's functions;
  - (c) engaging in illegal acts or conduct;
  - (d) if the corporate rescue practitioner no longer satisfies the requirements set out in section 131(1);
  - (e) conflict of interest or lack of independence;
  - (f) the corporate rescue practitioner is incapacitated and unable to perform the functions of that office, and is unlikely to regain that capacity within a reasonable time.
- (3) The company, or the creditor who nominated the corporate rescue practitioner, as the case may be, must appoint a new practitioner if a practitioner dies, resigns or is removed from office, subject to the right of an affected person to bring a fresh application in terms of section 123(1)(b) to set aside that new appointment.

### 133 General powers and duties of practitioners

- (1) During a company's corporate rescue proceedings, the corporate rescue practitioner, in addition to any other powers and duties set out in this Part—
- (a) has full management control of the company in substitution for its board and pre-existing management which is dissolved in terms of the provisions of section 130(2);
  - (b) may delegate any power or function of the practitioner to a person who was part of the board or pre-existing management of the company;
  - (c) may appoint a person as part of the management of a company, whether to fill a vacancy or not, subject to subsection (3);
  - (d) is responsible for—
    - (i) developing a corporate rescue plan to be considered by affected persons, in accordance with Sub-Part D of this Part; and
    - (ii) implementing any corporate rescue plan that has been adopted in accordance with Sub-Part D of this Part.
- (2) The corporate rescue practitioner must, as soon as practicable after appointment, inform all relevant regulatory authorities having authority in respect of the activities of the company, of the fact that the company has been placed under corporate rescue proceedings and of his or her appointment.
- (3) Except with the approval of the Court on application by the corporate rescue practitioner, a practitioner may not appoint a person as part of the management of the company, or an advisor to the company or to the practitioner, if that person—

- (a) has any other relationship with the company such as would lead a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship; or
  - (b) is an associate of a person who has a relationship contemplated in paragraph (a).
- (4) During a company's corporate rescue proceedings, the corporate rescue practitioner—
- (a) is an officer of the Court, and must report to the Court in accordance with any applicable rules of, or orders made by, the Court; and
  - (b) has the responsibilities, duties and liabilities of a director of the company; and
  - (c) other than as contemplated in paragraph (b)—
    - (i) is not liable for any act or omission in good faith in the course of the exercise of the powers and performance of the functions of a practitioner; but
    - (ii) may be held liable in accordance with any relevant law for the consequences of any act or omission amounting to gross negligence in the exercise of the powers and performance of the functions of a practitioner.

(5) If the corporate rescue process concludes with an order placing the company in liquidation, any person who has acted as corporate rescue practitioner during the corporate rescue process may not be appointed as liquidator of the company.

### **134 Investigation of affairs of company**

- (1) As soon as practicable after being appointed, a corporate rescue practitioner must investigate the company's affairs, business, property, and financial situation, and after having done so, consider whether there is any reasonable prospect of the company being rescued.
- (2) If, at any time during corporate rescue proceedings, the practitioner concludes that—
- (a) there is no reasonable prospect for the company to be rescued, the practitioner must—
    - (i) so inform the Court, the company, and all affected persons by standard notice; and
    - (ii) apply to the Court for an order discontinuing the corporate rescue proceedings and placing the company into liquidation;
  - or
  - (b) there no longer are reasonable grounds to believe that the company is financially distressed, the practitioner must so inform the Court, the company, and all affected persons by standard notice, and—
    - (i) if the corporate rescue process was confirmed by a Court order in terms of section 123, or initiated by an application to the Court in terms of section 124, apply to a Court for an order terminating the corporate rescue proceedings; or
    - (ii) otherwise, file a notice of termination of the corporate rescue proceedings;
  - or
  - (c) there is evidence, in the dealings of the company before the corporate rescue proceedings began, of—
    - (i) impeachable dispositions, the practitioner must take any necessary steps to rectify the matter and the provisions of Part 7 dealing with impeachable dispositions, and sections 56 to 63 dealing with examinations, shall apply with the necessary changes;
    - (ii) reckless trading, insolvent trading, fraud or other contravention of any law relating to the company, the practitioner—
      - A. must forward the evidence to the appropriate authority for further investigation and possible prosecution; and
      - B. may apply the provisions of sections 117 and 118, and may recover any misappropriated assets of the company;
    - (iii) a failure by the company or any director to perform any material obligation relating to the company, the practitioner must take any necessary steps to rectify the matter and may direct the management to take appropriate steps.
- (3) A Court to which an application has been made in terms of subsection (2)(a)(ii) may make the order applied for, or any other order that the Court considers appropriate in the circumstances.

### **135 Directors of company to co-operate with and assist practitioner**

(1) As soon as practicable after corporate rescue proceedings begin, each person who was a director of the company at the time the corporate rescue proceedings commenced must deliver to the practitioner all books and records that relate to the affairs of the company and which are in that person's possession.

(2) Any person who was a director of the company at the time the corporate rescue proceedings commenced and who knows where other books and records relating to the company are being kept, must inform the practitioner as to the whereabouts of those books and records.

(3) Within five business days after corporate rescue proceedings begin, or such longer period as the corporate rescue practitioner allows, the persons who were directors of the company at the time the corporate rescue proceedings commenced must provide the practitioner with a statement of affairs containing, at a minimum, particulars of the following—

- (a) any material transactions involving the company or the assets of the company, and occurring within 12 months immediately before the corporate rescue proceedings began;
- (b) any Court, arbitration or administrative proceedings, including pending enforcement proceedings, involving the company;
- (c) the assets and liabilities of the company, and its income and disbursements within the immediately preceding 12 months;
- (d) the number of employees, and any collective agreements or other agreements relating to the rights of employees;
- (e) any debtors and their obligations to the company;
- (f) any creditors and their rights or claims against the company.

(4) No person is entitled, as against the corporate rescue practitioner of a company, to retain possession of any books or records of the company, or to claim or enforce a lien over any such books or records, unless such books or records are in the lawful possession of such person and he or she has made copies available to the practitioner or has afforded the practitioner a reasonable opportunity to inspect the books or records concerned.

### **136 Remuneration of practitioner**

(1) The corporate rescue practitioner is entitled to charge an amount to the company for the remuneration and expenses of the practitioner in accordance with the Second Schedule item 1 which may be amended by the Minister from time to time by way of notice in the *Gazette*.

(2) The practitioner may propose an agreement with the company providing for further remuneration, additional to that contemplated in subsection (1), to be calculated on the basis of a contingency related to—

- (a) the adoption of a corporate rescue plan at all, or within a particular time, or the inclusion of any particular matter within such a plan; or
- (b) the attainment of any particular result or combination of results relating to the corporate rescue proceedings.

(3) Subject to subsection (4), an agreement contemplated in subsection (2) is final and binding on the company if it is approved by—

- (a) the holders of a majority of the creditors' voting interests, as determined in accordance with section 147(4) to (6), present and voting at a meeting called for the purpose of considering the proposed agreement; and
- (b) the holders of a majority of the voting rights attached to any shares of the company that entitle the shareholder to a portion of the residual value of the company on winding-up, present and voting at a meeting called for the purpose of considering the proposed agreement.

(4) A creditor or shareholder who voted against a proposal contemplated in this section may apply to a Court within 10 business days after the date of voting on that proposal, for an order setting aside the agreement on the grounds that—

- (a) the agreement is not just and equitable; or
- (b) the remuneration provided for in the agreement is unreasonable having regard to the financial circumstances of the company.

(5) To the extent that the corporate rescue practitioner's remuneration and expenses are not fully paid, the practitioner's claim for those amounts will rank in priority before the claims of all other secured and unsecured creditors.

(6) The Master may for good cause increase or decrease the corporate rescue practitioner's remuneration, in particular to compensate him or her for the time spent in assisting with criminal prosecutions or investigating the affairs of the debtor, or disallow his or her remuneration either wholly or in part, by reason of any failure of or delay in the discharge of his or her duties or on account of any improper performance of his or her duties.

## SUB-PART C—RIGHTS OF AFFECTED PERSONS DURING CORPORATE RESCUE PROCEEDINGS

**137 Rights of employees**

- (1) During a company's corporate rescue proceedings any employees of the company who are—
- (a) represented by a registered trade union may exercise any rights set out in this Part—
    - (i) collectively through their trade union; and
    - (ii) in accordance with applicable labour law;
  - or
  - (b) not represented by a registered trade union may elect to exercise any rights set out in this Part either directly, or by proxy through an employee organisation or representative.
- (2) To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment became due and payable by a company to an employee at any time before the beginning of the company's corporate rescue proceedings, and had not been paid to that employee immediately before the beginning of those proceedings, the employee is a preferent creditor of the company for the purposes of this Part.
- (3) During a company's corporate rescue process, every registered trade union representing any employees of the company, and any employee who is not so represented, is entitled to—
- (a) notice, which must be given by standard notice to employees at their workplace, and served at the head office of the relevant trade union, of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings;
  - (b) participate in any Court proceedings arising during the corporate rescue proceedings;
  - (c) form a committee of employees' representatives;
  - (d) be consulted by the practitioner during the development of the corporate rescue plan, and afforded sufficient opportunity to review any such plan and prepare a submission contemplated in section 144(1)(c);
  - (e) be present and make a submission to the meeting of the holders of voting interests before a vote is taken on any proposed corporate rescue plan, as contemplated in section 144(1)(c);
  - (f) vote with creditors on a motion to approve a proposed corporate plan, to the extent that the employee is a creditor, as contemplated in subsection (2);
  - (g) if the proposed corporate rescue plan is rejected, to—
    - (i) propose the development of an alternative plan, in the manner contemplated in section 145; or
    - (ii) present an offer to acquire the interests of one or more affected persons, in the manner contemplated in section 145.
- (4) A medical scheme, or a pension scheme including a provident scheme, for the benefit of the past or present employees of a company is an unsecured creditor of the company for the purposes of this Part to the extent of—
- (a) any amount that was due and payable by the company to the trustees of the scheme at any time before the beginning of the company's corporate rescue proceedings, and that had not been paid immediately before the beginning of those proceedings; and
  - (b) in the case of a defined benefit pension scheme, the present value at the commencement of the corporate rescue proceedings of any unfunded liability under that scheme.
- (5) The rights set out in this section are in addition to any other rights arising or accruing in terms of any law, contract, collective agreement, shareholding, security or Court order.

**138 Participation by creditors**

- (1) Each creditor is entitled to—
- (a) notice of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings; and
  - (b) participate in any Court proceedings arising during the corporate rescue proceedings; and
  - (c) formally participate in a company's corporate rescue proceedings to the extent provided for in this Part; and
  - (d) informally participate in those proceedings by making proposals for a corporate rescue plan to the corporate rescue practitioner.
- (2) In addition to the rights set out in subsection (1), each creditor has—
- (a) the right to vote to amend, approve or reject a proposed corporate rescue plan, in the manner contemplated in section 144; and
  - (b) if the proposed corporate rescue plan is rejected, a further right to—

- (i) propose the development of an alternative plan, in the manner contemplated in section 145; or
- (ii) present an offer to acquire the interests of any or all of the other creditors in the manner contemplated in section 145.

(3) The creditors of a company are entitled to form a creditors' committee, and through that committee are entitled to be consulted by the corporate rescue practitioner during the development of the corporate rescue plan.

(4) In respect of any decision contemplated in this Part that requires the support of the holders of creditors' voting interests—

- (a) a secured or unsecured creditor has a voting interest equal to the value of the amount owed to that creditor by the company; and
- (b) an unsecured creditor who would be subordinated in a liquidation in terms of a subordination agreement has a voting interest, as independently and expertly appraised and valued at the request of the practitioner, equal to the amount, if any, that the creditor could reasonably expect to receive in such a liquidation of the company.

