



INSOL
INTERNATIONAL



WORLD BANK GROUP

THE WORLD BANK **IFC** International
IBRD • IDA Finance Corporation

Caribbean Round Table 2022

In partnership with

Eastern Caribbean Central Bank



March 9 and 10
Virtual Workshops

Contents

Programme Agenda3

INSOL’s Vision and Purpose.....7

About World Bank Group8

Curriculum Vitae (in alphabetical order)9

Peer to Peer Outlines.....23

Antigua and Barbuda Companies (Amendment) Act 2020.....51

Cayman Islands Companies (Amendment) Act 2021.....107

Programme Agenda

Caribbean Round Table on Insolvency – Day 1 Wednesday, 09 March, 2022 9:00 am EST – 12:00 pm EST (10.00am – 1.00pm AST / 2.00-5.00pm London)	
9.00-9.10am	Opening Remarks Speakers: <i>Damien Shiels - Regional Manager, Creating Markets Advisory (CMA), Europe & Central Asia (ECA) - International Finance Corporation (IFC)</i> <i>Scott Atkins - INSOL Fellow and President, INSOL International</i> <i>Dr.Valda Henry - Deputy Governor, Eastern Caribbean Central Bank</i>
9.10-9.30am	Keynote Address Overview of Economic Challenges in the Caribbean in the Aftermath of the Pandemic Speakers: <i>Nataliya Mylenko - World Bank Program Leader, EFI Group</i> <i>Wendy Delmar - Chief Executive Officer, Caribbean Association of Banks</i>
9.30-11.00am	Peer to Peer Exchange Several countries will present: (i) their existing insolvency regime; (ii) potential / upcoming reforms; and (iii) the key challenges that remain. Different stakeholders have purposefully been requested to share their views in order to get cross-cutting perspectives in the region. Speakers: <i>Moderator: Antonia Menezes - World Bank Group</i> <i>Dr.Vanessa Moe - Crown Solicitor, Antigua</i> <i>Sophia Rolle-Kapousouzoglou - Lennox Paton, Bahamas</i>

	<p><i>Hon. Mrs Justice Shade Subair Williams - Supreme Court of Bermuda</i> <i>Kent McPartland - Kroll BVI</i> <i>Hon. Mr.Sam Bulgin - Attorney General, Cayman Islands</i> <i>Hon. Justice Algernon Smith - Superintendent, OSI Jamaica</i> <i>Fiona Hinkson - National Competitiveness and Productivity Council, Ministry of Finance, St Lucia</i> <i>Karen Seebaren-Blondet - Superintendent, OSI Trinidad</i></p>
11.00am-12.00pm	<p>Deep Dive into Insolvency Law Reform</p> <p>The recent insolvency reforms in two jurisdictions will be showcased and discussed in greater detail.</p> <ul style="list-style-type: none"> - Cayman Islands - Antigua and Barbuda <p>Speakers: <i>Hon. Justice Ian Kawaley - Grand Court of the Cayman Islands</i> <i>Deniscia Thomas - Chief Parliamentary Counsel, Antigua</i></p>
12.00pm	Closing Remarks

Caribbean Round Table on Insolvency – Day 2
Thursday, 10 March, 2022
9:00 am EST – 12:00 pm EST
(10.00am – 1.00pm AST / 2.00-5.00pm London)

9.00-9.10am	<p>Introduction to Insolvency Reform in the Eastern Caribbean</p> <p>Speakers: <i>Mahesh Uttamchandani - Practice Manager, Finance, Competitiveness & Innovation Global Practice, World Bank Group</i> <i>Maria Barthelmy - Senior Legal Specialist, Legal Services Department, Eastern Caribbean Central Bank</i></p>
9.10-10.20am	<p>Insolvency Law and Practice in England & Wales</p> <p>Discussion of the insolvency regime in England & Wales. Regional experiences and adaptations with this Model.</p> <p>Speakers: <i>Hon. Justice Nick Segal - Grand Court of the Cayman Islands / Erskine Chambers, UK</i> <i>Martin Kenney - Martin Kenney Solicitors, BVI</i></p>
10.20-11.30am	<p>Insolvency Law and Practice in Canada</p> <p>Discussion of the insolvency regime in Canada. Regional experiences and adaptations with this Model.</p> <p>Speakers: <i>Rob Thornton - Thornton, Grout Finnigan, Canada</i> <i>Bota McNamara - McNamara & Co, St Lucia</i></p>

11.30am-12.00pm	<p>Designing a Roadmap for Policy - makers (Open Discussion)</p> <p>Open discussion on the main challenges in the region and what insolvency reforms are needed looking forward.</p> <p><i>Moderator:</i> <i>Antonia Menezes – World Bank Group</i></p>
12.00 pm	Closing Remarks

Note: The organizers reserve the right to make any necessary amendments / changes to the programme without prior notification.

INSOL's Vision and Purpose

INSOL International is a worldwide association of national associations of accountants and lawyers who specialise in turnaround and insolvency. There are currently over 40 Member Associations with over 10,500 professionals participating as members of INSOL International. Individuals who are not members of a member association join as individual members.

INSOL also has ancillary groups that represent the judiciary, regulators, lenders and academics. These groups play an invaluable role within INSOL and provide valuable forums for discussions of mutual problems.

INSOL was formed in 1982 and has grown in stature to become the leading insolvency association in the world. It is a source of professional knowledge, which is being put to use around the world on diverse projects to the benefit of the business and financial communities.

OUR VISION: The INSOL International vision is to be the global association for restructuring and insolvency professionals operating in every country. We influence global restructuring and insolvency practice and policy, supported by a membership who share a global perspective.

OUR PURPOSE: A member-driven network maximising global economic value by improving solutions to cross-border issues, advancing restructuring and insolvency systems through the deep expertise of our members.

INSOL International exists to support its members wherever they may be and in whatever role they perform in the restructuring and insolvency profession.

OBJECTIVES AND KEY STRATEGIES:

- Member Support and Services
- Thought Leadership and Scholarship
- Global Influence and Advocacy
- Technical Education and Publications
- People, Resourcing and Culture

For further information on INSOL International please contact:

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WORLD BANK GROUP

About World Bank Group

DEBT RESOLUTION AND INSOLVENCY AND FINANCIAL STABILITY PROGRAM

The Debt Resolution and Insolvency Program of the World Bank Group assists governments in improving their credit environments through the development of more effective insolvency and debt resolution systems. This is achieved through standard-setting globally in the context of the World Bank Principles on Effective Insolvency and Creditor/Debtor Regimes, detailed diagnostics, technical assistance for strengthened implementation and operation of insolvency regimes and capacity-building of insolvency stakeholders. This work promotes saving viable businesses, while allowing failed businesses to 'exit' the market efficiently and effectively.

Part of the team's work also includes financial sector diagnostics, assessing insolvency regimes and the broader credit environments of countries in joint World Bank Group-IMF Financial Sector Assessment Programmes (FSAPs).

FINANCE, COMPETITIVENESS AND INNOVATION GLOBAL PRACTICE

The World Bank Group's Finance, Competitiveness & Innovation Global Practice (FCI) combines expertise in the financial sector with expertise in private sector development to foster private-sector led growth and help create markets in client countries.

Through this work, FCI strengthens the World Bank Group's evolving approach to development finance: to maximize finance for development and to leverage private sector investments for sustainable and inclusive growth.

Globally, FCI leads the institution's dialogue on financial sector policies and private sector development, as well as engagement with various standard-setting bodies, such as the G20, Financial Stability Board, the UN, etc.

For further information, please see www.worldbank.org/insolvency

Curriculum Vitae (in alphabetical order)

Scott Atkins



Scott Atkins is the President of INSOL International and an inaugural INSOL Fellow. He also Chair's INSOL International's Asian Advisory Council.

Scott is the Australian chair of Norton Rose Fulbright and head of its risk advisory practice, based in Sydney. Scott has unique, globally recognised dual-track insolvency and risk experience.

Scott insolvency and restructuring practice straddles the Asia-Pacific region and is recognised as Australia's only Eminent Practitioner for Restructuring by Chambers and Partners.

Scott serves as immediate past President of the Australian Restructuring Insolvency and Turnaround Association, Australia's peak insolvency and restructuring professional association.

Scott's practice, for well over two decades, has concentrated on advising Australia's major banks and insolvency and restructuring practitioners located around the world. He has acted in some of the industry's most complex and sensitive insolvency and restructuring engagements over the course of his career. Most recently, Scott led the NRF team who provided restructuring and insolvency law reform advice to the Australian government at the onset of the pandemic.

Scott is recognised by his peers for his leading experience in cross-border insolvency, acting on both inbound engagements in Australia and advising Australian clients on outbound engagements in jurisdictions including the United States, the United Kingdom, the Cayman Islands, Hong Kong, New Zealand, Indonesia, Singapore, Nauru, and The Netherlands. Recently, Scott led a team over a three-year period, working with the Asian Development Bank and the Union Supreme Court of Myanmar, to draft a new insolvency and restructuring framework for Myanmar, culminating in the passage of Myanmar's Insolvency Law in February 2020. This work was transformative, representing a critical pillar in Myanmar's law modernisation process and its broader economic development in the face of ongoing political instability. The tailored insolvency measures for SMEs developed as part of this work are also currently helping to shape the law reform and post-COVID 19 economic recovery process for developing and developed nations alike across the world, including in Australia as part of the SME rescue and simplified liquidation processes that took effect on 1 January 2021.

Scott is a widely published author on insolvency and cross-border insolvency and regularly presents at industry events across the globe. He is also a visiting lecturer on cross-border insolvency at the University of Sydney in its undergraduate and postgraduate law programs. Scott's approach sees him identify and shape, rather than respond to, legal and regulatory trends both domestically and internationally, and he is sought after for regular industry speaking engagements and publications.

Hon. Mr. Samuel Bulgin



Mr. Bulgin was appointed Attorney General and Official Member of the Legislative Assembly (now Parliament) and Cabinet in July 2003. The appointment to Attorney General was preceded by his service as Solicitor General for six years and, prior to that, as Crown Counsel and Senior Crown Counsel from 1992 to 1998.

As an Attorney-at-Law Mr Bulgin obtained his LLB (Hons) and Certificate in Legal Education (CLE), from the University of the West Indies and the Norman Manley Law School, respectively. He was the recipient of the Chancellor's prize for the Law of Human Rights, the Sir Colin McGregor Memorial Prize, and the H.H. Dunn Memorial Prize for Legal Drafting and Interpretation. He was appointed Queen's Counsel in 2004.

Prior to his employment with the Government of the Cayman Islands, Mr. Bulgin served in the Resident Magistrate's Courts, Jamaica as Clerk of Courts, and a Prosecutor in the Office of the Director of Public Prosecutions in Jamaica. He was also an Associate Lecturer in Law at the University of the West Indies, Mona Campus, Jamaica.

As Attorney General Mr. Bulgin is the principal legal adviser to the Government and the Parliament. His office provides legal advice and legal representation to all government departments, statutory authorities and government companies. His office is

also responsible for the drafting of all Acts, and subsidiary legislation for the Cayman Islands Government.

As Attorney General, his Portfolio responsibilities include the Legal Department, Legislative Drafting, Law Revision, Law Reform Commission, Financial Reporting Authority, The Anti-Money Laundering Unit, and the Truman Bodden Law School.

He is a member of the Grand Court Rules Committee, member of the Insolvency Rules Committee, Chairman of the Anti-Money Laundering Steering Group, member of the National Security Council, member of the Legal Advisory Council, and member of the Advisory Committee on the Prerogative of Mercy.

Mr. Bulgin has represented the Cayman Islands Government on numerous conferences and negotiations internationally, including at the OECD, FATF, CFATF, CARICOM, UK/Cayman Constitutional negotiations, MLATs, and Law of the Sea delimitations. He also served as Chairman of the Caribbean Financial Action Task Force (CFATF) for the year 2010 – 2011.

He is also a Justice of the Peace for the Cayman Islands.

Mr. Bulgin is married to Cindy Jefferson-Bulgin, Registrar General, Cayman Islands Government.

Maria Barthelmy



Maria is an Attorney at Law and currently serves as Senior Legal Specialist in the Legal Services Department at the Eastern Caribbean Central Bank. She holds a Bachelor of Laws degree (LLB)(Hons.) from the University of Sussex, Master of Laws degree in Banking and Finance Law from the London School of Economics and Political Science, Postgraduate Diploma in Legal Practice (PDGL) from the College of Law, Graduate Diploma in Law (GDL) and Postgraduate Diploma in Professional Training (PDPT) from BPP Law School, Practising Certificate from the Honourable Society of

Inner Temple, London and Legal Education Certificate (LEC) from the Hugh Wooding Law School.

She is a Chartered Director (C Dir.) and an ADR/ODR International Accredited Civil- Commercial Mediator.

Maria joined the Bank in 2002 in the Financial and Enterprise Development Department as a Research Officer and has served in the Governor's Immediate Office and the Strategic Planning and Projects Department.

She also served as Company Secretary of the Eastern Caribbean Securities Exchange Group of Companies and Corporate Secretary of the Eastern Caribbean Home Mortgage Bank for a number of years until 2018.

Wendy Delmar



Wendy brings over 20 years of experience in mainstream banking to the leadership of the Caribbean Association of Banks Inc., having previously worked with Scotiabank. Wendy says that she is ever grateful for the opportunities for growth which allowed her to challenge herself and become a solid individual in the field of finance. During her journey with the Bank, Wendy held progressively senior roles, having started her career in Retail Banking as a Teller, moving into Customer Service and then lending. From there, Wendy broke off into training, where she rediscovered her love for

imparting knowledge, as she worked throughout the region implementing new technological enhancements to the Banking framework. On her return, Wendy assumed the role of Home Mortgage Specialist with a focus on dealing specifically with the International Business portfolio. Wendy later joined the MDO in Barbados as Retail and Small Business Coach, a position she retained for 2 years before returning to Saint Lucia as the Branch Manager for the Castries operation. She later took on the role of President of the Bankers Association of Saint Lucia. Both posts she held until she joined the CAB in November 2018.

Wendy currently holds an MSc in Global Human Resource Management, which she believes deepens her passion for nurturing growth with the people she encounters daily.

Wendy describes herself as a well-balanced individual who is career driven and self-motivated, but she notes that life has ensured that she appreciates the opportunities to stop and smell the roses - those being family and friends - being intimately familiar with the sting of loss. Wendy is a widow, and mother to 3 beautiful boys, whom she describes as her foundation. Wendy says that they keep her grounded and challenge her daily to be the best version of herself.

Dr. Valda Frederica Henry



Valda Frederica Henry is the Deputy Governor of the Eastern Caribbean Central Bank. She is VF Inc.'s former Chief Executive Officer and Principal Trainer. She formerly served as a Senior Investment Officer at the Eastern Caribbean Central Bank and played an instrumental role in the restructuring of the Investment Unit and the development of the Investment Management Framework of the Bank. She has lectured in, among other subjects, Human Resource Management and Accounting and has extensive experience in organisational reviews, job analyses and job descriptions working with companies in the Caribbean and served as the Coordinator of the

Administrative Reform Program of the Commonwealth of Dominica. She has served as a Mentor for Executive and Middle Managers in many sectors including banking, hospitality and utility.

Valda is also a Global Human Resources and Organizational Development Expert who excels at collaboration, with very strong interpersonal, communications, leadership and decision-making skills. She has developed and led numerous multi-year personal and professional development programs for youth in Dominica as well as individuals and businesses throughout the Caribbean. She hosted a weekly radio and twice-monthly television programs on which she discussed solutions to challenges faced by businesses in the region. She wrote a Column, "Business and Life," for the online newspaper, "Dominica News Online."

Valda holds formal qualifications in Financial Analysis and Planning, Governance and Business Management. She is a Chartered Financial Analyst, holds a PhD in Industrial Relations & Business, Masters of Business Administration, Bachelors in Management and Bachelors in Law. She is a Certified Global Professional in Human Resources, Society for Human Resource Management, Senior Certified Professional (SHRM-SCP) and an Accredited Director. She is also a Certified ProNet Trainer and a Myers Briggs Type Indicator (MBTI) Practitioner and a Certified "Train the Trainer" for InfoDev and the Women Innovators Network in the Caribbean (WINC).

Fiona Hinkson



Mrs. Fiona Hinkson is currently the Director of the National Competitiveness and Productivity Unit within the Department of Finance engaged in leading reforms in both the public and private sectors in the areas of productivity, competitiveness, growth, finance and economic policy. As an Economist, within Government, Mrs Hinkson has successfully coordinated many projects such as the establishment of the National Competitiveness and Productivity Council, the Commercial Division of the High Court, and other institutions within the public sector setting.

Mrs Hinkson has worked within the public sector for over twenty-four (24) years, including the Eastern Caribbean Central Bank and the International Monetary Fund as an intern.

She holds a bachelor's degree in Economics and Statistics from the University of the West Indies and a master's degree in Economic Policy Management from Columbia University of New York.

The Hon. Justice Ian Kawaley



Ian R.C. Kawaley has been a full-time Judge of the Grand Court of the Cayman Islands since October 2018, assigned to the Financial Services Division. His caseload provides a steady diet of cases involving asset recovery, cross-border insolvency and the enforcement of foreign judgments and arbitral awards. Justice Kawaley was appointed to Bermuda's Supreme Court in July 2003 and was a founding member of Bermuda's Commercial Court when it was established in January 2006. He served as Chief Justice of Bermuda and Head of the Commercial Court from April 2012 until July 2018. He is the lead editor of 'Offshore Commercial Law in Bermuda' 2nd ed. (Wildy Simmonds & Hill: London, 2018) and co-editor (with Andrew Bolton and Robin Mayor) of 'Cross-Border Judicial Cooperation in Offshore

Litigation: the British Offshore World', 2nd ed. (Wildy, Simmonds & Hill: London, 2016). Justice Kawaley became an Overseas Master of the Bench (Middle Temple) in October 2017.

Mr. Martin Kenney



Martin Kenney is one of the world's leading asset recovery lawyers, specialising in multi-jurisdictional economic crime and international serious fraud. He is one of Who's Who Legal's Global Elite Thought Leaders and is ranked by Chambers & Partners as one of the world's top-ranked asset recovery lawyers.

His firm Martin Kenney & Co., Solicitors, is a cutting-edge investigative and litigation practice based in the British Virgin Islands (BVI), specializing in global asset recovery.

Dr. Vanessa Moe



Dr. Vanessa Moe, Attorney at Law, is the Crown Solicitor within the Attorney General's Chambers in Antigua and Barbuda.

She attained a LLB (Hons) and a LLM in International and Comparative Business Law at London Guildhall University in 1998 and 2001 respectively. She was called to the Bar of England and Wales in 2001 at Lincoln's Inn, and in 2002 obtained the LEC and became a Member of the Bar in Antigua and Barbuda. In 2018 she received a PhD in Law from Queen Mary University of London. She has a long-standing commitment of nineteen years as Legal Officer in the Ministry of Legal Affairs.

Having joined the Attorney General's Chambers as Crown Counsel in 2002, Dr. Moe had the opportunity to work in the areas of Civil Litigation and Land Law. During the period 2003 –2004, she worked at the Inter-American Commission on Human Rights, OAS and was a recipient of the Romulo Gallegos Fellowship. Upon her return to the Office of the Attorney General, she assumed responsibility for matters on Anti-Corruption and International Law.

Dr. Moe is a member of the Association of Anti-corruption Authorities and serves as governmental expert to the UN Convention Against Corruption. She is also a member of the Anti-Corruption working group within the Ministry of Legal Affairs which is charged with reporting to the Caribbean Financial Action Task Force. Dr. Moe presently serves on the Board of Directors of the Financial Services Regulatory Commission.

Kent McParland



Kent McParland is a director based in our British Virgin Islands office. Kent is a Canadian chartered professional accountant with experience working on both formal restructuring and informal advisory. Kent has been involved in cross border assignments in the British Virgin Islands, Antigua and Barbuda, Canada and Australia, relating to the banking and finance, gaming, manufacturing, retail, hospitality and development sectors.

Kent has extensive experience in the liquidation of large complex global companies. Notably, he was a senior team member of a multi-billion-dollar Ponzi scheme based in the Caribbean where he was responsible for, among other things, the day-to-day operations, global claims process, eDiscovery in support of the litigation team and employment related issues. Kent is also skilled at setting up and managing finance teams, developing, and maintaining government relations and managing stakeholders at all levels under contentious conditions.

Prior to joining Borrelli Walsh (now Kroll), Kent has worked in the corporate insolvency teams within big 6 firms and has worked in various industry in senior financial and operational roles.

Professional Affiliations and Academic Qualifications

Member of Recovery and Insolvency Specialists Association (RISA), British Virgin Islands

Member of the Institute of Chartered Accountants of Canada

Master of Business Administration, Simon Fraser University, Canada

Bachelor of Business Administration, Simon Fraser University, Canada

Nataliya Mylenko



Over the past two decades Nataliya worked at the World Bank, IMF and IFC on macroeconomic policy, private and financial sector development issues in over 50 countries. Before joining the team in the Caribbean region, she led economic team for Ethiopia, Sudan and South Sudan. Earlier, she was based in East Asia region and focused on financial sector topics in the Philippines as well as worked on financial inclusion in Myanmar, SME finance policy in Malaysia, and financial inclusion and community development in Indonesia. Ms. Mylenko is the lead author of the number of the World Bank Group reports including Global Survey on Consumer Protection and Financial Literacy: *Oversight Frameworks and Practices in 114 countries*, and *Financial Access* reports, introducing for the first-time

indicators of financial access in 140 countries and providing analysis of the trends in financial access policies.

Bota McNamara



Bota McNamara, has a corporate and commercial litigation practice, focused on corporate restructuring and insolvency, in the Eastern Caribbean and Canada.

Bota has extensive experience acting on behalf of financial institutions, creditors, debtors, trustees in bankruptcy, receivers, monitors and liquidators in all types of proceedings including bankruptcies, proposals, receiverships, and corporate restructurings, including complex litigation and cross-border Court proceedings. He also advises lenders with respect to security enforcement, in addition to assisting clients with the development and implementation of strategies in respect of asset recovery and the enforcement of contractual rights and remedies.

Bota's clients include lenders and borrowers in financing and debt refinancing transactions, corporate clients, and Governmental institutions where he advises on risk management, acquisitions, and litigation strategies, including the preparation of Court materials and contested applications and motions before all levels of Court.

Antonia Menezes



Antonia Menezes is a Senior Financial Sector Specialist with the Insolvency & Debt Resolution Team of the World Bank Group based in Washington D.C. The focus of her work is providing technical assistance and advice to governments on insolvency and debt resolution reforms, including legal aspects of NPL management, with a particular emphasis on work in Sub-Saharan Africa, the Caribbean and South Asia. She has assisted more than 50 countries in reforming and strengthening their insolvency and creditor/debtor regimes.

Ms. Menezes has published widely in the field of insolvency and represents the World Bank Group at Working Group V (Insolvency) of the United Nations Commission on International Trade Law (UNCITRAL). She is also a Co-Chair of the World Bank Group Insolvency & Creditor/Debtor Regimes (ICR) Task Force, which is responsible for testing and evaluating the effectiveness of the World Bank Group ICR Principles.

Prior to joining the World Bank Group, Antonia was a UK qualified solicitor at two leading international law firms in Paris and London. Ms. Menezes holds an LLM from McGill University and an LLB from the London School of Economics & Political Science. She is a Member of the International Insolvency Institute, a 2014 INSOL International Fellow and sits on the INSOL Fellow's Cross-Border Insolvency Committee.