(5) The corporate rescue practitioner of a company must—

- (a) determine whether a creditor is independent for the purposes of this Part; and
- (b) request a suitably qualified person to independently and expertly appraise and value an interest contemplated in subsection (4)(b); and
- (c) give a written notice of the determination, or appraisal and valuation, to the person concerned at least 15 business days before the date of the meeting to be convened in terms of section 143.

(6) Within five business days after receiving a notice of a determination contemplated in subsection (5), a person may apply to a Court to—

- (a) review the corporate rescue practitioner's determination that the person is, or is not, an independent creditor; or
- (b) review, re-appraise and re-value that person's voting interest, as determined in terms of subsection (5)(b).

### **139 Participation by holders of company's securities**

During a company's corporate rescue proceedings, each holder of any issued security of the company is entitled to—

- (a) notice of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings; and
- (b) participate in any Court proceedings arising during the corporate rescue proceedings; and
- (c) formally participate in a company's corporate rescue proceedings to the extent provided for in this Part; and
- (d) vote to approve or reject a proposed corporate rescue plan in the manner contemplated in section 144, if the plan would alter the rights associated with the class of securities held by that person; and
- (e) if the corporate rescue plan is rejected, to—
  - (i) propose the development of an alternative plan, in the manner contemplated in section 145; or
  - (ii) present an offer to acquire the interests of any or all of the creditors or other holders of the company's securities in the manner contemplated in section 145.

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

(1) Within 15 business days after being appointed, the Master must convene, and preside over, a first meeting of creditors, at which—

- (a) the Master—
  - (i) must inform the creditors whether he believes that there is a reasonable prospect of rescuing the company; and
  - (ii) may receive proof of claims by creditors;
- and
- (b) the creditors may determine whether or not a committee of creditors should be appointed and, if so, may appoint the members of the committee.

(2) The Master must give notice of the first meeting of creditors to every creditor of the company whose name and address is known to, or can reasonably be obtained by, the Master, setting out the—

- (a) date, time and place of the meeting; and
- (b) agenda for the meeting.

(3) At any meeting of creditors, other than the meeting contemplated in section 141, a decision supported by the holders of a simple majority of the independent creditors' voting interests voted on a matter, is the decision of the meeting on that matter.

**141 Functions, duties and membership of committees of affected persons (1) A committee of creditors, appointed in terms of section 140—**

- (a) may consult with the corporate rescue practitioner about any matter relating to the corporate rescue proceedings, but may not direct or instruct the practitioner; and
  - (b) may, on behalf of the general body of creditors receive and consider reports relating to the corporate rescue proceedings; and
  - (c) must act independently of the corporate rescue practitioner to ensure fair and unbiased representation of creditors' interests.
- (2) A person may be a member of a committee of creditors only if the person is—
- (a) an independent creditor of the company; or
  - (b) an agent, proxy or attorney of an independent creditor or other person acting under a general power of attorney; or
  - (c) authorised in writing by an independent creditor to be a member.

SUB-PART D— DEVELOPMENT AND APPROVAL OF CORPORATE RESCUE PLAN

**142 Proposal of corporate rescue plan**

(1) The corporate rescue practitioner, after consulting the creditors, other affected persons, and the management of the company, must prepare a corporate rescue plan for consideration and possible adoption at a meeting held in terms of section 143.

(2) The corporate rescue plan must contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and must be divided into three Parts, as follows—

- (a) part A — background, which must include at least—
  - (i) a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the corporate rescue proceedings began;
  - (ii) a complete list of the creditors of the company when the corporate rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
  - (iii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
  - (iv) a complete list of the holders of the company's issued securities;
  - (v) a copy of the written agreement concerning the corporate rescue practitioner's remuneration;
  - (vi) a statement whether the corporate rescue plan includes a proposal made informally by a creditor of the company;
- (b) part B — proposals, which must include at least—
  - (i) the nature and duration of any moratorium for which the corporate rescue plan makes provision;
  - (ii) the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
  - (iii) the ongoing role of the company, and the treatment of any existing agreements;
  - (iv) the property of the company that is to be available to pay creditors' claims in terms of the corporate rescue plan;
  - (v) the order of preference in which the proceeds of property will be applied to pay creditors if the corporate rescue plan is adopted;
  - (vi) the benefits of adopting the corporate rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation;
  - (vii) the effect that the corporate rescue plan will have on the holders of each class of the company's issued securities;
- (c) part C — assumptions and conditions, which must include at least—



- (i) a statement of the conditions that must be satisfied, if any, for the corporate rescue plan to—
  - A. come into operation; and
  - B. be fully implemented;
- (ii) the effect, if any, that the corporate rescue plan contemplates on the number of employees, and their terms and conditions of employment;
- (iii) the circumstances in which the corporate rescue plan will end;
- (iv) a projected—
  - A. balance sheet for the company; and
  - B. statement of income and expenses for the ensuing three years, prepared on the assumption that the proposed corporate plan is adopted.
- (3) The projected balance sheet and statement required by subsection (2)(c)(iv)—
  - (a) must include a notice of any material assumptions on which the projections are based; and
  - (b) may include alternative projections based on varying assumptions and contingencies.
- (4) A proposed corporate rescue plan must conclude with a certificate by the corporate rescue practitioner stating that any—
  - (a) actual information provided appears to be accurate, complete, and up to date; and
  - (b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.
- (5) The corporate rescue plan must be published by the company within 45 business days after the date on which the corporate rescue practitioner was appointed, or such longer time as may be allowed by—
  - (a) the Court, on application by the company; or
  - (b) the holders of a majority of the creditors' voting interests.

#### **143 Meeting to determine future of company**

- (1) Within 10 business days after publishing a corporate rescue plan in terms of section 142, the corporate rescue practitioner must convene and preside over a meeting of creditors and any other holders of a voting interest, called for the purpose of considering the plan.
- (2) At least five business days before the meeting contemplated in subsection (1), the practitioner must deliver a notice of the meeting to all affected persons, setting out—
  - (a) the date, time and place of the meeting; and
  - (b) the agenda of the meeting; and
  - (c) a summary of the rights of affected persons to participate in and vote at the meeting.
- (3) The meeting contemplated in this section may be adjourned from time to time, as necessary or expedient, until a decision regarding the company's future has been taken in accordance with sections 144 and 145.

#### **144 Consideration of corporate rescue plan**

- (1) At a meeting convened in terms of section 143, the corporate rescue practitioner must—
  - (a) introduce the proposed corporate rescue plan for consideration by the creditors and, if applicable, by the shareholders; and
  - (b) inform the meeting whether the corporate rescue practitioner continues to believe that there is a reasonable prospect of the company being rescued; and
  - (c) provide an opportunity for the employees' representatives to address the meeting; and
  - (d) invite discussion, and entertain and conduct a vote, on any motions to—
    - (i) amend the proposed plan, in any manner moved and seconded by holders of creditors' voting interests, and satisfactory to the corporate rescue practitioner; or
    - (ii) direct the corporate rescue practitioner to adjourn the meeting in order to revise the plan for further consideration;
- and
- (e) call for a vote for preliminary approval of the proposed plan, as amended if applicable, unless the meeting has first been adjourned in accordance with paragraph (d)(ii).
- (2) In a vote called in terms of subsection (1)(e), the proposed corporate rescue plan will be approved on a preliminary basis if—
  - (a) it was supported by the holders of more than 75% of the creditors' voting interests that were voted; and
  - (b) the votes in support of the proposed plan included at least 50% of the independent creditors' voting interests, if any, that were voted.
- (3) If a proposed corporate rescue plan—

- (a) is not approved on a preliminary basis, as contemplated in subsection (2), the plan is rejected, and may be considered further only in terms of section 145; or
  - (b) does not alter the rights of the holders of any class of the company's securities, approval of that plan on a preliminary basis in terms of subsection (2) constitutes also the final adoption of that plan, subject to satisfaction of any conditions on which that plan is contingent; or
  - (c) does alter the rights of any class of holders of the company's securities—
    - (i) the corporate rescue practitioner must immediately hold a meeting of holders of the class, or classes of securities whose rights would be altered by the plan, and call for a vote by them to approve the adoption of the proposed corporate rescue plan; and
    - (ii) if, in a vote contemplated in subparagraph (i), a majority of the voting rights that were exercised—
      - A. support adoption of the plan, it will have been finally adopted, subject only to satisfaction of any conditions on which it is contingent; or
      - B. oppose adoption of the plan, the plan is rejected, and may be considered further only in terms of section 144.
- (4) A corporate rescue plan that has been adopted is binding on the company, and on each of the creditors of the company and every holder of the company's securities, whether or not such a person—
- (a) was present at the meeting; or
  - (b) voted in favour of adoption of the plan; or
  - (c) in the case of creditors, had proved their claims against the company.
- (5) The company, under the direction of the corporate rescue practitioner, must take all necessary steps to—
- (a) attempt to satisfy any conditions on which the corporate rescue plan is contingent; and
  - (b) implement the plan as adopted.
- (6) To the extent necessary to implement an adopted corporate rescue plan—
- (a) the corporate rescue practitioner may, in accordance with that plan, determine the consideration for, and issue, any authorised securities of the company, despite any other provision of the Companies Act [*Chapter 24:31*], to the contrary; and
  - (b) if the corporate rescue plan was approved by the shareholders of the company, as contemplated in subsection (3)(c), the corporate rescue practitioner may amend the company's Memorandum of Incorporation to authorise, and determine the preferences, rights, limitations and other terms of, any securities that are not otherwise authorised, but are contemplated to be issued in terms of the corporate rescue plan, despite any other provision of the Companies Act [*Chapter 24:31*], to the contrary.
- (7) Except to the extent that an approved corporate rescue plan provides otherwise, a pre-emptive right of any shareholder of the company does not apply with respect to an issue of shares by the company in terms of the corporate rescue plan.
- (8) When the corporate rescue plan has been substantially implemented, the corporate rescue practitioner must file a notice of the substantial implementation of the corporate rescue plan.

#### **145 Failure to adopt corporate rescue plan**

- (1) If a corporate rescue plan has been rejected as contemplated in section 144(3)(a) or (c)(ii)(B) the corporate rescue practitioner may—
- (a) seek a vote of approval from the holders of voting interests to prepare and publish a revised plan; or
  - (b) advise the meeting that the company will apply to a Court to set aside the result of the vote by the holders of voting interests or shareholders, as the case may be, on the grounds that it was inappropriate.
- (2) If the corporate rescue practitioner does not take any action contemplated in paragraph (a), any affected person or combination of affected persons present at the meeting may—
- (a) call for a vote of approval from the holders of voting interests requiring the corporate rescue practitioner to prepare and publish a revised plan; or
  - (b) apply to the Court to set aside the result of the vote by the holders of voting interests or shareholders, as the case may be, on the grounds that it was inappropriate; or
  - (c) make a binding offer to purchase the voting interests of one or more persons who opposed adoption of the corporate rescue plan, at a value independently and expertly determined, on the request of the corporate rescue practitioner, to be a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated.

(3) If the corporate rescue practitioner, acting in terms of subsection (1)(b), or an affected person, acting in terms of subsection (2)(b), informs the meeting that an application will be made to the Court as contemplated in those provisions, the practitioner must adjourn the meeting—

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

(4) If, on the request of the corporate rescue practitioner in terms of subsection (1)(a), or a call by an affected person in terms of subsection (2)(a), the meeting directs the practitioner to prepare and publish a revised corporate rescue plan—

- (a) the corporate rescue practitioner must—
  - (i) conclude the meeting after that vote; and
  - (ii) prepare and publish a new or revised corporate rescue plan within 10 business days;and
- (b) the provisions of this Part apply afresh to the publishing and consideration of that new or revised plan.

(5) If an affected person makes an offer contemplated in subsection (2)(a), the corporate rescue practitioner must—

- (a) adjourn the meeting for no more than five business days, as necessary to afford the practitioner an opportunity to make any necessary revisions to the corporate rescue plan to appropriately reflect the results of the offer; and
- (b) set a date for resumption of the meeting, without further notice, at which the provisions of section 144 and this section will apply afresh.