Sophia Rolle-Kapousouzoglou



Sophia Rolle-Kapousouzoglou is a partner in Lennox Paton's Commercial Litigation department and a member of the Firm's Bankruptcy, Restructuring and Insolvency Group. Lennox Paton is one of the leading Commercial Law firms in The Bahamas and has been continuously ranked by Chambers Global, the Legal 500, IFLR, and Global Restructuring Review. Sophia represents liquidators, receivers, creditors, and investors in all aspects of complex corporate restructuring and has been involved in cross-border insolvency cases and applications for recognition proceedings on behalf of Liquidators. Sophia appears regularly in the Supreme Court and the Court of Appeal of The Bahamas and has also appeared as Junior Counsel in the Privy Council relating to an application on behalf of an agent of an investor

in a Bahamian Mutual Fund seeking to set aside an application for service of a clawback claim outside of the jurisdiction. Sophia's practice includes advising clients with respect to various contentious commercial disputes. Sophia has a broad range of experience and has represented clients in multi-jurisdictional and local cases and was involved in several notable insolvency and bankruptcy cases in The Bahamas including the Baha Mar Companies Liquidation and Receivership, the Liquidation of Caledonian Bank including the recognition of the foreign court appointed liquidators and the subsequent ancillary liquidation, the ZCM Asset Holding Company and AWH Fund Liquidation, and the Bankruptcy of Sir Anthony O'Reilly. Sophia has been ranked by international legal directories as a leading lawyer in The Bahamas and is a Fellow of INSOL International.

Damien Shiels



Regional Manager, Creating Markets Advisory

Europe & Latin America, International Finance Corporation

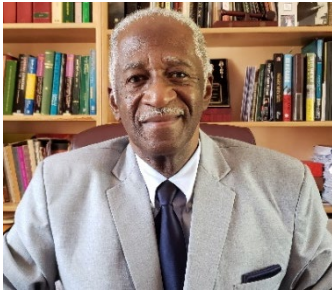
Damien Shiels is the Regional Manager for Europe & Latin America of IFC's Creating Markets Advisory team. In this role he is responsible for the delivery of regulatory and reform work across a range of sectors to help develop markets, open avenues for investment, expand employment opportunities and support growth of the private enterprises.

Previously he held various management and technical roles across the World Bank Group. He has delivered and supported projects in East Asia and the Pacific, Eastern Europe and Central Asia, South Asia, the Middle East, Africa and Latin America. Prior to joining the World Bank Group, Mr Shiels worked in both private sector and non-profit corporations involved in rural development and international disaster relief. Earlier in his

career he held positions as a court-appointed mediator, a business development consultant, and a legal adviser.

An Irish national, Mr. Shiels is graduate of Georgetown University's Master of Science in Foreign Service and University College Dublin's School of Law, he has also undertaken studies at De Paul Law School, the London School of Economics, and Harvard University.

The Hon. Justice Ferdinand Algernon Smith



The Honourable Justice Ferdinand Algernon Smith, J.A. (ret'd) C.D., was born in Kingston, Jamaica on January 21, 1940. He had his early education at Excelsior College and was later called to the Bar at Lincoln's Inn (England) in July 1968.

Justice Smith served as Deputy Clerk and Clerk of Courts from 1968 to 1973 and has held the posts of Crown Counsel, Assistant Director of Public Prosecutions and Deputy Director of Public Prosecutions. Further to this, he served as an Associate Tutor at the Norman Manley Law School

for over 30 years.

Additionally, Justice Smith was elevated to the Bench in 1986 and was appointed a High Court Judge in 1988. He was awarded the Order of Distinction, Commander Class, in 2008 and in 2010 he was selected to serve the Local Privy Council.

In August 2016, Justice Smith was appointed the Supervisor of Insolvency within the Office of the Supervisor of Insolvency, a post which he still holds. He is married to his beloved Veronica and their union produced three (3) handsome sons. A God-fearing man, he currently serves as a faithful deacon at the Bethel Baptist Church in Halfway Tree, Kingston, Jamaica.

The Hon. Justice Nick Segal



Nick Segal is a judge of the Grand Court in Cayman, assigned to the Financial Services Division. He was appointed in 2015. He has dealt with a wide variety of cases covering corporate, insolvency, financial, funds, trusts, fraud, land, and commercial law.

Nick is also a barrister and member of Erskine Chambers in London.

Prior to his appointment as a judge and joining Erskine Chambers, he was a partner at Freshfields (2006 – 2018), Davis Polk (2002-2006) and Allen &

Overy (1988-2002).

He was educated at Oxford University, where he obtained a first-class degree and now teaches and until recently was the chair of the university's Alumni Board. He is a member of the Panel of Recognised International Market Experts in Finance, a fellow of the American College of Bankruptcy and a member of the International Insolvency Institute. He also writes and contributes to textbooks in the fields of insolvency, banking, conflicts of law and restitution.

Karen Seebaran-Blondet



Mrs. Karen Seebaran-Blondet is a public service professional and was appointed in July 2017 as the Supervisor of Insolvency in the Republic of Trinidad and Tobago. She is charged with the general administration of the Bankruptcy and Insolvency Act, 2007 (BIA).

Prior to her appointment in the Office of the Supervisor of Insolvency (OSI), Ms. Seebaran-Blondet held positions of Treasury Director and Deputy Comptroller of Accounts, where she had oversight of operations pertaining to the Treasury Management and Financial Management Branches. She has been a key figure and contributor to the kick-off of several critical projects, specifically in areas of upgrades, reform and amendments to legislation in the Treasury Division

Mrs. Seebaran-Blondet is a Fellow of ACCA and graduated from the Herriot-Watt University, Edinburgh Business School with a master's degree in Business Administration. She has obtained training in all areas pertaining to leadership and management that has developed her technical competence and strategic vision.

Mrs. Seebaran-Blondet's role as the Supervisor has been intensely involved in engaging the wider public to inform on the Insolvency and Bankruptcy Regime. Further, she has taken a more robust approach in terms of compliance with the Act. The modern tendency is to regulate these processes of compliance and licensing of Trustees, hence the reason why the BIA vests this regulatory function in the OSI.

Given the OSI's overarching responsibility of monitoring, protecting and strengthening the insolvency system of Trinidad and Tobago, ultimately, the aim is to ensure that bankruptcies and insolvencies in Trinidad and Tobago are conducted in a fair and orderly manner consistent with the Act.

Mrs. Karen Seebaran-Blondet is a public service professional and was appointed in July 2017 as the Supervisor of Insolvency in the Republic of Trinidad and Tobago. She is charged with the general administration of the Bankruptcy and Insolvency Act, 2007 (BIA).

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Rob Thornton



Known for his creativity and energy, Bob is recognised as one of the best restructuring practitioners in Canada. He is currently acting for JTI-Macdonald Corp., an applicant in the CCAA restructuring of the tobacco industry in Canada, described by the presiding judge as one of the most complex restructurings in Canadian history. He is also acting for the Monitor in the restructurings of Just Energy Group, Carillion Group and Performance Sports Group Ltd. He led the restructuring of Coopers & Lybrand, whereby the “longest running legal saga in Canadian history” was resolved through a powerful and creative use of the CCAA. He acted for the Monitor in the restructuring of the Mobil city Group and was lead restructuring counsel in

the successful resolution of the Hollinger CCAA. Other matters with leading role involvement include Stelco Inc. (twice), Pacific Exploration, GuestLogix Inc., Fraser Papers, Calpine, and Air Canada. Bob is the President of the Insolvency Institute of Canada and a Fellow of both the American College of Bankruptcy and the Insolvency Institute of Canada.

Deniscia Thomas



Ms. E. Deniscia Thomas is an Attorney-at-Law currently working within the Ministry of Legal Affairs for the Government of Antigua and Barbuda. She is presently the Chief Parliamentary Counsel for the Government of Antigua and Barbuda with responsibility for setting the agenda for Parliamentary debates (in consultation with the Hon. Attorney General). She is the principal advisor of the Hon. Attorney General and of all departments of Government on the impact of proposed or required legislative amendments. As Chief Parliamentary Counsel, she has supervisory responsibility for all members of the Drafting Unit and represents the Government of Antigua and

Barbuda at regional and international conferences where the focus is to bring about legislative change.

Mahesh Uttamchandani



Mahesh Uttamchandani is a Global Practice Manager for Finance in the World Bank Group and oversees all of the World Bank Group's technical work in the areas of insolvency, creditor rights, payment systems, financial consumer protection and digital financial services/fintech. Mahesh represents the World Bank on the Board of the Consultative Group to Assist the Poor (CGAP) and at various international fora, including UNCITRAL.

Mahesh has held several positions in the World Bank and IFC and has also served as Insolvency Counsel at the European Bank for Reconstruction and Development (EBRD) in London, UK.

Prior to joining the EBRD, Mahesh practiced exclusively in the areas of insolvency, restructuring and debtor/creditor rights at a leading Canadian law firm.

Mahesh has been published widely, has lectured and taught at universities around the world and is a Board member of both INSOL International and the insolvency legal journal, International Corporate Rescue.

The Hon. Mrs. Justice Shade Subair Williams



The Hon. Mrs. Justice Shade Subair Williams is a Judge of the Civil and Commercial Court division of the Supreme Court of Bermuda. In that capacity, she is responsible for a variety of private and public law matters. She also has an active and supervisory role over the Supreme Court's criminal and appellate jurisdiction and occasionally sits as an Acting Justice in the Court of Appeal for Bermuda

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criminal and appellate jurisdiction and occasionally sits as an Acting Justice in the Court of Appeal for Bermuda.

Prior to her judicial appointment in 2018, Justice Subair Williams occupied a quasi-judicial role as the Registrar of the Courts of Bermuda from 2016-2018 during which time she regularly sat as an Acting Judge in all jurisdictions of the Supreme Court and was formally certified to sit on the Commercial Bench. In the post of Registrar, Justice Subair Williams pioneered a myriad of reforms to the Supreme Court's administrative processes.

Called to the Bar of England and Wales in 2000, Justice Subair Williams was an active member of the Bermuda Bar Association and sat on its Professional Conduct Committee. For a 12-year period, she regularly served as an Acting Magistrate and chaired numerous Government Boards including the Human Rights Commission. From 2009-2016 she was a practising partner of law firm, Mussenden Subair Limited, co-founded by her and Mr. Justice Larry Mussenden. Prior thereto, she specialized in commercial litigation as an associate at law firm Attride Stirling & Woloniecki (now ASW Law). At that stage of her career she worked closely with the late Mr. Jan Woloniecki on numerous commercial litigation matters before the Supreme Court and Court of Appeal.

Justice Subair Williams' formative years of legal practice experience in criminal, civil and family litigation was created by her 2004 appointment as Bermuda's first Legal Aid Counsel, a post from which she appeared in all jurisdictions and tiers of the Bermuda Courts and the Judicial Committee of the Privy Council. This was preceded by her years of prosecuting criminal cases before the Magistrates' Court, the Supreme Court and the Court of Appeal as a Crown Counsel in the Office of the Director of Public Prosecutions from 2000-2004.

Born and raised in Bermuda, Justice Subair Williams speaks fluent French as a second language. She is married to Mr. Jevon Williams with whom she has a young son and daughter, Akanni and Abiola Williams.

Antigua and Barbuda

The Companies (Amendment) Act 2020 No. 17 of 2020

The recent amendment to the Companies Act in Antigua and Barbuda is based on Chapter 11 of the Bankruptcy Code in the United States of America. The Act makes provision for companies that find themselves in trouble to be able to apply to the Court for protection from their creditors. Prior to the passage of this legislation, the only option to owners and creditors would be for an insolvent company to liquidate. Some of the key provisions are outlined below.

- . The first step is to petition the court for a rehabilitation order.
- . A petition filed under this statute is a stay for most prior proceedings against the debtor.
- A Creditor must file a proof of claim in the Case
- The Court shall appoint an administrator; The Minister of Finance shall submit a list of 3 disinterested persons to serve as administrator if the case involves a systemically important company; An Administrator can start an insolvency proceeding on behalf of a debtor in a foreign jurisdiction; When an Administrator is appointed, the powers of directors, managers and so on may not be exercised; The Administrator must make a final report and file a final account of the estate
- The Debtor can start case voluntarily by way of a petition for an order for rehabilitation.
- Case may be brought involuntarily against a debtor by 2 or more creditors who may have an undisputed claim against the Debtor; The minister of Finance may also start the claim against a company that may be a debtor and a systemically important company and by a receiver or receiver manager
- The Debtor may continue to operate the business Debtor may also use, acquire, or dispose of property if the action was not started involuntarily.

The first case to utilize the provisions of this amendment is the case involving LIAT 1974 Ltd. The company went into administration and is now currently operating as LIAT 2020 Ltd under Administration utilizing the present insolvency regime.

To date, no other company has utilized the provisions afforded under the recent amendment to the Companies Act. Additionally, there has been no evidence of major challenges to the implementation of this regime. Potentially some key factors which may influence the success of implementation are economic environmental factors.

The Bahamas

1. Please describe your insolvency regime (date of insolvency legislation; if it is based on a particular system (e.g. England & Wales); what the key procedures are and how many cases you roughly see per year for restructuring/liquidation)

Insolvency and restructuring proceedings in The Bahamas are governed by:

- The Companies Winding Up Amendment Act 2011;
- The Companies Liquidation Rules 2012
- The Insolvency Practitioners Rules 2012
- The Foreign Proceedings (International Cooperation) Liquidation Rules 2012;
- And the Foreign Proceedings (International Cooperation) (Relevant Foreign Countries) Liquidation Rules 2016.

The regime is largely based on UK law with similar provisions to the Cayman Islands and principles similar to the UNCITRAL Model Law.

2. Are there any potential or upcoming reforms to the insolvency regime?

In 2019 the Chief Justice has asked the Companies Liquidation Rules 2019 a group comprising of Attorneys and Insolvency Practitioners to provide recommendations regarding any proposed amendments to the insolvency provisions. These recommendations were in discussion with a number of recommendations having been compiled immediately prior to the pandemic which will no doubt further be considered by the Chief Justice in the not too distant future.

3. What are the key challenges that remain?

The legislation is creditor based so does not create many opportunities for restructurings and reorganizations such as in other jurisdictions like the US which has bankruptcy proceedings and Canada and the UK where schemes of arrangement and Company Voluntary Arrangements are alternative mechanisms to facilitate restructurings. Voluntary Liquidations and Involuntary liquidations remain the lead mechanisms to wind down a Company's affairs.

4. Has there been any significant insolvency activity in your jurisdiction in light of COVID-19?

Not particularly (as yet!) Most of the work has involved cruise line enforcement proceedings by way of ship arrests and enforcement mechanisms being used resulting in acquisitions and restructurings (buy outs of companies) but no material uptick in insolvent liquidations.

Bermuda



PRESENTATION BY JUSTICE SUBAIR WILLIAMS

THE INSOLVENCY REGIME UNDER BERMUDA LAW:

The governing law on the insolvency of all companies incorporated in Bermuda is principally contained in Part XIII of the Companies Act 1981(CA) and the Companies (Winding-Up) Rules 1982 (the Rules). The drafting of these statutory provisions was guided by the UK Companies Act 1948 and the UK Companies (Winding-Up) Rules 1949.

KEY PROCEDURES:

The Rules govern the procedural steps for the filing and hearing of petitions for the winding up of a company. At first instance, applications for the winding up of a Bermuda exempted or local company are made before the Supreme Court in its commercial jurisdiction.

Pursuant to Rule 5(1) the Registrar may hear and determine any application or matter which may be heard and determined in chambers, subject to any general or special directions of the Court. Any such application before the Registrar may, however, be adjourned to be heard before a Judge.

Under Rule 19 every petition must be publicly advertised at least 7 days prior to the hearing. The advertisement must contain a note directing persons who wish to be heard to provide prior notice thereof to the petitioner.

Pursuant to Rule 24 every petitioner must file a certificate of compliance with the Rules before the first hearing of the Petition. Such certificates are to be signed and approved by the Registrar.

Hearing of Petitions

Rule 4(a) requires petitions to be heard in open Court.

Section 161 of the CA provides eight distinct grounds on which a company may be wound up. However, a petition to the Court seeking the winding up of a Company under section 161 is most often based on one or more of the following grounds:

- by resolution of the company;

- the company is unable to pay its debts
- that the Court will find that the winding up of the company is just and equitable¹

Petitions to the Court may be presented by the company, a creditor (including contingent and prospective creditors) and/or an individual or body of contributories.

Proviso re contributories:

A petition may not be brought by a contributory who has held shares in the company for 6 months or longer within the preceding 18 months of the filing of the petition

Proviso re contingent and prospective creditors:

Security for costs shall be given in the sum the Court thinks reasonable and a *prima facie* case for a winding up must first be established

Pursuant to section 164(1) of the CA the Court may dismiss, adjourn or make an interim order on a winding up petition. The Court may also make “any other order that it thinks fit”.

Effect of the filing of a Petition

- Application for stay of other proceedings against the Company may be made to the Court (Section 165 of the CA) and after a PL has been appointed no action shall be commenced or proceeded with against the company except by leave of the Court (Section 167(4) of the CA)
- Avoidance of dispositions of property after the commencement of a winding-up (Section 166)

Chambers Applications

Mostly all other applications in winding-up proceedings are made by summons and heard in chambers (Rule 6).

Appointment of Liquidators

Section 170 of the CA: the Court may appoint liquidators “*for the purpose of conducting proceedings in winding up a company*” and for the “*performing of such duties in reference thereto as the Court may impose*”.

Generally, the overarching purpose for appointing provisional liquidators is to preserve the assets of the company until a winding up order is made. Section 174(1): where ... a PL has been appointed “*he shall take into his custody or under his control*” all property and other interests to which the company is entitled. Under section 174(2) the Court has the power to direct company property to vest in the liquidator’s by his/her official name.

¹ Section 164(2) Where the petition is brought by members of the company as contributories the Court will not make a winding up order if of the view there is another remedy available and the petitioner(s) are acting unreasonably in seeking a winding up order

The liquidator may also bring or defend any action which relates to that property for the purpose of winding up the company and recovering its property.

However, as may be seen through the cases which come before the Court, JPLs are also often appointed on a soft touch basis to assist in cases where a restructuring and scheme of arrangement is afoot.

Source of Court's power to make a *soft-touch* appointment: Once a petition is presented, the Court may appoint a provisional liquidator (PL) (before appointing a liquidator) and limit his/her powers in the order of appointment. (s. 170(3) of the CA)

The full powers that may be conferred on liquidators are listed under section 175 of the CA. The exercise and control of liquidators' powers are outlined under section 176 of the CA.

When a PL is appointed, he/she shall summon separate meetings of the creditors and contributories of the company for the purpose of determining whether an application should be made to the Court for the appointment of a liquidator in his/her place (see section 171(b)-(c) of the CA).

When a winding-up order has been made by the Court, separate meetings of the creditors and contributories shall be summoned to determine whether or not an application shall be made to the Court for the appointment of a liquidator. In such case, a further determine shall be made as to whether an application to the Court will be made for the appointment of a Committee of Inspection to act with the liquidator (Section 181(1)).

A Committee of Inspection, consisting of both creditors and contributories (Section 182 of the CA) is a component of the statutory measures in place ensuring that liquidators operate with direction and guidance. The liquidators of a company which is being wound up shall, in the administration of the assets, shall have regard to any directions given by a committee of inspection or by the body of creditors and contributories.

Power to Stay a Winding-Up Order (Section 184 of the CA) – Court has discretionary power to stay winding up proceedings altogether or for a limited time with terms and conditions. In doing so, Court may also make an order which enables the company to be as near as practical as it was before the winding up order was made.

Restructuring and Scheme of Arrangement

Part VII of the CA is dedicated to Arrangements, Reconstructions, Amalgamations and Mergers

Section 99 of the CA: Where a compromise or arrangement is proposed between a company and any class of its creditors or members, the Court may on an application made by any of those parties or the liquidators order a meeting of the creditors or members as the case may be.

If $\frac{3}{4}$ (i.e. 75%) or more of the voters agree, the compromise or arrangement may be sanctioned by the Court. The Court's additional powers in giving effect to any scheme for

the reconstruction of a company (a scheme of arrangement) is outlined under section 101 of the CA.

Bermuda Statistics:

For the past year (March 2021 to March 2022) 50 petition matters have been before the Supreme Court.

Spanning the last 4 years (between 2018 and 2022) there have been 14 reported judgments and rulings handed down by the Supreme Court in its winding up jurisdiction



BVI Insolvency Regime – Peer to Peer Session
INSOL / World Bank Group – Inaugural Caribbean Round Table

The British Virgin Islands (BVI) continues to be an attractive global financial center due to the safety and stability of the regions government and legal system based largely on the English common law with the ultimate court of appeal being the Privy Council. BVI companies continue to be popular with Chinese and Russian nationals.

The BVI's insolvency regime, both individual and corporate, is governed by the British Virgin Islands Insolvency Act, 2003 (the "Insolvency Act") and the Virgin Islands Insolvency Rules 2005 (the "Insolvency Rules"), the provisions of which are based on the legal framework adopted in England and Wales and the English Insolvency Act 1986.

The jurisdiction offers additional measures under the BVI Business Companies Act, 2004 (the "Companies Act") to allow for the orderly windup of a solvent company as well as provisions under both the Insolvency Act and the Insolvency Rules to allow for the restructuring of a company.

Key sections under the Insolvency Act include:

- Bankruptcy;
- Liquidation (both Court appointed and members appointed liquidations);
- Provisional Liquidation;
- Administrative Receiverships;
- Receiverships; and
- Creditors' arrangements.

Additional provisions within the Insolvency Act not yet enacted include:

- Administration; and
- Cross border insolvency.

Key sections under the Companies Act include:

- Solvent Voluntary Liquidations; and
- Plans and Schemes of Arrangements.

The most recently published annual report from the BVI Financial Services Commission dated 31 December 2020 indicated the following active appointments for the jurisdiction;

- 50 Receiverships;
- 1 Administrative Receivership;
- 12 Company Creditor Arrangements;
- 11 Provisional Liquidations;
- 118 Members Appointed Liquidations; and
- 208 Court Appointed Liquidations.



For all appointments under the Insolvency Act, except for Receiverships, an appointee must be a BVI Licensed Insolvency Practitioner ("BVI IP"). A BVI IP must meet the requirements set out within the Insolvency Act, including being a resident of the territory. Presently, there are 26 Licensed Insolvency Practitioners in the territory. A foreign insolvency practitioner may be appointed jointly with a BVI IP with the approval of the BVI Financial Services Commission.

While the number of Notice of Appointment of Liquidators (both solvent and insolvent) is trending slightly higher during the most recently reported twelve-month period the numbers have not increased as quickly as expected as a result of the impact from Covid -19 pandemic. This may be attributable to the continued global stimulus in place resulting in a delayed impact on insolvency filings in the territory. There also appears to be a steady increase in the use of receiverships in the territory.

Cayman Islands

The Insolvency regime of the Cayman Islands is regulated by Part V of the Companies Act (2022 Revision), the Companies Winding Up Rules, 2018, the Insolvency Practitioners Regulations, 2018 and the Foreign Bankruptcy Proceedings (International Co-operation) Rules, 2018, as well as case law. Those provisions are based on the U.K.'s insolvency laws (Insolvency Act 1986 and Insolvency Rules 1986) and have been specifically adapted for the Cayman Islands. The provisions apply to the winding up of companies, including certain foreign companies and, pursuant to the Exempted Limited Partnership Act (2021 Revision) and the Limited Liability Companies Act (2021 Revision), to the winding up of exempted limited partnerships and limited liability companies.

The main insolvency procedures in the Cayman Islands are liquidation by the court (official liquidation), voluntary liquidation, winding-up subject to the supervision of the court and provisional liquidation.

In December 2021, the Cayman Islands Government achieved a major milestone with the enactment of the Companies (Amendment) Act, 2021 which amends Part V of the Companies Act. The Amendment Act, which is expected to commence shortly, addresses three major concerns with the current insolvency regime. It remedies an optical deficiency that may deter persons from using Cayman's restructuring regime, it enhances the recognition and enforcement of our regime in other jurisdictions and it clarifies directors' standing to access the regime.

Based on data examined from the public register of the Grand Court and the General Registry, it appears that in 2021 there were approximately 38 applications

for official liquidations, 14 applications for winding-up subject to the supervision of the court and 2663 voluntary liquidations.



Jamaica

1. Please describe your insolvency regime (date of insolvency legislation; if it is based on a particular system (e.g. England & Wales); what the key procedures are and how many cases you roughly see per year for restructuring/liquidation)?