(6) If no person takes any action contemplated in subsection (1), the corporate rescue practitioner must promptly file a notice of the termination of the corporate rescue proceedings.

(7) A holder of a voting interest, or a person acquiring that interest in terms of a binding offer, may apply to a Court to review, re-appraise and re-value a determination by an independent expert in terms of subsection (2)(c).

(8) On an application contemplated in subsection (1), or (2), a Court may order that the vote on a corporate rescue plan be set aside if the Court is satisfied that it is reasonable and just to do so, having regard to—

- (a) the interests represented by the person or persons who voted against the proposed corporate rescue plan; and
- (b) the provision, if any, made in the proposed corporate rescue plan with respect to the interests of that person or those persons; and
- (c) a fair and reasonable estimate of the return to that person, or those persons, if the company were to be liquidated.

#### **146 Discharge of debts and claims -**

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

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

#### **SUB-PART E—COMPROMISE WITH CREDITORS**

#### **147 Compromise between company and creditors**

(1) This section applies to a company, irrespective of whether or not it is financially distressed as defined in section 121(1)(f), unless it is engaged in corporate rescue proceedings in terms of this Part.

(2) The board of a company, or the liquidator of such a company if it is being liquidated, may propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors, by delivering a copy of the proposal, and notice of meeting to consider the proposal, to—

- (a) every creditor of the company, or every member of the relevant class of creditors whose name or address is known to, or can reasonably be obtained by, the company; and
- (b) the Registrar of Companies.

(3) A proposal contemplated in subsection (2) must contain all information reasonably required to facilitate creditors in deciding whether or not to accept or reject the proposal, and must be divided into three parts, as follows—

- (a) part A — background, which must include at least—
  - (i) a complete list of all the material assets of the company, as well as an indication as to which assets are held as security by creditors as of the date of the proposal;
  - (ii) a complete list of the creditors of the company as of the date of the proposal, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
  - (iii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
  - (iv) a complete list of the holders of the company issued securities, and the effect that the proposal would have on them, if any;
  - (v) whether the proposal includes a proposal made informally by a creditor of the company.
- (b) part B — proposals, which must include at least—
  - (i) the nature and duration of any proposed debt moratorium;
  - (ii) the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
  - (iii) the treatment of contracts and ongoing role of the company;
  - (iv) the property of the company that is proposed to be available to pay creditors' claims;
  - (v) the order of preference in which the proceeds of property of the company will be applied to pay creditors if the proposal is adopted;
  - (vi) the benefits of adopting the proposal as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation.
- (c) part C — assumptions and conditions, which must include at least—
  - (i) a statement of the conditions that must be satisfied, if any, for the proposal to come into operation, and be fully implemented;
  - (ii) the effect, if any, that the plan contemplates on the number of employees, and their terms and conditions of employment;
  - (iii) a projected balance sheet for the company and statement of income and expenses for the ensuing three years, prepared on the assumption that the proposal is accepted.

(4) The projected balance sheet and statement required by subsection (3)(c)(iii)—

- (a) must include a notice of any significant assumptions on which the projections are based;
- (b) may include alternative projections based on varying assumptions and contingencies.

(5) A proposal must conclude with a certificate by an authorised director or prescribed officer of the company stating that any—

- (a) factual information provided appears to be accurate, complete, and up to the date;
- (b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.

(6) A proposal contemplated in this section will have been adopted by the creditors of the company, or the members of a relevant class of creditors, if it is supported by a majority in number, representing at least 75 percent in value of the creditors or class, as the case may be, present and voting in person or by proxy, at a meeting called for that purpose.

(7) If a proposal is adopted as contemplated in subsection (6)—

- (a) the company may apply to the Court for an order approving the proposal; and
- (b) the Court, on an application in terms of paragraph (a) may sanction the compromise as set out in the adopted proposal, if it considers it just and equitable to do so, having regard to—
  - (i) the number of creditors of any affected class of creditors, who were present or represented at the meeting, and who voted in favour of the proposal; and
  - (ii) in the case of a compromise in respect of a company being liquidated, the report of the Master.

(8) A copy of an order of the Court sanctioning a compromise—

- (a) must be filed by the company within five business days; and
- (b) must be attached to each copy of the company's Memorandum of Incorporation that is kept at the company's registered office, or elsewhere, if applicable; and

(c) is final and binding on all of the company's creditors or all of members of the relevant class of creditors, as the case may be, as of the date on which it is filed.

(9) An arrangement or a compromise contemplated in this section does not affect the liability of any person who is a surety of the company.

SUB-PART F—APPLICATION OF PART TO DEBTORS OTHER THAN COMPANIES

**148 Application of Part XXIII to debtors other than companies**

(1) The provisions of this section apply to a debtor provided for in subsection (2) who carries on a business and employs 10 or more employees.

(2) Part XXIII of this Act, with the exception of sections, 123(2), 130(1), (5) and (6), 133(3)(b), 136(3)(b), 139, 142(2)(b)(vii), 144(3)(b) and (c); 144(6) and (7), and section 149 read with the changes required by the context, applies to a debtor other than a company, but—

- (a) a reference to a company or a director, board, management or officer of a company, must be regarded as a reference to a debtor, or the estate, or affairs of a debtor;
- (b) a reference to “shareholder”, “equity”, “in existence” or “conversion of debt to equity” must be ignored;
- (c) section 123(5)(c)(ii) must be read as follows: “if the Court has found that there were no reasonable grounds for believing that the debtor would be unlikely to pay all of its debts as they became due and payable, an order of costs against the debtor, unless the Court is satisfied that the debtor acted in good faith and on the basis of information that the debtor was reasonably entitled to rely upon.”;
- (d) section 124(8)(a) must be read as follows: “may not apply for liquidation of the estate of the debtor until the corporate rescue proceedings have ended as determined in accordance with section 150(2); and”;
- (e) section 131(1)(c) must be read as follows: “would not be disqualified from acting as a director in terms of the Companies Act [*Chapter 24:31*]”;
- (f) section 133(1)(a), (b) and (c) must be read as follows: “During a debtor’s corporate rescue proceedings, the practitioner, in addition to any other powers and duties set out in this Chapter—
  - (a) has full management control of the debtor’s affairs in substitution for its pre-existing management;
  - (b) may delegate any power or function of the practitioner to a person who was part of the pre-existing management of the debtor;
  - (c) may appoint a person as part of the management of a debtor, whether to fill a vacancy or not, subject to subsection (2); and”.

PART XXIV

OFFENCES

**149 Offences**

(1) A debtor or the management of a debtor is guilty of an offence if he or she—

- (a) conceals or parts with or intentionally destroys any book or accounting record relating to the affairs of the debtor or intentionally erases the information contained therein or makes it illegible or permits any other person to perform any such act with regard to any such book or accounting record; or
- (b) alienates property, obtained by him or her or the estate on credit and not paid for, otherwise than in the ordinary course of business; or
- (c) despite having been expressly asked about his or her or the debtor’s financial standing and credit worthiness, falsely conceals his or her or the debtor’s insolvent status and as a result thereof obtains credit for more than \$50; or
- (d) offers or promises to any person a reward in order to procure the acceptance by a creditor of an offer of compromise or to give up any investigation with regard to the estate or to conceal any information in connection therewith or, in the case of a debtor who is a natural person, to induce a creditor not to oppose an application for rehabilitation; or
- (e) at any time within two years before the date of liquidation of his or her estate or the estate of the debtor, with intent to obtain credit or the extension of credit, gave false information or concealed any material fact in connection with his or her or the debtor’s assets and liabilities to anyone who became his or her or the debtor’s creditor; or

- (f) at any time before the date of liquidation of the estate of the debtor deducted an amount from salary paid to an employee for payment to someone other than the debtor and fails to pay the amount to the person entitled thereto when required or if payment is not required within a specified period within 14 days after payment of the salary; or
  - (g) in the case of a debtor who is a natural person who carried on a business or practised a profession or occupation, failed to keep proper accounting records of all business transactions, income, expenditure, assets and liabilities and to retain the accounting records for a period of at least three years; or
  - (h) in the case of a debtor who is a natural person debtor, if at any time when his or her liabilities exceeded his or her assets or at any time within six months immediately prior to the date of liquidation of his or her estate he or she reduced his or her assets through gambling, betting or risky speculation or contracted debts which were not reasonably necessary in connection with business or occupation or for his or her own maintenance or that of his or her dependants; or
  - (i) contracted any debt of \$10 or more or debts to the aggregate of \$50 or more, without any reasonable expectation of being able to discharge such debt or debts; or
  - (j) without good cause fails to submit a statement of his or her affairs or the affairs of the debtor as required by section 43(1)(b); or
  - (k) without lawful cause fails to attend any meeting or continuation of a meeting of creditors of his or her estate or the estate of the debtor of which he or she has been notified; or
  - (l) knows that any person has proved a false claim against his or her estate or the estate of the debtor and fails to inform the Master and the liquidator in writing of that fact within 14 days as from the date upon which he or she acquired that knowledge.
- (2) Any person is guilty of an offence if he or she—
- (a) without lawful cause fails to attend at the time and place determined in summons or notice as contemplated in section 21(6)(a), 56, 58, or 60 or having appeared, without lawful cause fails to remain in attendance until he or she is excused from further attendance by the presiding officer of the meeting in question; or
  - (b) has been called up for questioning in terms of section 21(6)(a), 56, 58 or 60 and refuses to be sworn as a witness or to take an affirmation or without lawful cause refuses or fails to answer any question lawfully put to him or her or without lawful cause refuses or fails to produce any book, document, or record which is in his or her possession or custody and which he or she is obliged to produce in terms of the summons or a direction of the presiding officer of the meeting; or
  - (c) without lawful cause fails to comply with a written order contemplated in section 59(7) or (8); or
  - (d) without lawful cause fails to answer fully and correctly any written questions put to him or her in terms of section 59 or to send the said answers within the time and in the manner contemplated in section 59(3); or
  - (e) receives any benefit or accepts any promise of a benefit as a reward for keeping or undertaking to keep in abeyance or stopping or undertaking to stop any action for the liquidation or inquiry connected with the liquidation of the estate of the debtor or for agreeing or undertaking to agree to a composition or rehabilitation or for not opposing or agreeing not to oppose it for concealing or undertaking to conceal particulars of a debtor or an insolvent estate; or
  - (f) conceals, parts with, damages, destroys, alienates or otherwise disposes of property attached in terms of section 29 or property belonging to the debtor or his or her insolvent estate with intent to frustrate the attachment of such property by virtue of a liquidation order, in terms of section 29, or with intent to prejudice creditors of the insolvent estate; or
  - (g) has in his or her possession or custody or under his or her control property belonging to an insolvent estate and intentionally fails to notify the liquidator of the insolvent estate as soon as possible of the existence and whereabouts of such property and to make it available to the liquidator; or
  - (h) intentionally impedes or hinders a liquidator or any person acting under his or her command, in the execution of his or her duties; or
  - (i) makes or causes or allows to be made a false nomination in terms of section 41 or signs such a nomination without reasonable grounds for believing it to be correct or who knowingly submits a false nomination to the Master.
- (3) A liquidator of an insolvent estate who fails to submit to the Master an account or to pay over a sum of money within 30 days from the date on which he or she became obliged to submit such account or pay over such sum of money, or fails to comply with the duties listed in section 42 within 30 days from the

date of liquidation is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

- (4) Any person who is convicted of an offence contemplated—
- (a) in subsection (1)(a) or (b) or subsection (2)(f), (g) or (h) is liable to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment;
  - (b) in subsection (1)(c), (d), (e), (e), (f), (g), (h), (i) or (j) or subsection (2)(e) is liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment;
  - (c) in subsection (2)(a), (b), (c) or (d) is liable to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

## PART XXV

### CROSS-BORDER INSOLVENCIES

#### SUB-PART 1—INTERPRETATION AND FUNDAMENTAL PRINCIPLES

### 150 Interpretation

For the purposes of this Part—

- “Court” means a High Court referred to in section 154;
- “curator of an institution” means a curator appointed in terms of the Banking Act [*Chapter 24:20*];
- “establishment” means any place of operations where the debtor carries out a non transitory economic activity with human means and goods or services;
- “foreign Court” means a judicial or other authority competent to control or supervise foreign proceedings;
- “foreign main proceedings” means foreign proceedings taking place in the State where the debtor has the centre of its main interests;
- “foreign non main proceedings” means foreign proceedings, other than foreign main proceedings, taking place in a State where the debtor has an establishment;
- “foreign proceedings” means collective judicial or administrative proceedings in a foreign State, including interim proceedings, pursuant to a law relating to insolvency in which proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign Court, for the purpose of reorganisation or liquidation;
- “foreign representative” means a person or body, including one appointed on an interim basis, authorised in foreign proceedings to administer the reorganisation or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceedings;
- “foreign State” means a State not designated under section 152(2);
- “Minister” means the Cabinet member responsible for the administration of justice;
- “receiver” means a receiver or other person appointed to administer a compromise or arrangement sanctioned by a Court.