Answer:

The Insolvency Act (the Act) came into operation on January 2, 2015 and is modelled off the Canadian Bankruptcy and Insolvency Act. The Act repeals the Bankruptcy Act and makes substantive amendments to those sections of the Companies Act which provide for the winding up of insolvent companies. The Act makes provisions for the regulation of insolvency-corporate and individual- and has as its main activities: (a) the rehabilitation of debtors and the preservation of viable companies with due regard to the protection of creditors; (b) the fair allocation of the costs of insolvencies with the overriding interest of strengthening and protecting Jamaica's economic and financial system and the availability and flow of credit within the economy- see s. 3; and (c) the orderly and fair distribution of the property of the bankrupt among the creditors on a pari passu basis.

The average number of restructuring/liquidation per year as of 2015 is: Proposals – 3; Assignments – 16; Receiving Orders – 1 (see below table for more detailed information)

DATA CALENDAR YEAR (2015 – FEB 2022)

Regimes	15	16	17	18	19	20	21	22	Total of each Regime	Type of Insolvent	
										Com.	Ind.
Receiverships	4	1	0	3	1	0	3		12	12	0
Proposals	0	1	9	3	6	2	4	1	26	16	10
Assignments	0	4	11	37	24	15	20	4	115	21	94
Receiving Ord	0	0	0	1	1	0	2		4	3	1
Total Annually	4	6	20	44	32	17	29	5	157	52	105

2. Are there any potential or upcoming reforms to the insolvency regime?

Answer:

Yes; the review has been done and the necessary suggestions made for the necessary amendments. The main reform is for the creditors to be given the right to make a Proposal.

3. What are the key challenges that remain?

Answer:

The main challenge concerns the effect of a Proposal which was made to secured creditors alone and which the unsecured creditors accept but the secured creditors reject. The problem would arise where the secured creditors hold all the bankrupt company's assets as securities. Another key challenge that remains is the need for Extension of Time to convene a Meeting of Creditors (MOC) as the timeline for this is too short. This is due to the many things that the Trustee has to do to prepare creditors to be able to vote at the MOC.

4. Has there been any significant insolvency activity in your jurisdiction in light of COVID-19?

Answer:

Yes, there has been; particularly in relation to industries that rely heavily on tourism, entertainment as well as the sporting industries.



Justice F. Algernon Smith CD, JA Ret'd

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Saint Lucia Current Insolvency Regime and Proposed Reform

Presented by Fiona Hinkson
Director
National Competitiveness and Productivity Unit
Department of Finance

Saint Lucia's Current Insolvency Regime

The current legal framework for insolvency and restructuring and other aspects of the creditor/debtor relationship is out-dated in Saint Lucia.

Insolvency proceedings are governed by the bankruptcy provisions in the Commercial Code of 1957.

Some of these provisions were subsequently incorporated into the Companies Act of 2008, which is currently the primary instrument governing the insolvency of registered companies.

It is based on the UK law

Current Insolvency Regime

FOR COMPANIES --- two key features:

Liquidation (winding up):

The company to be liquidated when it is unable to pay its debt;

This process can be done voluntary, by the creditors or by a court supervised liquidation. (English Insolvency Rules)

Receivership

This is supplemented by common law principles.

Liquidation and receivership can take place simultaneously.

Repayment of debts to creditors with little regard to the recovery of viable businesses; this result in loss of the business and jobs;

Current Insolvency Regime

FOR NATURAL PERSONS (BANKRUPTCY PROVISIONS), REFERS TO:

individual consumer debt or household debt;



Non-corporate entities include partnerships, sole traders and sole proprietorships.

In contrast with corporate entities, these entities do not possess a distinct legal identity from their shareholders and, as such, the debts of the business are the debts of the individual shareholder.



As a result, if a sole proprietorship goes out of business the debts accrue to the individual, potentially burying him or her in debt for life.



77% of business operate as sole traders

Perception is that sole traders especially non incorporated are not entitled to use insolvency proceedings

Current Insolvency Regime – Disadvantages – For the Companies

Does not focus on business rescue.

There is no proper balance between liquidation and reorganisation.

The tools contained are for the advantages of the creditors only.

When the creditor initiate, the aim is to recover its security interest and not to ensure the continuation of the business.

The debtor do not initiate insolvency; the creditors don't like the process either

Given that the law is outdated; it does not integrate well with the rest of the legal and commercial system; there is not enough coherence with other pieces of legislation.

Current Insolvency Regime – Disadvantages for natural persons

The bankruptcy provisions in the Commercial Code are outdated. For example, they refer to bankruptcy acts that the debtor does in the “Colony”¹⁴⁵ and sums owing to the “Crown”¹⁴⁶;

Creditors can only bring action against the debtor if the amount of the debt is over seventy-two dollars, ¹⁴⁷

The disqualifications that a bankrupt debtor faces are significant unless the Court certifies that the bankruptcy was due to “misfortune without any misconduct”

Due to the lack of use of the bankruptcy provisions, banks continue to accrue NPLs thus unable to clamp down on those responsible. Hence this result in banks only using immovable property as collateral.

Proposed new reforms – Modernisation of the Insolvency Regime

For Businesses:

Improvement be made to the legal framework for insolvency, by introducing a comprehensive reorganization /administration process that includes a broad moratorium on enforcement by both secured and unsecured creditors and that allows the administrator to dispose of encumbered assets free and clear subject to retaining the priority in the proceeds;

Consideration be given to diminishing the use of receivership over time (while taking into account the impact on creditor rights in view of weaknesses of the enforcement regime) or else imposing duties on receivers to have greater regard to the interests of the general body of creditors.

The introduction of a hybrid reorganization processes such as voluntary arrangements that could bind dissenting creditors through a vote, without the need for court intervention; and

Improvements be made to the scheme of arrangement process so that it can be used outside liquidation; and

The modernization of the ranking of claims in insolvency.

Proposed new reforms – Modernisation of the Insolvency Regime

Modernization of the law governing the bankruptcy of individuals, to include: (1)

A unified Act for
corporates and
individuals;

Easing the threshold
criteria for debtor's
access to bankruptcy
proceedings;

Providing alternatives to
bankruptcy;

Simplifying the scheme
of arrangement
procedure;

The adoption of out-of-
court mechanisms for
debt negotiation, such as
loan restructuring
guidelines;

Proposed new reforms – Modernisation of the Insolvency Regime

Modernization of the law governing the bankruptcy of individuals, to include: (2)

Ensuring that the discharge of the debtor is after a fixed period of time and whether it should be tied to a repayment plan;

Reviewing and clarifying the priorities, ensuring correlation with other pieces of legislation;

Modernizing the exempt property provisions;

The establishment of a specific oversight office and developing professional intermediaries who can implement a modern bankruptcy framework; and

Providing outreach and training to judges regarding the importance of personal bankruptcies.

Features of the proposed legislation

Trustees to be licensed –

Currently trustees are not licensed and any one can be appointed.

Supervisor of Insolvency – this person to be appointed by the Public Service Commission. Will be responsible for the administration of the Act/regulate the licensing of Trustees.

The **ability to put a restructuring plan** in place for businesses to ensure that they can get a breathing space from creditors.

Notice period is place in the proposed Act of 10 days. The insolvent person can file a stay of proceedings during which time, a proposal can be made. The insolvent persons can also request an extension of that stay.

The ability to transfer the debtors property to a Trustee thus freeing the debtor from his obligations and be able to re-engage in business.

Key challenges that remain At the Policy Level

Finalisation of Bankruptcy and Insolvency Bill – work on this continues and hopefully should be approved in the next few months

TRINIDAD AND TOBAGO

ORGANISATIONAL HISTORY

The Office of the Supervisor of Insolvency (OSI) was created in June 2014 to operationalize the Bankruptcy and Insolvency Act (BIA), in an effort to improve the credit and economic environment of Trinidad and Tobago. The OSI is a regulatory government agency headed by the Supervisor of Insolvency and charged with the responsibility of monitoring, protecting and strengthening the insolvency system of Trinidad and Tobago.

The OSI is guided by the Bankruptcy and Insolvency Act, 2007, which came into effect on May 26, 2014. The Act focuses on the reality that not all businesses and/or individuals can survive during periods of financial difficulties. The Act is modelled against the Canadian BIA.

The Act provides a statutory framework which would allow companies and/or individuals to be cognisant of their financial circumstances and to be proactive in entering into arrangement with their creditors.

The OSI is a member of the International Association of Insolvency Regulators (IAIR) and INSOL International, in which the Office is given the opportunity to share and gain experiences through the expertise of government insolvency regulators from jurisdictions around the world.

The OSI's Mandate and Mission defines our purpose (why we exist).

Mandate

The Office of the Supervisor of Insolvency (OSI) was created to operationalize the Bankruptcy and Insolvency Act, Chapter 9:70 (BIA), in an effort to foster public confidence in the financial system.

Mission

To facilitate a fair and effective insolvency system under which the rights of debtors and creditors are protected and confidence in the business environment is generated.

Role and Function

The role of the insolvency administration is to provide a fair and effective system for the restoration of assets to productive use, a framework for debtor counselling, a platform for viable businesses to reorganize, a public record of estates, and act as a deterrent to abuse.

This role is carried out jointly with private sector trustees, licensed by the Supervisor and with the Courts.

Core Values

Our Core Values shape the foundation on which our work is performed and how we interact with our stakeholders.

❖ **Independence** – Nothing but the highest possible standards of ethical

performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions are sought openly from all parties involved. Decisions are based on objective, unbiased assessments of all information, and are documented with reasons explicitly stated.

- ❖ **Integrity** – The Office is guided by sound moral judgment, honesty, trustworthiness and the highest ethical standards in all facets of our operations.
- ❖ **Efficiency** – The Office operations are time sensitive which requires tasks to be completed in a given timeframe, maintaining a high quality and efficient operation. The OSI maintains and improves this value on an everyday basis.
- ❖ **Reliability** – As a regulatory office, the OSI has a duty to be reliable in the matters of insolvency and bankruptcy. This relates to intervening in matters and guidance on such.

Strategy

The OSI 2021-2023 Strategy is presented in six (6) major sections and one of the main focal points is the future ***amendments and harmonization of the BIA with subsidiary legislation in Trinidad and Tobago*** that will form part of the ingredients required to produce an efficient and effective insolvency regime.

The format of the strategy and its components has been designed based on necessity of the Office to become more visible to the wider public, improving compliance with the BIA and the capacity-building needs of the OSI.

Previously the lack of mechanisms for restructuring and or conducting organized transparent liquidation proceedings limited the possibility for creditors to recover their investment.

The BIA favors and encourages a culture of Corporate/ Debtor rescue against failed businesses and unemployed and or displaced employees.

Key Procedures

The OSI is occupied currently with the licensing of Trustees, the management of insolvency cases and virtual outreach meetings and webinars to increase the visibility of the office.

Licensing of Trustees

Trustees are fundamental to the operationalization of the BIA.

The Supervisor ensures that each Trustee fulfills the requirement of the BIA and has the required skill set, qualifications and resources to become licensed.

Only after the Supervisor is satisfied that the requirements in accordance with the BIA are met, a Trustee License is issued. All Trustees are informed in writing of Part XVI of the Bankruptcy and Insolvency Regulations which states that a Trustee shall be bound to the code of ethics.

The Supervisor has oversight on the monitoring and misconduct of Trustees.

Presently there are 14 licensed Trustees and 2 requests for information on the process on how to apply for Trustee Licence. A listing of all our Trustees is available on the OSI's webpage www.finance.gov.tt

The Proposal Process

The Proposal is the mechanism/procedure which allows for the re-organization of business and settlement of debts within a certain time frame under the watchful eye of the Trustee.

The Proposal presents the composition and requirement for an extension of time to put forward a scheme, business plan or arrangement to repay a creditor within a certain timeframe.

Presently, there are 4 cases of insolvency.

The objective is to provide information on the OSI and how the BIA can be utilized as an alternative solution for companies to restructure. The BIA provides a protection to both debtors and creditors in times of financial difficulties, an alternative to liquidation and winding up of businesses, promotes financial rehabilitation of individuals and businesses (small, medium and large) and contributes to the economic environment in a country.

Public Records

The OSI has made it a priority for the appropriate documents to be submitted with respect to receiverships and insolvent cases in compliance with the Act.

POTENTIAL/ UPCOMING REFORMS TO THE INSOLVENCY REGIME

The Supervisor is aware that the BIA requires a comprehensive review for consideration of legislative upgrades. This is to be in alignment with modern practices and standards for modern times and changing economic times.

A review will be undertaken for the harmonisation of the BIA, Bankruptcy and Insolvency Regulations (BIR), the Companies Act (inclusive of subsidiary legislation under both Acts) and will include recommendations for amendments, harmonization of legal provisions and upgrade of the Act where necessary, to incorporate modern rescue provisions. The amendments and harmonization processes will ensure that the coordination of information and data are culminated to produce analytical sourced information. This will create an environment that supports the local insolvency regime and by extension the economy at large.

Proclamation of Part XI of the BIA – International Insolvencies

An exercise will be undertaken to determine the requirements necessary for the proclamation of Part XI of the BIA, International Insolvencies. The OSI is presently re-engaging and an external party for advisory support in this area.

Reform

i. Legal Framework Upgrade

The BIA requires significant updating to conform to modern standards and current economic conditions. The amendments to update the law aim at to be aligned to evolving modern and digital economy and modern financial and post-covid world.

ii. Immediate need for modernization of business rescue provisions.

The existing business rescue provisions in the BIA is limited for modern challenges. Enhanced tools provide much needed upgrades for business rescue, as well as streamlined procedures for Micro, Small and Medium Enterprises (MSMEs), Out-of-Court Workout tools, mediation and/or other cost-effective easily implementable measures to save businesses that can be saved.

iii. Harmonisation of the BIA and Companies Act

There are a number of matters that require harmonisation between the BIA and the Companies Act, though the BIA expressly prevails in the event of the conflict with the Companies Act in relation to corporations (see section 23 of the BIA). A non-exhaustive list of matters relates to:

- Forms;
- Obligations of Receivers;
- Licensing of Receivers (in relation to Court appointed receivers); and
- Priority of creditors;

iv. Harmonisation with the Income Tax Act, Chap. 75:01

Further to the issue of harmonisation with the Companies Act, is also required in relation the certificate under section 82 of the Income Tax Act. This arises as, under the BIA, the priority of taxes in sixth in line (as opposed to first under the Companies Act).

The harmonization process will ensure that the coordination of information and data are culminated to produce analytical sourced information that will create an environment that support the local insolvency regime and by extension the economy as large.

KEY CHALLENGES FOR THE OSI AND THE INSOLVENCY REGIME

Historical and Cultural Challenges

Trinidad and Tobago is steeped in “old British” law and the terminology of bankruptcy and insolvency connotes a certain stigma by which an individual/company do not want to be associated with. From a cultural perspective, persons from various cultures were not encouraged to enter business and/or take loans. The way to change this perception is in the informing and educating the key stakeholders and the general public.

A transition period of acceptance of the BIA by other stakeholders

As a relatively newly established OSI, there is a gap in the acceptance of the offerings in the BIA. Certainly, with the engagement of the key stakeholders and the general public that gap is closing slowly.

Establishing administrative, regulatory and court processes

The establishment of these processes have begun, and much progress has been made in documenting systems and procedures, however, this still requires a continuous review, for updating and improvement.

Training and development of Trustees, Judiciary and building the capacity of the OSI

In 2020, the World Bank having regard to the global pandemic situation, reached out to the Government of the Republic of Trinidad and Tobago (GoRTT) and offered training in insolvency to the Judicial Education Institute of Trinidad and Tobago (JEITT). The training was offered in two (2) components namely, INSOL Judicial Insolvency Program (eLearning) on the core principles and best practices of insolvency law and via a Webinar on the Proposal process and the role of the judge in restructurings.

In December 2021, IMPACT Justice (CANADA) offered training in the form of a Workshop to Insolvency Trustees via Zoom on the “Model Insolvency Law” on December 8 & 9, 2021. A few topics covered were key concepts/definitions; role of the supervisor, liquidation under bankruptcy and receiverships and reorganizations.

SIGNIFICANT INSOLVENCY ACTIVITY IN LIGHT OF COVID-19

Virtual Outreach Programmes

In light of the current global pandemic (COVID-19) that has affected many businesses and individuals, the OSI is pursuing its initiatives as outlined in our Strategic Plan that focuses on engagement. The objective of this theme is to increase the engagement with the OSI’s local, regional and international stakeholders. This in an effort to collaborate with each other to on common goals, while improving the visibility of the OSI.

The main focus of the OSI has been raising public awareness of the Bankruptcy and Insolvency Act (BIA), Chapter 9:70 and by extension, fostering an effective Insolvency framework that is essential in fostering financial stability.

In the last two years, the OSI has engaged a number of key stakeholders to create an adaptive platform that facilitates a medium of communication and outreach program. This is geared towards the networking with the business community and informing them of the avenue and channels with regards to resolving insolvencies.

Individual Bankruptcies

There has been a significant increase in the requests for information by individuals with respect to individual bankruptcies. However, to date, there are no registered cases.

ANTIGUA AND BARBUDA



COMPANIES (AMENDMENT) ACT, 2020

No. 17 of 2020

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ANTIGUA AND BARBUDA
COMPANIES (AMENDMENT) ACT 2020
ARRANGEMENT OF SECTIONS

SECTION

1.	Short Title	3
2.	Interpretation.....	3
3.	Amendment of section 236 of the principal Act – Re-organisation	3
4.	Amendment of section 238 of the principal Act - Definitions	4
5.	Amendment of section 241 – Oppression restrained.....	4
6.	Amendment of section 336A – Filing of reports by non-profit.....	4
7.	Insertion of Part VI	4

[L.S.]



I ASSENT,

Rodney Williams,
Governor-General.

15th July, 2020

ANTIGUA AND BARBUDA
COMPANIES (AMENDMENT) ACT 2020
No. 17 of 2020

AN ACT to amend the Companies Act 1995 No.18 of 1995 to provide for the rehabilitation of an insolvent corporate debtor and for other incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as the Companies (Amendment) Act. 2020

2. Interpretation

In this Act –

“principal Act” means the Companies Act 1995 No. 18 of 1995

3. Amendment of section 236 of the principal Act – Re-organisation

Section 236 is amended in subsection (1) by inserting after paragraph (a) the following”
“(aa) a court order for rehabilitation issued under Part VI;”

4. Amendment of section 238 of the principal Act - Definitions

Section 238 is amended in the definition of “complainant” by inserting after paragraph (b)(ii) the following new subparagraph (iia) as follows –

“(iia) a creditor of the company or of any of its affiliates;”

5. Amendment of section 241 – Oppression restrained

Section 241 of the principal Act is amended in subsection (3) by –

- (a) deleting “,” at the end of paragraph (m); and
- (b) inserting after paragraph (m) the following new paragraph –

“(ma) an order for rehabilitation of a Debtor under Part VI; or”

6. Amendment of section 336A – Filing of reports by non-profit

Section 336A of the principal Act is amended in subsection (1) by –

- (a) repealing the words, “and the amount thereof” and replacing these with the words, “in excess of twenty-five thousand (\$25,000.) dollars;
- (b) repealing paragraph (e) and replacing it as follows –

“(e) the names and positions held by its employees”

- (c) by repealing paragraph (f) in its entirety.

7. Insertion of Part VI

The principal Act is amended by inserting at the end of Part V the following:

“PART VI COMPANY REHABILITATION DIVISION A: PRELIMINARY

551. Definitions

In this Part —

“administrator” means the person appointed by the court to preside over the process of rehabilitation of a debtor pursuant to an order made under this Part;

“affiliate” includes —

- (a) an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—
 - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company in which 20 percent or more of the outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—
 - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
- (d) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement;

“claim” means—

- (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

“creditor” means an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor or that has a claim against the estate of a kind specified in section 569(7), 569(8), or 569(9).

“custodian” means—

- (a) a receiver or receiver-manager of any of the property of the debtor, appointed in a case or proceeding not under this Part;

- (b) an assignee under a general assignment for the benefit of the debtor's creditors; or
- (c) a trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors;

“debtor” means an entity concerning which a case under this Part has been commenced;

“estate” refers collectively to all the property, income, finances, receivables and other assets owned by the debtor or in which the debtor had an interest at the time that an order is made for rehabilitation, whether or not such property is in the possession of the debtor or in the possession of another person, and it also includes all property, income, finances, receivable and other assets acquired on behalf of the debtor during the period of rehabilitation, and explained at section 578 of this Part;

“entity” includes a person, estate, trust, and governmental unit;

“equity security” means a share in a company, whether or not transferable or denominated, stock or similar security, or a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified herein;

“equity security holder” means holder of an equity security of the debtor;

“executory contract” means a contract under which the obligation of both the debtor and the other party to the contract are underperformed such that the failure of either party to complete performance would constitute a material breach excusing the performance of the other;

“governmental unit” means Antigua and Barbuda; parish of Antigua and Barbuda; department, agency, or instrumentality of Antigua and Barbuda or parish of Antigua and Barbuda; foreign state; or other foreign or domestic government;

“insider” means, in respect of a debtor —

- (a) a director or manager of the debtor;
- (b) an officer of the debtor;
- (c) a person in control of the debtor, including de facto control;
- (d) a partnership in which the debtor is a general partner;
- (e) a general partner of the debtor; or
- (f) a relative of a general partner, director, officer, or person in control of the debtor;

“insolvent” means a financial condition such that a company –

- (a) is unable to pay its liabilities as they become due, or
- (b) the value of the entity’s debts is greater than the realisable value of the entity’s assets, at a fair valuation, exclusive of assets transferred, concealed, or removed with intent to hinder, delay, or defraud the entity’s creditors;

“judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

“lien” means lien, security interest, mortgage, or any form of charge against or interest in property to secure payment of a debt or performance of an obligation;

“person” includes an individual, partnership, and company, but does not include governmental unit, except that a governmental unit that acquires an asset from a person as a result of the operation of a loan guarantee agreement or as receiver or liquidating agent of a person;

“petition” means petition filed under section 555 and 556, as the case may be, commencing a case under this Part;

“security” –

(a) includes—

- (i) note;
- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) debenture;
- (vi) collateral trust certificate;
- (vii) pre-organization certificate or subscription;
- (viii) transferable share;
- (ix) voting-trust certificate;
- (x) certificate of deposit;
- (xi) certificate of deposit for security;
- (xii) other claim or interest commonly known as "security"; and

- (xiii) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but
- (b) does not include—
 - (i) currency, check, draft, bill of exchange, or bank letter of credit;
 - (ii) commodity futures contract or forward contract;
 - (iii) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;
 - (iv) option to purchase or sell a commodity; or
 - (v) debt or evidence of indebtedness for goods sold and delivered or services rendered;

“security agreement” means an agreement that creates or provides for a security interest;

“security interest” means lien created by an agreement;

“statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

“substantial consummation” means—

- (a) transfer of all or substantially all of the property proposed by the plan to be transferred;
- (b) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (c) commencement of distribution under the plan;

“systemically important company” means a company or partnership –

- (a) that has either at least fifty million (\$50,000,000.) dollars in assets or liabilities or has at least 300 employees who are citizens or residents of Antigua and Barbuda; or
- (b) that the Minister of Finance has determined is important to the economy of Antigua and Barbuda taking into consideration –
 - (i) the nature, scope, size, scale, concentration, interconnectedness of the activities of the company in relation to other aspects of the national economy;
 - (ii) whether such entity is subject to specific regulatory or public and safety matters; and

(iii) any other factors that the Minister deems appropriate for the public interest;
“transfer” means—

- (a) the creation of a lien;
- (b) the retention of title as a security interest;
- (c) the foreclosure of a debtor’s equity of redemption; or
- (d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - (i) property; or
 - (ii) an interest in property.

552. Power of court

(1) The court may issue any order, instructions, process, or judgment that is necessary or appropriate to carry out the provisions of this Part. No provision of this Part providing for the raising of an issue by a party in interest shall be construed to preclude the court from, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(2) Notwithstanding subsection (1) of this section, a court may not appoint a custodian in a case under this Part.