### 151 Purpose of Part

The purpose of this Part is to provide effective mechanisms for dealing with cases of cross border insolvency so as to promote—

- (a) co-operation between the Courts and other competent authorities of Zimbabwe and those of foreign States involved in cases of cross border insolvency;
- (b) greater legal certainty for trade and investment;
- (c) fair and efficient administration of cross border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) protection and maximisation of the value of the debtor’s assets;
- (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

### 152 Scope of application

(1) This Part applies where—

- (a) assistance is sought in Zimbabwe by a foreign Court or a foreign representative in connection with foreign proceedings; or
- (b) assistance is sought in a foreign State in connection with proceedings under the laws of Zimbabwe relating to insolvency; or
- (c) foreign proceedings and proceedings under the laws of Zimbabwe relating to insolvency in respect of the same debtor are taking place concurrently; or

(d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, proceedings under the laws of Zimbabwe relating to insolvency.

(2) Subject to paragraph (b), this Part applies in respect of any State not designated by the Minister by notice in the *Gazette*.

(3) The Minister may designate a State if he or she is satisfied that the recognition accorded by the law of such a State to proceedings under the laws of Zimbabwe relating to insolvency does not justify the application of this Part to foreign proceedings in that State.

(4) The Minister may at any time by subsequent notice in the *Gazette* withdraw any notice under subsection (2), and thereupon any State referred to in such last-mentioned notice is a foreign State for the purposes of this Part.

(5) Any notice referred to in subsection (2) or (4) must, before publication in the *Gazette*, be approved by Parliament.

(6) Where the Minister withdraws a notice in terms of subsection (4), such withdrawal does not affect any pending legal proceedings and such proceedings must continue as if the notice had not been withdrawn.

### **153 International obligations of Republic of Zimbabwe**

To the extent that this Part conflicts with an obligation of Zimbabwe arising out of any treaty or other form of agreement to which Zimbabwe is a party with one or more other States and which treaty or agreement has been enacted into law, the requirements of the treaty or agreement prevail.

### **154 Competent Court**

The functions referred to in this Part relating to recognition of foreign proceedings and cooperation with foreign Courts must be performed by the High Court of Zimbabwe.

### **155 Authorisation of trustee, liquidator, corporate rescue practitioner, curator, or receiver to act in foreign State**

A trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver is authorised to act in a foreign State in respect of proceedings under the laws of Zimbabwe relating to insolvency, to the extent and in the manner permitted by the applicable foreign law.

### **156 Public policy exception**

This Part must not be construed as obliging a Court to take any action which would be manifestly contrary to the public policy of Zimbabwe.

### **157 Additional assistance under other laws**

Nothing in this Part limits the power of a Court or a trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver to provide additional assistance to a foreign representative under other laws of Zimbabwe.

### **158 Interpretation of this part**

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

#### **SUB-PART 2—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN ZIMBABWE**

### **159 Right of direct access**

A foreign representative may apply directly to a Court in Zimbabwe for relief.

### **160 Limited jurisdiction**

An application made to a court in Zimbabwe by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Courts of Zimbabwe for any purpose other than the application.

### **161 Application by foreign representative to commence proceedings under laws of Republic of Zimbabwe relating to insolvency**

A foreign representative may apply to commence proceedings under the laws of Zimbabwe relating to insolvency if the conditions for commencing such proceedings are otherwise met.

### **162 Participation of foreign representative in proceedings under laws of Republic of Zimbabwe relating to insolvency**

Upon recognition of foreign proceedings, the foreign representative may participate in proceedings regarding the debtor under the laws of the Zimbabwe relating to insolvency.



### **163 Access of foreign creditors to proceedings under laws of Republic of Zimbabwe relating to insolvency**

(1) Subject to subsection (2), foreign creditors have the same rights regarding the commencement of, and participation in, proceedings under the laws of Zimbabwe relating to insolvency as creditors in Zimbabwe.

(2) The ranking of claims in respect of assets in Zimbabwe is regulated by the law and practice of Zimbabwe on the ranking of claims.

### **164 Notification to foreign creditors of proceedings under laws of Republic of Zimbabwe relating to insolvency**

(1) Whenever under the laws of Zimbabwe relating to insolvency notification is to be given to creditors in Zimbabwe, such notification must also be given to the known creditors that do not have addresses in Zimbabwe.

(2) The court may order that appropriate steps be taken to notify any creditor whose address is not yet known.

(3) In giving notice to foreign creditors no letters rogatory or other, similar formality is necessary.

(4) When a notification of commencement of proceedings is to be given to foreign creditors, the notification must—

(a) indicate a reasonable time period for filing claims and specify the place for their filing; and

(b) indicate whether secured creditors must file their secured claims; and

(c) contain any other information required to be included in such a notification to creditors in terms of the law of Zimbabwe and the orders of the court.

#### **SUB-PART 3—RECOGNITION OF FOREIGN PROCEEDINGS AND RELIEF**

### **165 Application for recognition of foreign proceedings**

(1) A foreign representative may apply to the Court for recognition of the foreign proceedings in which the foreign representative has been appointed.

(2) An application for recognition must be accompanied by—

(a) a certified copy of the decision commencing the foreign proceedings and appointing the foreign representative; or

(b) a certificate from the foreign Court affirming the existence of the foreign proceedings and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceedings and of the appointment of the foreign representative.

(3) An application for recognition must also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into an official language of Zimbabwe.

### **166 Presumptions concerning recognition**

(1) If the decision or certificate referred to in section 165(2) indicates that the foreign proceedings are proceedings defined in terms of section 150 and that the foreign representative is a person or body defined in terms of section 150, the Court may so presume.

(2) In the absence of evidence to the contrary the Court may presume that documents submitted in support of the application for recognition are authentic, whether or not they have been authenticated.

(3) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

### **167 Decision to recognise foreign proceedings**

(1) Subject to section 146, the Court must recognise foreign proceedings if—

(a) the foreign proceedings are proceedings defined in terms of section 150; and

(b) the foreign representative applying for recognition is a person or body defined in terms of section 150; and

(c) the application meets the requirements of section 155(2).

(2) The Court must recognise the foreign proceedings—

(a) as foreign main proceedings if they are taking place in the State where the debtor has the centre of his or her or its main interests; or

(b) as foreign non main proceedings if the debtor has an establishment in the foreign State.

(3) An application for recognition of foreign proceedings must be decided upon at the earliest possible time.

(4) Sections 155, 156, 157 and 158 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

### **168 Subsequent information**

From the time of filing the application for recognition of the foreign proceedings, the foreign representative must inform the Court promptly of—

- (a) any change in the status of the recognised foreign proceedings or the status of the foreign representative's appointment; and
- (b) any other foreign proceedings regarding the same debtor that become known to the foreign representative.

### **169 Relief that may be granted upon application for recognition of foreign proceedings**

(1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realisation of all or part of the debtor's assets located in Zimbabwe to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- (c) any relief mentioned in section 161(1)(c), (d) and (g).

(2) An order issued in terms of subsection (1) must be dealt with in the manner contemplated in section 13 of this Act.

(3) Unless extended under section 161(1)(f), the relief granted under this section terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this section if such relief would interfere with the administration of foreign main proceedings.

### **170 Effects of recognition of foreign main proceedings**

(1) Upon recognition of foreign proceedings that are foreign main proceedings—

- (a) commencement or continuation of individual legal actions or individual legal proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed; and
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in subsection (1) are subject to sections 16 and 19, and the Court may, at the request of the foreign representative or a person affected by subsection (1), modify or terminate the scope of the stay and suspension.

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

(4) Subsection (1) does not affect the right to request the commencement of proceedings under the laws of Zimbabwe relating to insolvency or the right to file claims in such proceedings.

### **171 Relief that may be granted upon recognition of foreign proceedings**

(1) Upon recognition of foreign proceedings, whether main or non main, where it is necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including—

- (a) staying the commencement or continuation of individual legal proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent that they have not been stayed under section 160(1)(a);
- (b) staying execution against the debtor's assets to the extent it has not been stayed under section 160(1)(b);
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent that this right has not been suspended under section 160(1)(c);
- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Zimbabwe to the foreign representative or another person designated by the Court;
- (f) extending relief granted under section 159(1);

(g) granting any additional relief that may be available to a trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver under the laws of Zimbabwe.

(2) Upon recognition of foreign proceedings, whether main or non main, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Zimbabwe to the foreign representative or another person designated by the Court, if the Court is satisfied that the interests of creditors in Zimbabwe are adequately protected.

(3) In granting relief under this section to a representative of foreign non main proceedings, the Court must be satisfied that the relief relates to assets that, under the law of Zimbabwe, should be administered in the foreign non main proceedings or concerns information required in those proceedings.

(4) Without derogating from the application of laws of Zimbabwe generally, in granting relief under this section the court must indicate the laws of Zimbabwe relating to the administration, realisation or distribution of a debtor's estate in Zimbabwe that will apply.

### **172 Protection of creditors and other interested persons**

(1) In granting or denying relief under section 160 or 162, or in modifying or terminating relief under subsection (3), the Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under section 160 or 162 to the conditions it considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under section 159 or 160, or of its own motion, modify or terminate such relief.

### **173 Actions to avoid acts detrimental to creditors**

(1) Upon recognition of foreign proceedings, the foreign representative has standing to initiate any legal action to set aside a disposition that is available to a trustee or liquidator under the laws of Zimbabwe relating to insolvency.

(2) When the foreign proceedings are foreign non main proceedings, the court must be satisfied that the legal action relates to assets that, under the law of Zimbabwe, should be administered in the foreign non main proceedings.

### **174 Intervention by foreign representative in proceedings in Zimbabwe**

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

#### **SUB-PART 4—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES**

### **175 Cooperation and direct communication between Court of Zimbabwe and foreign Courts or foreign representatives**

(1) In matters referred to in section 141(1), the Court must cooperate to the maximum extent possible with foreign Courts or foreign representatives, either directly or through a trustee, liquidator, corporate rescue practitioner, curator, or receiver.

(2) The Court may communicate directly with, or request information or assistance directly from, foreign Courts or foreign representatives.

### **176 Cooperation and direct communication between the trustee, liquidator, corporate rescue practitioner, curator, or receiver and foreign Courts or foreign representatives**

(1) In matters referred to in section 141(1), a trustee, liquidator, corporate rescue practitioner, curator, or receiver must, subject to the supervision of the Court, cooperate to the maximum extent possible with foreign Courts or foreign representatives.

(2) The trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver may, in the exercise of his or her or its functions and subject to the supervision of the Court, communicate directly with foreign Courts or foreign representatives.

### **177 Forms of cooperation**

Cooperation referred to in sections 165 and 166 may be implemented by any appropriate means, including—

- (a) appointment of a person to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by Courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

### **178 Commencement of proceedings under laws of Zimbabwe relating to insolvency after recognition of foreign main proceedings**

(1) After recognition of foreign main proceedings, proceedings under the laws of Zimbabwe relating to insolvency may be commenced only if the debtor has assets in Zimbabwe.

(2) The effects of such proceedings are restricted to the assets of the debtor that are located in Zimbabwe and, to the extent necessary to implement cooperation and coordination under sections 165, 166 and 167, to other assets of the debtor that, under the law of Zimbabwe, should be administered in those proceedings.

### **179 Coordination of proceedings under laws of Republic of Zimbabwe relating to insolvency and foreign proceedings**

(1) Where foreign proceedings and proceedings under the laws of Zimbabwe relating to insolvency are taking place concurrently regarding the same debtor, the Court must seek cooperation and coordination under sections 165, 166 and 167, and when the proceedings in Zimbabwe—

- (a) are taking place at the time that the application for recognition of the foreign proceedings is filed—
  - (i) any relief granted under section 159 or 161 must be consistent with the proceedings in Zimbabwe; and
  - (ii) if the foreign proceedings are recognised in Zimbabwe as foreign main proceedings, section 161 does not apply:
- (b) commence after recognition, or after the filing of the application for recognition, of the foreign proceedings—
  - (i) any relief in effect under section 159 or 160 must be reviewed by the Court and must be modified or terminated if inconsistent with the proceedings in Zimbabwe; and
  - (ii) if the foreign proceedings are foreign main proceedings, the stay and suspension referred to in section 160(1) must be modified or terminated in terms of section 161(2) if inconsistent with the proceedings in Zimbabwe;

(2) In granting relief or in extending or modifying relief granted to a representative of foreign non main proceedings, the Court must be satisfied that the relief relates to assets that, under the law of Zimbabwe, should be administered in the foreign non main proceedings or concerns information required in those proceedings.

### **180 Coordination of foreign proceedings**

In matters referred to in section 141(1), in respect of more than one set of foreign proceedings regarding the same debtor, the Court must seek cooperation and coordination under sections 165, 166 and 167, and—

- (a) any relief granted under section 159 or 161 to a representative of foreign non main proceedings after recognition of foreign main proceedings must be consistent with the foreign main proceedings;
- (b) if foreign main proceedings are recognised after recognition, or after the filing of an application for recognition of foreign non main proceedings, any relief in effect under section 160 or 162 must be reviewed by the Court and must be modified or terminated if inconsistent with the foreign main proceedings;
- (c) if, after recognition of foreign non main proceedings, other foreign non main proceedings are recognised, the Court must grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

### **181 Presumption of insolvency based on recognition of foreign main proceedings**

In the absence of sufficient evidence to the contrary, recognition of foreign main proceedings are, for the purpose of commencing proceedings under the laws of Zimbabwe relating to insolvency, proof that the debtor is insolvent.

### **182 Rule of payment in concurrent proceedings**

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of his or her claim in proceedings in terms of a law relating to insolvency in a foreign State may not receive a payment for the same claim in proceedings under the laws of Zimbabwe relating to insolvency regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment that the creditor has already received.

## PART XXVI

## GENERAL PROVISIONS

**183 Court may stay or set aside liquidation**

(1) The Court may at any time after the commencement of the liquidation of a debtor on the application of any liquidator, creditor, trustee or shareholder or member, make an order staying or setting aside the proceedings or for the continuance of any voluntary liquidation on such terms and conditions as the Court may consider appropriate.

(2) The Court may in all matters relating to liquidation, have regard to the wishes of the creditors, beneficiaries, shareholders or members and contributories.

(3) An order setting aside liquidation proceedings shall set out the effect of the setting aside of the order on—

- (a) the assets of the debtor immediately before the date of liquidation; and
- (b) actions taken by the liquidator during the liquidation; and
- (c) contracts of service terminated during the liquidation.

**184 Meetings to ascertain wishes of creditors and others**

(1) Where by this Act the Court is authorised, in relation to a liquidation, to have regard to the wishes of creditors, beneficiaries, shareholders or members or contributories—

- (a) the value of the respective creditors' claims and the voting rights of the various shareholders or members or contributories of the debtor in terms of its trust deed, memorandum, articles, founding statement, agreement or constitution must also be taken into consideration; and
- (b) for the purpose of ascertaining the wishes of such creditors, beneficiaries, shareholders or members or contributories the Court may direct that meetings of the creditors, beneficiaries, shareholders or members or contributories be called, held and conducted in such manner as it directs, and may appoint a person to act as chairperson of any such meeting and to report the result thereof to the Court.

**185 Dispositions and share transfers, or transfer of shareholders' after liquidation void**

(1) Every transfer of an interest in a trust, shares of a company, or other right conferred by agreement or the constitution of an association of persons being liquidated, or alteration in the status of its shareholders or members or beneficiaries effected after the commencement of the liquidation without the sanction of the liquidator, is void.

(2) Every disposition of its property including rights of action by any debtor being liquidated made after the commencement of the liquidation, is void unless the Court orders otherwise.

**186 Inspection of records of debtor being liquidated**

(1) Any person having an interest in a debtor which is being liquidated in terms of this Act may apply to the Court for an order authorising him or her to inspect any or all of the books and papers of that debtor and the Court may impose any condition which it thinks fit in granting that authority.

(2) Subsection (1) must not be construed as affecting any powers or rights conferred by any law upon any department of State or any person acting under its authority at all times to inspect or cause to be inspected, the books and papers of any company being liquidated.

**187 Giving of evidence after conviction for failure to testify**

(1) Any person who is serving a term of imprisonment for the offence contemplated in section 149(2)(c) and who declares himself or herself willing to give the required evidence or to produce the required books, documents, or records may, on the written application of the Master or another person who is to preside at a meeting or to chair a commission, made to the head of the institution where the said person is being held in custody, be brought before the Master or other person for the hearing of such evidence or the production of the required books, documents, or records.

(2) A person contemplated in subsection (1) who has given the required evidence or produced the required books, documents, or records may on his or her own application be brought before the Court which imposed the sentence and that Court may, irrespective of whether or not it is composed as it was when the sentence was imposed, suspend the remaining portion of the sentence or any portion thereof on the conditions that it considers appropriate.

(3) In order to satisfy itself concerning the facts contemplated in subsection (2), the Court may accept as conclusive proof of those facts a certificate given by the presiding officer to the effect that the said person had appeared before him or her and had answered fully and correctly all questions put to him or her and produced all books, documents, or records required of him or her.

### **188 Criminal liability of partners, administrators, servants or agents**

(1) A person commits an offence if, in relation to the affairs or property of a debtor, estate, employer or principal, he or she does or omits to do anything that, had it been done or omitted in respect of that person's own affairs or property, would have constituted an offence under this Act.

(2) The liability under subsection (1) of a partner, person responsible for the management of a debtor, servant or agent shall not affect the liability under that subsection or under any other provision of this Act, of another partner or person responsible for the management of a debtor or of a servant or agent of the same partnership, or of the employer or principal of the employee or agent who is so liable.

### **189 Jurisdiction of Court**

(1) The Court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who—

- (a) on the date on which an application for the liquidation of the estate is lodged with the Registrar of the Court, is domiciled or owns or is entitled to property situate within the jurisdiction of the Court; or
- (b) has its registered office or main place of business within the jurisdiction of the Court; or
- (c) at any time within twelve months immediately before the date of the application ordinarily resided or carried on business within the jurisdiction of the Court.

(2) A Court which has jurisdiction over a debtor or the insolvent estate of a debtor by virtue of subsection (1) has jurisdiction in respect of any matter regulated by this Act arising out of the liquidation of the estate of the said debtor.

(3) When it appears to the Court equitable or convenient that the estate of a person not domiciled in Zimbabwe should be liquidated elsewhere, the Court may refuse or postpone the application for liquidation.

(4) Foreign representatives and creditors have access to the Court as provided in Part XXV of this Act, and liquidation of the estate of a debtor shall be limited as provided in that Part.

(5) The Court may rescind or vary any order made by it under this Act.

### **190 Appeals**

(1) Any person aggrieved by a final liquidation order, or by a refusal to grant a provisional order or to grant a liquidation order without a provisional liquidation order, or by an order setting aside a provisional liquidation order, or any other appealable order made in terms of this Act may, subject to section 31 of the High Court Act [*Chapter 7:06*], appeal against such order.

(2) The rules applicable to appeals from judgments or orders given in civil matters by the Court in question apply to appeals contemplated in subsection (1), subject to subsection (3), with the necessary changes.

(3) Notwithstanding any other law, the noting of an appeal against a final liquidation order does not have the effect of suspending the operation of any provision of this Act:

Provided that, pending judgment on appeal, no property belonging to the insolvent estate may be realised without the written consent of the debtor or, failing such consent, permission granted by order of Court on an application by an interested person who has furnished security to the satisfaction of the Court for restitution in the event of the appeal being successful.

(4) If an appeal against a final liquidation order is allowed, the respondent may be ordered to pay all liquidation costs.

### **191 Review**

(1) Any person aggrieved by any decision, order or taxation of the Master or by a decision by the liquidator or by a decision or order of an officer presiding at a meeting of creditors of an insolvent estate, including the liquidator, may, within 90 days or such further period as the Court may allow for good cause shown, bring such decision, order or taxation under review by the Court upon notice to the Master, liquidator or the presiding officer as the case may be and to any other person whose interests are affected.

(2) If all or most of the creditors are affected by an application referred to in subsection (1), it is sufficient if notice is given to the liquidator on behalf of the creditors.

(3) The Court reviewing any decision, order or taxation may consider the merits of any such matter, hear evidence and make any order it considers appropriate:

Provided that it may not re-open any confirmed liquidator's account otherwise than in terms of section 96.

(4) If the Court on review confirms any decision, order or taxation of the Master or officer referred to in subsection (1) the applicant's costs may not be paid out of the estate in question unless the Court so directs.

### **192 Master's fees**

The Master must in respect of the matters mentioned in Tariff B of the Second Schedule, ensure that the fees specified therein are recovered in the manner prescribed in the Schedule.

### **193 Custody and destruction of documents**

(1) The Master has custody of all documents relating to an insolvent estate.

(2) The liquidator of an insolvent estate may after one year has elapsed from the date of confirmation by the Master of the final liquidation account destroy all books, documents and records in his or her possession relating to the insolvent estate, unless the Master consents to the earlier destruction of such books, documents or records or directs that they be retained for a longer period determined by him or her.

(3) The Master may destroy all records in his or her office relating to an insolvent estate after five years have elapsed from the date of the rehabilitation of a debtor who is a natural person or the dissolution of debtor which is a company or co-operative, or confirmation of the final account in the estate of any other debtor.

### **194 Insurer's liability in respect of indemnification of debtor**

Whenever any person (herein referred to as the insurer) is obliged to indemnify another person (herein referred to as the insured) in respect of any liability incurred by the insured towards a third party, such third party is, on the liquidation of the estate of the insured, entitled to recover from the insurer the amount of the insured's liability towards the third party, but not exceeding the maximum amount for which the insurer is bound in terms of the indemnity.

### **195 Non-compliance with directives**

(1) Nothing done under this Act is invalid merely by reason of the noncompliance with any directive prescribed by or in terms of this Act, unless a substantial injustice has thereby been caused which cannot be remedied by an appropriate order of the Court, the Master or the presiding officer, as the case may be.

(2) No defect or irregularity in the election or appointment of a liquidator invalidates anything done by him or her in good faith.

### **196 Regulations, policy and other powers of Minister**

(1) The Minister may make regulations prescribing—

- (a) the procedure to be observed in Masters' offices in connection with insolvent estates;
- (b) the form, and manner of conducting proceedings under this Act;
- (c) the manner in which fees payable under this Act must be paid and brought to account.