(3) The court, on its own motion or at the request of an interested party —

- (a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;
- (b) shall provide for notice and an opportunity to be heard that is appropriate under the circumstances to any relief sought under this Part, and, in conducting any evidentiary proceedings, may require the disclosure of information relevant to such proceedings and the appearance of witnesses as necessary to the fair adjudication of the matter; and
- (c) may, unless inconsistent with another provision of this Part, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—
 - (i) sets the date by which the administrator must assume or reject an executory contract or unexpired lease; or
 - (ii) sets a date by which the administrator shall file a disclosure statement and plan;
 - (iii) sets the date by which the administrator shall solicit acceptances of a plan;

- (iv) sets the date by which a party in interest other than the administrator may file a plan;
- (v) sets a date by which a proponent of a plan, other than the administrator, shall solicit acceptances of such plan;
- (vi) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
- (vii) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

553. Extension of time

(1) If, an order that was previously entered in another proceeding against the Debtor other than in proceedings under this Part, or an agreement between the Debtor and any other person fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the administrator may commence such action only before the later of—

- (a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (b) two years after the order for relief.

(2) Except as provided in subsection (1) of this section, if applicable law, an order entered in a proceeding other than a proceeding under this Part, or an agreement fixes a period within which the debtor may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the administrator may only file, cure, or perform, as the case may be, before the later of—

- (a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (b) 60 days after the order for relief.

(3) Except as provided in section 574, if applicable law, an order entered in a proceeding other than a proceeding under this Part, or an agreement fixes a period for commencing or continuing a civil action in another court on a claim against the debtor, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (b) 30 days after notice of the termination or expiration of the stay under section 564 with respect to such claim.

554. Who may be a debtor

Only a company or a partnership that –

- (i) is insolvent; and either
- (ii) was organised under this Act; or
- (iii) has a place of business or property in Antigua and Barbuda may be a debtor until this Part.

DIVISION B: CASE ADMINISTRATION

555. Voluntary cases

(1) A debtor may commence a voluntary case under this Part by filing a petition with the court for an order for rehabilitation.

(2) The commencement of a voluntary case under this Part shall constitute an order for relief under this Part.

556. Involuntary cases

(1) An involuntary case may be commenced under this Part against a company that may be a debtor—

- (a) by two or more creditors, each of which is either a holder of a claim against such company that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or a debenture trustee representing such a holder, if such noncontingent, undisputed claims amount to at least five hundred thousand (\$500,000.) dollars more than the value of any lien on property of the debtor securing such claims held by the holders of such claims
- (b) if there are fewer than twelve (12) such holders, excluding any employer or insider of such person and any transferee of a transfer under section 581, 582, 584, 585, or 586, by one or more of such holders that hold in the aggregate of at least five hundred thousand (EC\$500,000) dollars of such claims;
- (c) by the Minister of Finance, if the company –
 - (i) is a company that may be a debtor; and
 - (ii) is a systemically important company.
- (iii) by a receiver or receiver manager appointed pursuant to Part II of this Act.

(2) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (1) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (1) of this section.

(3) The debtor may file an answer to a petition under this section.

(4) After notice and a hearing, and for cause, the court may require the petitioners, other than a governmental unit, under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (7) of this section.

(5) Notwithstanding section 565, except to the extent provided under section 557(1) or that the court otherwise orders, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(6) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case, if the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to the liability or amount.

(7) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

- (a) against the petitioners and in favor of the debtor for—
 - (i) costs; or
 - (ii) reasonable attorney's fees; or
- (b) against any petitioner that filed the petition in bad faith, for—
 - (i) any damages proximately caused by such filing; or
 - (ii) punitive damages;

provided, however, that no governmental unit shall be liable for any costs, fees, or damages under this subsection.

(8) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

- (a) on the motion of a petitioner;
- (b) on consent of all petitioners and the debtor; or
- (c) for want of prosecution.

557. Appointment of an administrator

(1) Subject to subsection (2) of this section, upon the filing of a petition under section 555 or upon an order for relief granted under section 556 the court shall appoint an administrator.

(2) As soon as practicable after the filing of a petition for a systemically important company under section 555 or 556, the Minister of Finance shall submit a list of three disinterested persons that are qualified and willing to serve as administrators in the case and the court shall appoint one of such persons to serve as the administrator.

(3) An administrator in a case under this Part is authorised to commence an insolvency proceeding in a foreign jurisdiction on behalf of the debtor, subject to the eligibility requirements of the foreign jurisdiction.

(4) When an administrator is appointed under subsection (1) or (2), the powers of the directors, managers, equity holders, members, general partners, or limited partners of the debtor may not be exercised by such entities until the case is dismissed or closed.

558. Role and capacity of administrator

(1) The administrator in a case under this Part is the representative of the estate.

(2) The administrator in a case under this Part has the capacity to sue and be sued, provided that the administrator shall not be personally liable for any act or omission taken on behalf of the debtor or the estate except for willful misconduct.

(3) In addition to any specific authorization under this Part, the administrator shall have standing to sue to recover funds or to seek subordination of claims, in the name of and for the benefit of creditors, to redress any generalized harm occasioned upon creditors.

559. Duties of administrator

(1) An administrator shall—

- (a) be accountable for all property received;
- (b) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
- (c) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
- (d) if the business of the debtor is authorized to be operated, file with the court, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court requires;
- (e) make a final report and file a final account of the administration of the estate with the court;
- (f) file—
 - (i) a list of creditors; and
 - (ii) unless the court orders otherwise—
 - (A) a schedule of assets and liabilities
 - (B) a schedule of current income and current expenditures;
 - (C) a statement of the debtor's financial affairs;
 - (D) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and
 - (E) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

- (g) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
- (h) as soon as practicable—
 - (i) file a statement of any investigation conducted under paragraph (g), including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and
 - (ii) transmit a copy or a summary of any such statement to the court, and to such other entity as the court designates;
- (i) as soon as practicable, file a plan under section 598, file a report of why the administrator will not file a plan, or recommend conversion of the case to a wind-down under Part IV of this title or dismissal of the case;
- (j) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and
- (k) after confirmation of a plan, file such reports as are required by law or as the court orders.

(2) Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, for cause, the administrator may direct the operation the debtor's business, including the continuation of management personnel to formulate a business plan and operate as a going concern.

560. Eligibility to serve as an administrator

Only a person who would be eligible and qualified to be appointed as a receiver or receiver-manager under section 288 of this Act may be appointed and serve as an administrator under this Part.

561. Removal of administrator

The court, after notice and hearing, may remove an administrator, for cause, and shall promptly appoint a successor administrator.

562. Effect of vacancy

A vacancy in the office of administrator during a case does not abate any pending action or proceeding, and the successor administrator shall be substituted in such action or proceeding.

563. Adequate protection

When adequate protection is required under section 564, 565, or 566 of an interest of an entity in property, such adequate protection may be provided by—

- (a) requiring the administrator to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 564, use, sale, or lease under section 565, or any grant of a lien under section 566 results in a decrease in the value of such entity's interest in such property;
- (b) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (c) granting such other relief, other than entitling such entity to compensation allowable under section 570(2) as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property; provided, however, the court may not grant as adequate protection administrative expense priority to any claim.

564. Automatic stay

(1) Except as provided in subsection (2) of this section, a petition filed under section 555 or 556 operates as a stay, applicable to all entities, of—

- (a) the commencement or continuation, including the issuance or employment of process, of a judicial, statutory, administrative, or other action or proceeding against the debtor, except as required by this Part, that was or could have been commenced before the commencement of the case under this Part, or to recover a claim against the debtor that arose before the commencement of the case under this Part;
- (b) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this Part;
- (c) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (d) any act to create, perfect, or enforce any lien against property of the estate;
- (e) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this Part;
- (f) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this Part; and
- (g) the setoff of any debt owing to the debtor that arose before the commencement of the case under this Part against any claim against the debtor.

(2) The filing of a petition under section 555 or 556 does not operate as a stay—

- (a) under subsection (1), of the commencement or continuation of a criminal action or proceeding against the debtor;
- (b) under subsection (1), of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the administrator's rights and powers are subject to such perfection under section 583(2) or to the extent that such act is accomplished within the period provided under section 584(6)(a);
- (c) under paragraph (a), (b), (c), or (f) of subsection (1), of the commencement or continuation of an action or proceeding by a governmental unit, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;
- (d) under subsection (1), of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property; and
- (e) under subsection (1), of any transfer that is not avoidable under section 581 and that is not avoidable under section 586.

(3) Except as provided in subsection (4), the stay of an act against property of the estate under subsection (1) continues until—

- (a) such property is no longer property of the estate; or
- (b) the earliest of—
 - (i) the time the case is closed; or
 - (ii) the time the case is dismissed.

(4) At the request of an interested party and after notice and a hearing, the court shall grant relief from the stay provided under subsection (1), such as by terminating, annulling, modifying, or conditioning such stay—

- (a) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (b) with respect to a stay of an act against property under subsection (1), if—
 - (i) the debtor does not have an equity in such property; and
 - (ii) such property is not necessary to an effective rehabilitation of the debtor.

(5) Thirty days after a request under subsection (4) for relief from the stay of any act against property of the estate under subsection (1), such stay is terminated with respect to the interested party making such request, then, unless the court, after notice and a hearing, orders such stay

continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (4) of this section.

(6) A hearing under subsection (5) may be a preliminary hearing, or may be consolidated with the final hearing under subsection (4) of this section.

(7) The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (4) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing.

(8) If the hearing under subsection (4) is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the interested parties or for a specific time which the court finds is required by compelling circumstances.

(9) Upon request of an interested party, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (1) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (4) or (5) of this section.

(10) In any hearing under subsection (4) or (5) concerning relief from the stay of any act under subsection (1)—

- (a) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (b) the party opposing such relief has the burden of proof on all other issues.

(11) On request of a party in interest, the court shall issue an order under subsection (3) confirming that the automatic stay has been terminated.

565. Use, sale, or lease of property

(1) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 589(2) whether existing before or after the commencement of a case under this Part.

(2) The administrator, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(3) Unless the court orders otherwise, -

- (a) the administrator may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

- (b) the administrator may not use, sell, or lease cash collateral under paragraph (a) of this subsection unless—
 - (i) each entity that has an interest in such cash collateral consents; or
 - (ii) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
- (c) Except as provided in paragraph (b) of this subsection, the administrator shall segregate and account for any cash collateral in the possession, custody, or control of the administrator.

(4) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the administrator, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 564).

(5) The administrator may sell property under subsection (2) or (3) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (a) otherwise applicable law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(6) At a sale under subsection (2) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(7) Subject to the provisions of section 567, the administrator may use, sell, or lease property under subsection (2) or (3) of this section, or a plan under this Part, may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this Part concerning the debtor, or on the appointment of or the taking possession by an administrator in a case under this Part or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(8) The reversal or modification on appeal of an authorization under subsection (2) or (3) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(9) The administrator may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(10) In a hearing under this section—

- (a) the administrator has the burden of proof on the issue of adequate protection; and
- (b) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

566. Obtaining credit

(1) Unless the court orders otherwise, the administrator may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 570(2)(a) as an administrative expense.

(2) The court, after notice and a hearing, may authorize the administrator to obtain unsecured credit or to incur unsecured debt other than under subsection (1) of this section, allowable under section 570(2)(a) as an administrative expense.

(3) If the administrator is unable to obtain unsecured credit allowable under section 570(2)(a) as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (a) with priority over any or all administrative expenses specified in section 570(2);
- (b) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (c) secured by a junior lien on property of the estate that is subject to a lien.

(4) The court after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (a) the administrator is unable to obtain such credit otherwise; and
- (b) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(5) In any hearing under this subsection, the administrator has the burden of proof on the issue of adequate protection.

(6) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

567. Executory contracts and unexpired leases

(1) Except as provided in subsections (2), (5), and (6) of this section, the administrator, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(2) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

- (a) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
- (b) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (c) provides adequate assurance of future performance under such contract or lease.

(3) Subsection (2) does not apply to a default that is a breach of a provision relating to—

- (a) the insolvency or financial condition of the debtor at any time before the closing of the case;
- (b) the commencement of a case under this Part;
- (c) the appointment of or taking possession by an administrator in a case under this title or a custodian before such commencement; or
- (d) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in subsection (3) of this section, the administrator may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(5) The administrator may not assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

- (a) an applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
- (b) such party does not consent to such assignment; or
- (c) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or
- (d) such lease is of non-residential real property and has been terminated under applicable law prior to the order for relief

(6) The administrator shall timely perform all the obligations of the debtor, except those specified in subsection (3) arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 570(2). The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period.