(2) The Minister may by notice in the *Gazette* amend the Second Schedule.

### **197 Repeals**

(1) The Insolvency Act [*Chapter 6:04*] is repealed.

(2) Anything done under any provision of any law repealed by subsection (1) and (2) which may be done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.

**FIRST SCHEDULE****FORM A (sections 4(4)(a), 5(4)(a), 9(5)(a), 43(1)(b)(1) and (ii))**

## STATEMENT OF DEBTOR'S AFFAIRS

FAILURE TO SUBMIT THIS FORM TO THE MASTER AND THE LIQUIDATOR  
WITHIN SEVEN DAYS IS A CRIMINAL OFFENCE AND MAY DELAY  
REHABILITATION, WHERE APPLICABLE

**PART 1**

## BALANCE SHEET

OF .....

\*Here insert the name in full of the debtor

Liabilities	\$ c	Assets	\$ c
Debts due as per Part 5.....		Immovable property as per part 2..... Movable property as per part 2..... Outstanding claims, etc, as per Part 3 ..... Deficiency/surplus .....	

**PART 2**

## IMMOVABLE PROPERTY

	Description of property	Situation and extent	Mortgages and other secured claims	Estimated values
Property situate in Zimbabwe Property situate elsewhere .....				\$ c
			Total	

**PART 3**

ANY MOVABLE PROPERTY WHATSOEVER WHICH IS NOT INCLUDED IN PART 4 OR PART 5

	Description of property	Estimated value
Property situate in Zimbabwe.... Property situate elsewhere.....		\$..... c
	Total	

Note: Movable property includes assets such as insurance policies and credit balances in accounts with banks or other institutions or persons. Any merchandise mentioned in this part shall be valued at its cost



price or at its market value at the time of the making of this statement, whichever is the lower, and the statement shall be supported by detailed stock sheets relating to such merchandise.

#### PART 4

##### OUTSTANDING CLAIMS, BILLS, BONDS AND OTHER SECURITIES

	Names and residential and postal address of the debtor	Particulars of claim	Estimated amount good	Estimated amount bad or doubtful
In Zimbabwe.....			\$            ¢	\$            ¢
Elsewhere.....				
		Total		

#### PART 5

##### LIST OF CREDITORS

Name and address of creditor	Nature and value of security for claim	Nature of claim	Amount of claim
			\$            ¢
		Total	

#### PART 6

##### MOVABLE ASSETS PLEDGED, HYPOTHECATED, SUBJECT TO A RIGHT OF RETENTION OR UNDER ATTACHMENT IN EXECUTION OF A JUDGMENT

Description of asset	Estimated value of asset	Nature of charge on asset	Amount of debt to which charge relates	Name of creditor in whose favour charge is

The nominal amount of unpaid capital liable to be called up is \$\* .....

\* This information to be provided by a company debtor

PART 7

ENUMERATION AND DESCRIPTION OF EVERY BOOK OR DOCUMENTING RECORD IN USE BY THE DEBTOR AT TIME OF THE LIQUIDATION OR AT TIME WHEN THE DEBTOR CEASED CARRYING ON BUSINESS

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

PART 8

DETAILED STATEMENT OF CAUSES OF DEBTOR'S INSOLVENCY

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

PART 9

PERSONAL INFORMATION (TO BE COMPLETED BY NATURAL PERSON DEBTORS)

State whether the debtor is married, widowed or divorced:

.....

If the debtor is or was married, state—

(a) name or names of spouse or spouses (a 'spouse' means not only a wife or husband in the legal sense, but also a person who in terms of any legal system or recognised custom is recognised as such a person's spouse and also any person with whom such person is cohabitating in a marriage relationship, irrespective of whether or not he or she is lawfully married to any other person).

.....  
.....

(b) Date of marriage .....

(c) whether the matrimonial property system has been changed since entering into the marriage and, if so, the nature of the change

.....  
.....

(d) full names and date of birth of the spouse and, if an identity number has been assigned, the identity number of the spouse

.....  
.....

Was the debtor, or a member of management of the debtor, a director of a company which was liquidated within 10 years before the liquidation of the estate of the debtor? .....

If the preceding answer is in the affirmative, state the name of each liquidated company, the date of liquidation and the office of the Master of the High Court which had jurisdiction:

.....  
.....  
.....

State the debtor's nationality.....

State the debtor's place of birth, date of birth and, if an identity number has been assigned, the identity number.....

.....

Was the debtor's estate or the estate of a partnership in which the debtor is or was a partner previously liquidated or placed in bankruptcy, whether in Zimbabwe or elsewhere?

.....

If the preceding answer is in the affirmative, state—

(a) whether debtor's own estate or his partnership's estate was (i) liquidated; or (ii) placed in bankruptcy.....

(b) the place where and the date when that estate was liquidated or placed in bankruptcy.....

(c) whether the debtor has been rehabilitated or his estate released; if so, when:

.....  
.....

**PART 10**

**AFRDAVIT/SOLEMN DECLARATION**

I ..... declare under oath/solemnly and sincerely declare\* that to the best of my knowledge and belief the statements contained in this Schedule are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

Signature of declarant .....

Sworn/solemnly declared before me on the .....day .....of  
at.....

.....  
Commissioner of Oaths

.....  
Full names

.....  
Business address

.....  
Designation and area or office

**FORM B (Section 66(6))**

**AFFIDAVIT FOR PROOF OF ANY CLAIM OTHER THAN A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE**

Strike out inapplicable words where \* occurs.

In the insolvent estate of .....

Date of liquidation: .....

Name of creditor.....  
Address of creditor.....  
E-mail address of creditor.....  
Fax number of creditor: .....  
Amount of claim at date of liquidation.....

I .....declare \*under oath/solemnly as follows

(1) \*I am the creditor/I am the .....(capacity) of the creditor and have authority to make this declaration and submit the claim for proof as appears from the attached documentation.

(2) \*I have personal knowledge of the nature and particulars of the claim/I have satisfied myself as to the nature and particulars of the claim.

(3) \*The claim was not obtained by cession after the commencement of liquidation proceedings/The claim was obtained by cession on .....(date).

(4) The nature of the claim (for instance money advanced, goods delivered, salary due) is ..... as appears from the attached documentation or declaration.

(In respect of debts which accrued over a period or in respect of which payments were made a statement shall be submitted with a brief description of all debits and credits over the period of twelve months immediately preceding the date of liquidation.)

(5) The debt arose on or since .....(date). The debt was due to me on the date of liquidation/The debt or part thereof became due to me or will become due to me after liquidation as set out on the attached statement.

(6) \*I hold no security in respect of the debt/The particulars of security held by me for payment of the debt and the value placed on the security (if a value is placed on the security) are as follows:

.....  
.....

\* I do not rely on my security for the payment of my claim it rely solely on my security for the payment of my claim.

(7) \*To the best of my knowledge no one except the insolvent estate is liable for the debt or a part thereof/The particulars of others who are to my knowledge liable for the debt and the security held in respect thereof are as follows

.....  
.....  
.....

\*(8) I authorise the liquidator to have any dividend due to me transferred electronically to my banking account (supply name of account, branch number and account number

.....  
.....  
.....

.....  
Signature of declarant

\*Sworn to/solemnly declared before me on..... (date) at .....(place)

.....  
Commissioner of oaths

.....  
Full name

.....  
Business address

.....  
Designation and area or office

**FORM C (Section 66(6))**

AFFIDAVIT FOR THE PROOF OF A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE

Strike Out inapplicable words where \* occurs.

In the insolvent estate of .....

Date of liquidation.....

Name of creditor: .....

Address of creditor.....

E-mail address of creditor.....

Fax number of creditor.....

Amount of claim at date of liquidation.....

I ..... declare \*under oath/solemnly as follows

(1) \*I am the creditor/I am the (capacity) of the creditor and have authority to make this declaration and submit the claim for proof as appears from the attached documentation.

(2) \*I have personal knowledge of the nature and particulars of the claim/I have satisfied myself as to the nature and particulars of the claim.

(3) \*The claim was not obtained by cession after the commencement of liquidation proceedings/The claim was obtained by cession on .....(date).

(4) The debtor was on the date of liquidation and still is indebted to me by virtue of the following \*promissory note/bill of exchange:

Date of note or bill	Name of maker or drawer	Name of acceptor	Name of person to whom payable	Date when payable	Name of endorser	Amount

(5) The nature of the claim (for instance money advanced, goods delivered, and salary due) ..... is as appears from the attached documentation or declaration.

(In respect of debts which accrued over a period or in respect of which payments were made a statement shall be submitted with a brief description of all debits and credits over the period of twelve months immediately preceding the date of liquidation.)

(6) That the said \*note/bill is in all respects genuine and valid.

(7) \*I hold no security in respect of the debt/The particulars of security held by me for payment of the debt and the value placed be me on the security (if a value is placed on the security) are as follows—

\* I do not rely on my security for the payment of my claim./I rely solely on my security for the payment of my claim.

(8) \*To the best of my knowledge no one except the insolvent estate is liable for the debt or a part thereof/The particulars of others who are to my knowledge liable for the debt and the security held in respect thereof are as follows : .....

.....  
.....

(9) I authorise the liquidator to have any dividend due to me transferred electronically to my banking account (supply name of account, branch number and account number) .....

.....

Signature of declarant

\*Sworn to/solemnly declared before me on..... (date) at .....(place)

.....

Commissioner of oaths

.....

Full name

.....

Business address

.....

Designation and area or office

### FORM D

#### FORM AND CONTENTS OF ACCOUNTS (SECTION 97(2))

1. The accounts must be lodged on A4 standard paper and totals must be added up separately at the foot of each sheet with a total at the end of each account.

#### 2. Heading

The heading of the account must contain the following information:

- (a) the name of the debtor;
- (b) the address of the debtor;
- (c) the identity number or date of birth or registration number of the debtor;
- (d) the date of liquidation;
- (e) the ordinal number of the account or supplementary account;
- (f) the nature of the account (e.g. liquidation account);
- (g) where applicable, whether it is a final or supplementary account;
- (h) whether it is a distribution account or a contribution account or both;
- (i) the Master's reference number.

#### 3. Liquidation account

- 3.1 A liquidation account must contain a record of all receipts derived from the realisation of assets and disbursements made or to be made in defraying the costs of liquidation, except receipts and disbursements reflected in a trading account.
- 3.2 The record of receipts and disbursements must reflect full particulars explaining their nature and state the amount thereof in a money column.
- 3.3 The gross proceeds of assets must be reflected and the disbursements incidental to the realisation must be entered as disbursements.
- 3.4 Receipts and disbursements must upon the request of the Master be supported by satisfactory vouchers numbered consecutively in the top right-hand corner by reference to the number appearing in the account opposite the relative item.
- 3.5 The account must reflect separately the distribution to be made (if any) to secured claims, preferent claims and concurrent claims and the contribution to be levied (if any).
- 3.6 If security has been realised, the liquidation account must contain a free residue account dealing with receipts not subject to security and consecutively numbered encumbered asset accounts dealing with receipts subject to security.
- 3.7 If disbursements or income are apportioned amongst the free residue and encumbered asset accounts the liquidation account must indicate how the apportionment has been calculated.
- 3.8 An encumbered asset account must be drawn to indicate the proceeds of the realisation of security, the disbursements payable out of the proceeds of the security and the amount payable to a creditor or creditors with the period for and rate at which interest before and after liquidation (if any) has been calculated.

#### 4. Trading account

When the liquidator carried on business by either purchasing stock or entering into new transactions for the purpose of trading, a separate trading account including the following items only, must be submitted:

- (a) the value of the stock on hand at the date of liquidation shown on the credit side;
- (b) the receipts and disbursement on the trading account;
- (c) the value of stock on hand at the date on which the accounts were made up shown on the debit side with a note of the items in the liquidation account reflecting the proceeds of the stock that has been realised (if any).

#### 5. Bank reconciliation

5.1 The liquidator must lodge complete statements up to the date on which the accounts were made up of all accounts opened in terms of section 88.

5.2 The account must contain a bank reconciliation statement with the following information:

- (a) the balance in the cheque account and the date at which the bank statement reflected that balance;
- (b) the amount of the contribution provided for in the contribution account (if any);
- (c) the amount (if any) of each outstanding deposit with sufficient particulars to explain its nature or a reference to the item in the liquidation account which together with the even numbered voucher (if any) explain its nature;
- (d) the amount of each disbursement in the liquidation account that must still be paid with sufficient particulars to explain its nature or a reference to the item in the liquidation account which together with the even numbered voucher, if any, explain its nature;
- (e) the amount of the payment (if any) still to be made to each secured creditor with an explanation if this amount does not agree with the amount reflected in the distribution account;
- (f) the total amounts to be paid to preferent creditors and concurrent creditors (if any) with an explanation if these amounts do not agree with the totals reflected in the distribution account;
- (g) the amount (if any) to be transferred to a next account.

#### 6. Distribution account, contribution account or contribution and distribution account

6.1 The liquidator must, upon the request of the Master, lodge all proved claims and unproved claims admitted or compromised by the liquidator or proved in an action at law.

6.2 The account must indicate the basis for contribution if this is not the amount of the concurrent claim and contain the following columns that are applicable to the account:

- (a) claim reference number;
- (b) creditor's name and if dividends are to be transferred electronically the account name, branch number and account number of the creditor's account;
- (c) total claim;
- (d) concurrent claim;
- (e) secured claim;
- (f) award in previous accounts;
- (g) concurrent award with a separate column for interest after liquidation (if any) and an explanation in the account of the rate at and period for which interest has been calculated;
- (h) secured or preferent award;
- (i) amount of contribution;
- (j) shortfall.

6.3 In the event of the debtor being a company debtor or co-operative debtor, the account must in addition also contain a list of the amounts returnable to contributories, if applicable, and such list must contain the following columns that are applicable to the account:

- (a) the full christian names and surname of the contributory;
- (b) the number of shares or percentage of the shareholders or members interest held by the contributory;
- (c) the amount returnable to the contributory expressed as a dividend in the rand.

#### 7. Certificate

7.1 Each liquidator must sign the certificate under oath or affirmation.

7.2 The certificate must state that the account contains a true account of the administration of the estate.

- 7.3 If it is a final account, the certificate must state that so far as the liquidator is aware all the assets of the insolvent estate have been disclosed in the accounts.
- 7.4 If it is not a final account, the certificate must reflect a list of all unrealised assets of which the liquidator is aware with the reason why the assets have not been realised and an estimate of the value of the assets.

**FORM E1**

NOTICE IN TERMS OF SECTION 21(9) TO ATTEND A HEARING IN TERMS OF SECTION 21(9) OF THE ACT

In Re:  
 ESTATE OF .....  
 MASTER’S REFERENCE No.....  
 To.....

You are hereby notified in terms of section 21(9) to appear at a hearing to be held at ..... (details of venue) on the ..... day of .....20...., at to give evidence and supply proof of earnings received by you or your dependants out of the exercise of your profession, occupation or employment and all assets or income received by you or your dependants from whatever source and the estimated expenses for your own support and that of your dependants.  
 Dated at ..... this ..... day of ....., 20 .....

.....  
 Magistrate

\_\_\_\_\_  
 (Here insert details of the name, address  
 telephone number, fax number and e-mail  
 of the liquidator or the attorneys acting for the liquidator)

NOTE:  
 Your attention is specifically drawn to the provisions of sections 61 and 150(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

**FORM E2**

SUMMONS IN TERMS OF SECTION 66(14) TO ATTEND A MEETING OF CREDITORS FOR EXAMINATION IN TERMS OF SECTION 66(14) OF THE ACT

In Re:  
 ESTATE OF .....  
 MASTER’S REFERENCE No.....  
 To.....

You are hereby summonsed in terms of section 68(12) to appear in person at a meeting of creditors in the above estate to be held at ..... (details of venue) on .....the ..... day of .....20...., at to be questioned by the presiding officer, the liquidator or a creditor who has proved a claim against the estate, or the representative of the liquidator or such creditor in regard to your claim against the insolvent estate. You are summonsed to bring with you all books, documents or records in support of your claim.

Dated at ..... this ..... day of ....., 20 .....

.....



Presiding Officer

\_\_\_\_\_  
(Here insert details of the name, address  
telephone number, fax number and e-mail  
of the liquidator or the attorneys acting  
for the liquidator)

NOTE:

In terms of section 68(13), if a person who wishes to prove a claim is called upon to be questioned as contemplated in subsection (12) and fails without reasonable excuse to appear or refuses to take the oath or make a solemn declaration or to submit to questioning or to answer fully and satisfactorily any lawful question put to him or her, his or her claim, may be rejected.

**FORM E3**

SUMMONS IN TERMS OF SECTION 56(2) TO ATTEND A MEETING OF CREDITORS FOR EXAMINATION IN TERMS OF SECTION 56 OF THE ACT

In Re:

ESTATE OF .....

MASTER'S REFERENCE No.....

To.....

You are hereby summonsed in terms of section 55(1) to appear in person at a meeting of creditors in the above estate to be held at .....(details of venue) on the ..... day of ..... 20.....at ..... to give evidence and to be questioned on all matters relating to the insolvent or his or her business or affairs, whether before or after the liquidation of the estate, and concerning any property which at any time belonged to the insolvent estate and to produce to the presiding officer at the meeting all the books, papers and documents specified hereunder:

LIST OF BOOKS, PAPERS OR DOCUMENTS TO BE PRODUCED

Description of book, paper or document	Date (if any)	Copy or original required
--	---------------	---------------------------

Dated at ..... this .....day .....of , 20.....

.....  
Presiding Officer

\_\_\_\_\_  
(Here insert details of the name, address  
telephone number, fax number and e-mail  
of the liquidator or the attorneys action for the liquidator)

NOTES:

1. A cheque for witness fees in the form of appearance money and travelling allowances in the sum of \$ ..... (dollars) is attached to your copy of the summons. You are entitled to make representations to the Presiding Officer of the meeting for additional necessary witness fees.
2. Your attention is specifically drawn to the provisions of subsections 57(3), 57(6), 57(9), 57(10) and 61 of the Act which sections are printed on the reverse side hereof.

**FORM E4**

SUMMONS IN TERMS OF SECTION 58(4) TO ATTEND AN EXAMINATION IN TERMS OF SECTION 58 OF THE ACT

In Re:  
ESTATE OF .....  
MASTER'S REFERENCE No.....  
To.....

You are hereby summonsed in terms of section 58(3)(b) or 58(5) to appear in person at a questioning in the above estate to be held at .....(details of venue) on .....the .....day .....of 20 ....., at..... to be questioned on property in your possession belonging to the insolvent estate, amounts due by you to the insolvent estate and all matters relating to the affairs of the insolvent and his or her property and to produce to the presiding officer at the questioning all the books, documents or records specified hereunder:

LIST OF BOOKS, DOCUMENTS OR RECORDS TO BE PRODUCED

Description of book, paper or document	Date (if any)	Copy or original required
--	---------------	---------------------------

Dated at .....this .....day..... of 20.....

.....  
Master/Court/Presiding Officer

\_\_\_\_\_  
(Here insert details of the name, address  
telephone number, fax number and e-mail  
of the liquidator or the attorneys acting for the liquidator)

NOTES:

1. A cheque for witness fees in the form of appearance money and travelling allowances in the sum of \$ .....(dollars) is attached to your copy of the summons. You are entitled to make representations to the Presiding Officer of the meeting for additional necessary witness fees.
2. Your attention is specifically drawn to the provisions of sections 57(3), (6), (9), (10), 58(7), (8) and (10), 61 and 150(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

**FORM E5**

SUMMONS IN TERMS OF SECTION 60(2) TO ATTEND AN EXAMINATION IN TERMS OF SECTION 60 OF THE ACT

In Re:  
ESTATE OF .....  
MASTER'S REFERENCE No.....  
To.....

You are hereby summonsed in terms of section 60(1) to appear in person at a questioning in the above estate to be held at ..... (details of venue) on .....the .....day of ..... 20..... at ..... to furnish information and to be questioned on all information within your knowledge concerning the insolvent or his or her estate or the administration of the estate and to produce to the presiding officer at the meeting all the books, documents and records specified hereunder:

LIST OF BOOKS, DOCUMENTS OR RECORDS TO BE PRODUCED

Description of book, paper or document	Date (if any)	Copy or original required
--	---------------	---------------------------

.....  
Master/Court/Presiding Officer

Your attention is specifically drawn to the provisions of sections 57(3), 57(6), 57(9), 57(10), 60(5), 60(6), 61 and 150(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

**FORM F**

STATUTORY DEMAND IN TERMS OF SECTION 3(2)(A)

**WARNING**

This is an important document. If you should fail to respond to the document within 21 days after service thereof your estate may be liquidated and your assets taken away from you.

**DEMAND**

To: .....

Address: .....

The creditor claims that you are indebted to him or her for the following amount which is now due and payable and that he holds no security for the amount claimed.

When incurred	Type of debt (cause of action)	Amount due as at the date of the demand
---------------	-----------------------------------	---

The creditor demands that you pay the amount due within three weeks after the service of this demand or give security to the reasonable satisfaction of the creditor therefor, or enter into a compromise in respect thereof.

Should you fail to comply with this demand, this does not preclude you from opposing an application for the liquidation of your estate. If you deny indebtedness wholly or in part, you should contact the creditor without delay.

SIGNATURE: .....

NAME OF CREDITOR.....

(PRINT)

DATES.....

CAPACITY.....

(IF NOT CREDITOR PERSONALLY)

ADDRESS.....

TEL. No: .....

PERSON YOU MAY CONTACT IF NOT CREDITOR PERSONALLY:

NAMES.....

ADDRESS.....

.....

.....

If debt obtained by cession or otherwise:

	Name	Date of cession or other act
Original creditor		
Cessionaries		

## SECOND SCHEDULE

### TARIFF A (SECTION 29(2)(d))

#### REMUNERATION OF LIQUIDATOR, INTERIM LIQUIDATOR AND CORPORATE RESCUE PRACTITIONER

##### ITEM 1: REMUNERATION OF LIQUIDATOR (SECTIONS 48(2) AND 136(1))

A liquidator appointed under the provisions of this Act is entitled to remuneration at the following tariffs—

(1) On the proceeds of and any income or rentals arising from any property which was subject to the rights of a secured creditor in respect Of the gross amount reflected in each encumbered asset account—	
(a) on the first \$5 000	<i>4 per centum</i>
(b) on the next \$10 000	<i>3 per centum</i>
(c) on any amount in excess of \$15 000	<i>1 per centum</i>
(d) minimum fee	\$150
(2) On the gross amount of the free residue of the company, including any surplus brought into the free residue from an encumbered asset account—	
(a) on the first \$5 000	<i>7 per centum</i>
(b) on the next \$10 000	<i>5 per centum</i>
(c) on the next \$10 000	<i>4 per centum</i>
(d) on any amount in excess of \$25 000	<i>3 per centum</i>
(e) minimum fee	\$thirty0
(3) On the gross turnover of any trading or carrying on of business—	
(a) on the first \$5 000	<i>3 per centum</i>
(b) on any excess over \$5 000	<i>1 per centum</i>
(4) On the value of any asset taken over by a creditor with the consent of the liquidator minimum fee	<i>1 per centum</i>
(5) Where the liquidator is appointed for the purposes of carrying out a scheme of arrangement, post-liquidation composition or compromise under the provisions of this Act, he shall be entitled to a fee calculated as follows on the value of the debtor's property as estimated in the statement of affairs—	\$50
(a) on the first \$10 000 or fraction thereof	<i>1 per centum</i>
(b) on the next \$40,000 or fraction thereof	<i>1.5 per centum</i>
(c) on the next \$50 000 or fraction thereof	<i>2 per centum</i>
(d) on the next \$100 000 or fraction thereof	<i>2.5 per centum</i>
(e) thereafter	<i>3 per centum</i>
(6) A liquidator shall be entitled to recover travelling expenses incurred during the course of his duties at a rate to be determined in the discretion of the Master.	

##### ITEM 2: REMUNERATION OF INTERIM LIQUIDATOR (SECTION 79(9))

A reasonable remuneration, to be determined by the Master, not to exceed the rate of remuneration of a liquidator under this tariff.

##### ITEM 3: REMUNERATION OF CORPORATE RESCUE PRACTITIONER (SECTION 136(1))

(1) The basic remuneration of a business rescue practitioner, to be determined by the Minister from time to time and published by way of notice in the *Gazette*.

(2) Paragraph (1) does not apply to, limit or restrict any 'further remuneration' for a business rescue practitioner, as contemplated in section 136(2) to (4).

(3) In addition to the remuneration in paragraphs (1) and (2), a practitioner is entitled to be reimbursed for the actual cost of any disbursement made by the practitioner, or expenses incurred by the practitioner to the extent reasonably necessary to carry out the practitioner's functions and facilitate the conduct of the company's corporate rescue proceedings.

## TARIFF B

### MASTER'S FEES OF OFFICE (SECTIONS 88(1)(B) AND 192)

<p>(1) On the gross assets, including income and any security taken over by a creditor, dealt with in any liquidation account in respect of an insolvent debtor being liquidated by the court or voluntarily by resolution, a fee of <i>2 per centum</i> of the gross proceeds or gross value of such assets: Provided that, where a debtor has been placed under judicial management or corporate rescue and is thereafter wound up, the fee shall be reduced to <i>1½ per centum</i>.</p>	
<p>(2) On the gross assets, including income, dealt with in any liquidation account in respect of a solvent debtor being wound up voluntarily, a fee of <i>1½ per centum</i> of the gross proceeds or gross value of such assets.</p>	
<p>(3) On the gross value of assets owned by a debtor which has been placed under judicial management or corporate rescue, a fee of <i>1½ per centum</i> of such gross value, which value shall be determined by the Master by reference to the reports or other information which the judicial manager or corporate rescue practitioner is required to submit to the Master.</p>	
<p>(4) For every report prepared by the Master, such fee as the Master may fix, taking into account the length and complexity of the report—  Minimum  Maximum</p>	<p>\$4  \$40</p>
<p>(5) Inspection of documents in respect of one debtor by a person other than the liquidator, judicial manager or corporate rescue practitioner of that company or by the agent of such liquidator, judicial manager or corporate rescue practitioner.</p>	<p>\$1</p>
<p>(6) Making a copy of any document, per page—  (a) by photostatic means;  (b) by original type;  (c) by duplicated or printed copy type.</p>	<p>50 cents  \$1  25 cents</p>
<p>(7) Supplying, upon request, transcripts of shorthand notes and of documents in respect of any examination under the Act, per page or part thereof—  (a) for the first copy supplied to any party  (b) for the second and subsequent copies made at the same time and supplied to the same party</p>	<p>\$1  25 cents</p>

**THIRD SCHEDULE**

STATEMENT IN RESPECT OF PROPOSED PRE-LIQUIDATION COMPOSITION

(SECTION 119 AND S48(6))

**PART A**

PERSONAL PARTICULARS OF DEBTOR

Full name: .....

Address: .....

(Documents in connection with the composition may be delivered to the debtor at this address until such time as he or she has notified the administrator of a change of address)

Date of birth: .....

Identity number, if one has been assigned: .....

Marital status: .....

If married, state—

full name of spouse “spouse” means a person’s—

- (a) partner in a marriage;
- (b) partner in a customary union or customary marriage according to customary law;
- (c) civil union partner as defined in section 2 of the Civil Union Act, 2006 (Act No. 17 of 2006); or
- (d) partner in a relationship in which the parties live together in a manner resembling a partnership contemplated in paragraphs (a), (b), or (c), even if one or both are in such a partnership with another partner;

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Date of birth of spouse: .....

Identity number of spouse, if one has been assigned .....

Date of marriage .....

whether the matrimonial property system has changed since entering into the marriage and, if so, the nature of the change .....

.....

Whether the debtor’s estate has been placed under administration during the last five years or whether it is under administration at present and, if so, the date of the administration order and whether it has been concluded

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.....

Whether the debtor has during the last six months lodged a composition with a magistrate for submission to creditors

.....

Whether the debtor’s estate has been liquidated during the last ten years and, if so, the date of liquidation and the Division of the High Court that issued the liquidation order

.....

.....

**PART B**

APPLICABLE STATUTORY PROVISIONS

The debtor declares that he or she is aware of the following statutory provisions in connection with his or her application:

If the composition provides for the payment of a cash amount for distribution among creditors, the amount must, pending the outcome of the offer of composition, be paid to the administrator.

If a debtor incurs debt during the period from lodging the composition with the administrator until creditors have voted on the composition, he or she must notify the creditor who offers him or her credit of the pending composition and provide full particulars concerning the said debt incurred by him or her to the

administrator. During the said period or after a composition has been accepted, a debtor must not alienate, encumber or voluntarily dispose of any property which is to be made available to creditors in terms of the composition or do anything which can impede compliance with the composition. A debtor who contravenes these provisions is guilty of an offence.

If the composition provides for payments by the debtor in determined instalments or otherwise, the acceptance of the composition has the effect of a judgment in terms of section 18 of the Magistrates' Courts Act [Chapter 7:10] and shall be enforced by the Court upon registration by the interested party in respect of the payments. Any person who in terms of the composition is to receive the payments on behalf of creditors, or if there is no such person, any creditor who is in terms of the composition entitled to a benefit out of the payments, has the rights which a judgment creditor would have in terms of the section.

The administrator may revoke the composition for good reasons, including the following—

1. If the debtor does not comply with his or her obligations in terms of the composition; or
2. If the debtor gives false information in his or her statement or in the course of the questioning; or
3. If the debtor gives a benefit in respect of a claim which falls under the composition to a creditor on whom the composition is binding and who is not entitled to the benefit in terms of the composition.

### PART C

#### INCOME AND EXPENDITURE

The name and business address of the debtor's employer or, if the debtor is not employed, the reason why he or she is not employed : .....

The debtor's trade or vocation and his or her gross weekly or monthly income as well as the income of his or her spouse living in with him or her, and particulars of all deductions therefrom by way of debit order or otherwise, supported as far as possible by written statements by the employer of the debtor or his or her spouse.....

A detailed list of the debtor's weekly or monthly necessary expenses and the expenses of persons who are dependent on him or her, including the travelling expenses of the debtor or his or her spouse to and from work and such expenses of his or her children to and from school, and expenses required to retain assets that are subject to the composition:

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The number and ages of persons who are dependent on the debtor or his or her spouse and their relationship to the debtor or his or her spouse

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### PART D

#### ASSETS

(i) Assets not subject to the composition

<u>Description of asset</u>	<u>Value</u>	<u>Subject to secured claim?</u>
<u>(Bond, property tax, pledge, cession, hire-purchase, instalment contract, etc)</u>		



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(ii) Assets subject to the composition

Description of asset                      Value                      Subject to secured claim?  
(Bond, property tax, pledge, cession, hire-purchase, instalment contract, etc)

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The debtor affirms that assets which are subject to the composition are in safe custody, that obligations in respect of the assets are included in “necessary expenses” in Part C above, and that such obligations will be fulfilled until conclusion of the composition.

PART E  
DEBTS

(i) Debts not subject to security

Name and address of debtor                      Amount                      Give particulars if the debt  
is not immediately claimable

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(ii) Debts subject to security

Name and address of debtor                      Amount                      Nature of security and  
identification of asset subject to security (Part D above) Give particulars if the debt is not immediately  
claimable

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Name and address of any other person who is apart from the debtor liable for any of the abovementioned debts: .....

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**AFFIDAVIT/SOLEMN DECLARATION**

I,..... declare under oath/solemnly and sincerely declare\* that to the best of my knowledge and belief the statements contained in this form are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

.....  
Signature of declarant

Sworn to/solemnly declared before me on the ..... day of ..... at .....

.....  
Commissioner of oaths

.....  
Full name

.....  
Business address

.....  
Designation and area or office

## FOURTH SCHEDULE (Section 142(2))

### CONTENTS OF PROPOSED RESCUE PLAN

Part A — background, which must include at least—

- (vii) a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the corporate rescue proceedings began;
- (viii) a complete list of the creditors of the company when the corporate rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
- (ix) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
- (x) a complete list of the holders of the company's issued securities;
- (xi) a copy of the written agreement concerning the corporate rescue practitioner's remuneration;
- (xii) a statement whether the corporate rescue plan includes a proposal made informally by a creditor of the company.

(d) Part B—proposals, which must include at least—

- (viii) the nature and duration of any moratorium for which the corporate rescue plan makes provision;
- (ix) the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
- (x) the ongoing role of the company, and the treatment of any existing agreements;
- (xi) the property of the company that is to be available to pay creditors' claims in terms of the corporate rescue plan;
- (xii) the order of preference in which the proceeds of property will be applied to pay creditors if the corporate rescue plan is adopted;
- (xiii) the benefits of adopting the corporate rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation; Q
- (vii) the effect that the corporate rescue plan will have on the holders of each class of the company's issued securities.

(e) Part C—assumptions and conditions, which must include at least—

- (v) a statement of the conditions that must be satisfied, if any, for the corporate rescue plan to come into operation and be fully implemented;
- (vi) the effect, if any, that the corporate rescue plan contemplates on the number of employees, and their terms and conditions of employment;
- (vii) the circumstances in which the corporate rescue plan will end;
- (viii) a projected—
  - C. balance sheet for the company; and
  - D. statement of income and expenses for the ensuing three years, prepared on the assumption that the proposed corporate plan is adopted.

### FIFTH SCHEDULE (Section 147 (3))

- Part A — background, which must include at least—
- (vi) a complete list of all the material assets of the company, as well as an indication as to which assets are held as security by creditors as of the date of the proposal;
  - (vii) a complete list of the creditors of the company as of the date of the proposal, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
  - (viii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
  - (ix) a complete list of the holders of the company issued securities, and the effect that the proposal would have on them, if any; and
  - (x) whether the proposal includes a proposal made informally by a creditor of the company;
- (d) Part B—proposals, which must include at least—
- (vii) the nature and duration of any proposed debt moratorium;
  - (viii) the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
  - (ix) the treatment of contracts and ongoing role of the company;
  - (x) the property of the company that is proposed to be available to pay creditors' claims;
  - (xi) the order of preference in which the proceeds of property of the company will be applied to pay creditors if the proposal is adopted; and
  - (xii) the benefits of adopting the proposal as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation;
- (e) Part C—assumptions and conditions, which must include at least—
- (iv) a statement of the conditions that must be satisfied, if any, for the proposal to come into operation, and be fully implemented;
  - (v) the effect, if any, that the plan contemplates on the number of employees, and their terms and conditions of employment; and
  - (vi) a projected balance sheet for the company and statement of income and expenses for the ensuing three years, prepared on the assumption that the proposal is accepted.
- (4) The projected balance sheet and statement required by subsection (3)(c)(iii)—
- (c) must include a notice of any significant assumptions on which the projections are based; and
  - (d) may include alternative projections based on varying assumptions and contingencies.
- (5) A proposal must conclude with a certificate by an authorised director or prescribed officer of the company stating that any—
- (c) factual information provided appears to be accurate, complete, and up to the date; and
  - (d) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.