(7) Subsection (6) shall not be deemed to affect the obligations of the administrator under the provisions of subsection (2) or (5) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this Part.

(8) Subject to subsection (9), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the administrator shall immediately surrender that nonresidential real property to the lessor, if the administrator does not assume or reject the unexpired lease by the earlier of—

- (a) the date that is 120 days after the date of the order for relief; or
- (b) the date of the entry of an order confirming a plan.

(9) The court may extend the period determined under subsection (8), prior to the expiration of the 120-day period, for 90 days on the motion of the administrator or lessor for cause.

(10) If the court grants an extension under subsection (9), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

(11) The administrator shall timely perform all of the obligations of the debtor, except those specified in subsection (3), first arising from or after 60 days after the order for relief in a case under this Part under an unexpired lease of personal property until such lease is assumed or rejected notwithstanding section 570(2)(a), unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This paragraph shall not be deemed to affect the administrator's obligations under the provisions of subsection (2) or (5). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this Part.

(12) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

- (a) the insolvency or financial condition of the debtor at any time before the closing of the case;
- (b) the commencement of a case under this Part; or
- (c) the appointment of or taking possession by a trustee in a case under this Part or a custodian before such commencement.

(13) Subsection (11) does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties if—

- (a) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
- (b) such party does not consent to such assumption or assignment; or
- (c) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(14) Except as provided in subsections (2) and (3) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under subsection (2).

(15) The administrator may assign an executory contract or unexpired lease of the debtor only if—

- (a) The administrator assumes such a contract or lease in accordance with the provisions of this section; and
- (b) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(16) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the administrator.

(17) The rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease if such contract or lease has not been assumed under this section or under a plan confirmed under this Part, immediately before the date of the filing of the petition.

(18) Assignment by the administrator to an entity of a contract or lease assumed under this section relieves the administrator and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(19) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(20) For purposes of this section 569 and sections 582(2)(b) and 566(2)(4), leases of real property shall include any rental agreement to use real property.

(21) If the administrator rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

- (a) to treat such contract as terminated by such rejection if such rejection by the administrator amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable law, or an agreement made by the licensee with another entity; or
- (b) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable law), as such rights existed immediately before the case commenced, for—
 - (i) the duration of such contract; and
 - (ii) any period for which such contract may be extended by the licensee as of right under applicable law.

(22) If the licensee elects to retain its rights, as described in paragraph (i)(B) of this subsection, under such contract—

- (a) the administrator shall allow the licensee to exercise such rights;
- (b) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (i)(B) of this subsection for which the licensee extends such contract; and

(c) the licensee shall be deemed to waive—

- (i) any right of setoff it may have with respect to such contract under this Part or applicable law; and
- (ii) any claim allowable under section 573(b) arising from the performance of such contract.

(23) If the licensee elects to retain its rights, as described in paragraph (i)(B) of this subsection, then on the written request of the licensee the trustee shall—

- (a) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the administrator; and
- (b) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(24) Unless and until the administrator rejects such contract, on the written request of the licensee the administrator shall—

- (a) to the extent provided in such contract or any agreement supplementary to such contract—
 - (i) perform such contract; or
 - (ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable law) held by the administrator; and
- (b) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

(25) If a lease of personal property is rejected or not timely assumed by the administrator under subsection (4), the leased property is no longer property of the estate and the stay under section 566(1) is automatically terminated.

DIVISION C: CREDITORS, THE DEBTOR, AND THE ESTATE

568. Filing of proofs of claims or interests

(1) A creditor or an indenture trustee may file a proof of claim; an equity security holder may file a proof of interest.

(2) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(3) If a creditor does not timely file a proof of such creditor's claim, the debtor or the administrator may file a proof of such claim.

(4) A claim of a kind specified in section 569(6), 569(7), 572(8), or 569(9) of this Part may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

569. Allowance of claims or interests

(1) A claim or interest, proof of which is filed under section 568 of this Part, is deemed allowed, unless an interested party objects.

(2) Except as provided in subsections (6), (7), (8), (9) and (10) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

- (a) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
- (b) such claim is for unmatured interest;
- (c) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
- (d) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;
- (e) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds
 - (i) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
 - (A) the date of the filing of the petition; and
 - (B) the date on which such lessor repossessed, or the lessee surrendered, the leased property; and
 - (ii) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;
- (f) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—
 - (i) the compensation provided by such contract, without acceleration, for one year following the earlier of—
 - (A) the date of the filing of the petition; or

- (B) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; and
 - (ii) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;
 - (g) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or
 - (h) proof of such claim is not timely filed, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief.
- (3) There shall be estimated for purpose of allowance under this section—
 - (a) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or
 - (b) any right to payment arising from a right to an equitable remedy for breach of performance.
- (4) Notwithstanding subsections (1) and (2) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 579, 580, 587, 590 of this Part or that is a transferee of a transfer avoidable under section 581, 582, 584, 585, or 586 of this Part, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 579, 580, 587, or 590 of this Part.
- (5) Notwithstanding subsections (1), (2), (3) and (6) of this section, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—
 - (a) such creditor's claim against the estate is disallowed;
 - (b) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution.
- (6) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsections (1), (2), or (3) of this section, or disallowed under subsection (4) of this section, the same as if such claim had become fixed before the date of the filing of the petition.
- (7) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of an administrator and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsections (1), (2), or (3) of this section or disallowed under subsection (4) or (5) of this section, the same as if such claim had arisen before the date of the filing of the petition.
- (8) A claim arising from the rejection, under section 567 of this Part or under a plan, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (1), (2), or (3) of this section or disallowed under subsection

(4) or (5) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(9) A claim arising from the recovery of property under section 587 or 590 of this Part shall be determined, and shall be allowed under subsection (1), (2), or (3) of this section, or disallowed under subsection (4) or (5) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(10) A claim that has been allowed or disallowed may be reconsidered for cause.

(11) A reconsidered claim may be allowed or disallowed according to the equities of the case.

(12) Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder.

(13) Subsections (10), (11) and (12) do not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

570. Allowance of administrative expenses

(1) An entity may timely file a request for payment of an administrative expense.

(2) After notice and a hearing, there shall be allowed administrative expenses including—

- (a) the actual, necessary costs and expenses of preserving the estate;
- (b) reasonable compensation and reimbursement of the administrator or any professionals employed by the administrator or debtor for services rendered during the case;
- (c) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (iv) of this subsection, incurred by—
 - (i) a creditor that files a petition under section 558 of this Part;
 - (ii) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
 - (iii) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;
 - (iv) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors, in making a substantial contribution in a case under this Part; or
 - (v) a custodian superseded under section 584 of this Part, and compensation for the services of such custodian;

- (d) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (iii) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;
- (e) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under this Part, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this Part;
- (f) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this Part in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

(3) Notwithstanding subsection (2), there shall neither be allowed, nor paid—

- (a) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—
 - (i) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;
 - (ii) the services provided by the person are essential to the survival of the business; and
 - (iii) either—
 - (A) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or
 - (B) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;
- (b) a severance payment to an insider of the debtor, unless—
 - (i) the payment is part of a program that is generally applicable to all full-time employees; and

- (ii) the amount of the payment is not greater than 5 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or
- (iii) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

571. Determination of tax liability

(1) Except as provided in section (2) of this section, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine—

- (a) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this Part;
- (b) any right of the estate to a tax refund, before the earlier of—
 - (i) 120 days after the administrator properly requests such refund from the governmental unit from which such refund is claimed; or
 - (ii) a determination by such governmental unit of such request; or
 - (iii) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

(3) The clerk shall maintain a list under which a governmental unit responsible for the collection of taxes may—

- (a) designate an address for service of requests under this section; and
- (b) describe where further information concerning additional requirements for filing such requests may be found.

(4) If such governmental unit does not designate an address and provide such address to the clerk, any request made under this section may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

(5) An administrator may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in subsection (3).

(6) Unless such return is fraudulent, or contains a material misrepresentation, the estate, the administrator, the debtor, and any successor to the debtor are discharged from any liability for such tax—

- (a) upon payment of the tax shown on such return, if—
 - (i) such governmental unit does not notify the administrator, within 60 days after such request, that such return has been selected for examination; or
 - (ii) such governmental unit does not complete such an examination and notify the administrator of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;
 - (iii) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or
 - (iv) upon payment of the tax determined by such governmental unit to be due.

(7) Notwithstanding section 564 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

572. Determination of secured status

(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 590 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(2) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (3) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or applicable law under which the claim arose.

(3) The administrator may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

(4) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

- (a) such claim was disallowed only under section 569(5) of this Part; or
- (b) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 568 of this Part.

573. Debtors' duties

The debtor shall—

(a) file—

(i) a list of creditors;

and unless the court orders otherwise—

(ii) a schedule of assets and liabilities;

(iii) a schedule of current income and current expenditures;

(iv) a statement of the debtor's financial affairs to include:

(A) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(B) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(C) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(D)

(b) cooperate with the administrator as necessary to enable the administrator to perform the administrator's duties under this Part.

574. Effect of discharge

A discharge in a case under this Part—

(a) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 606, whether or not discharge of such debt is waived; and

(b) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a liability of the debtor, whether or not discharge of such debt is waived.

575. Protection against discriminatory treatment

(1) A governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a company that is or has been a debtor under this Part, or another company or person with whom such bankrupt or debtor has been associated, solely because such

bankrupt or debtor is or has been a debtor under this Part, has been insolvent before the commencement of the case under this Part, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this Part.

(2) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been associated with a debtor under this Part, solely because such debtor is or has been a debtor under this Part, has been insolvent before the commencement of the case under this Part, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this Part.

576. Rankings

Except with respect to administrative expenses that are allowed under section 570(2)(a) and (b), which shall have priority of distribution from all property of the estate, the ranking of claims described in section 457 of this Act shall apply in a reorganisation under this Part.

577. Subordination

(1) A subordination agreement is enforceable in a case under this Part to the same extent that such agreement is enforceable under applicable law.

(2) For the purpose of distribution under this Part, a claim arising from rescission of a purchase or sale of a security of the debtor or of an affiliate of the debtor, for damages arising from the purchase or sale of such a security, or for reimbursement or contribution allowed under section 569 on account of such a claim, shall be subordinated to all claims or interests that are senior to or equal the claim or interest represented by such security, except that if such security is common stock, such claim has the same priority as common stock.

(3) Notwithstanding subsections (1) and (2) of this section, after notice and a hearing, the court may—

- (a) under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim or all or part of an allowed interest to all or part of another allowed interest; or
- (b) order that any lien securing such a subordinated claim be transferred to the estate.

578. Property of the estate

(1) The commencement of a case under section 555 or 556 of this Part creates an estate, such estate is comprised of all the following property, wherever located and by whomever held:

- (a) Except as provided in subsections (2) and (4) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.
- (b) Any interest in property that the administrator recovers under section 565(9), 580, 587, or 590 of this Part.

- (c) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 577(3) or 588 of this Part.
- (d) Proceeds, product, offspring, rents, or profits of or from property of the estate.
- (e) Any interest in property that the estate acquires after the commencement of the case.

(2) Property of the estate does not include—

- (a) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or
- (b) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

(3) Except as provided in subsection (4), an interest of the debtor in property becomes property of the estate under subsection (1)(a), (1)(b), or (1)(e) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable law—

- (a) that restricts or conditions transfer of such interest by the debtor; or
- (b) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(4) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable law is enforceable in a case under this title.

(5) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (1) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

579. Turnover of property to the estate

(1) Except as provided in subsection (3) or (4) of this section, an entity in possession, custody, or control, during the case, of property that the administrator may use, sell, or lease under section 565 of this Part shall deliver to the administrator, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(2) Except as provided in subsection (3) or (4) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the administrator, except to the extent that such debt may be offset under section 594 of this Part against a claim against the debtor.

(3) Except as provided in section 564(1)(g) of this Part, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith and other than in the manner specified in subsection (4) of this section, to an entity other than the administrator, with the same effect as to the entity making such transfer or payment as if the case under this Part concerning the debtor had not been commenced.

(4) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the administrator.

580 Turnover of property by a custodian

(1) A custodian with knowledge of the commencement of a case under this Part concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

(2) A custodian shall—

- (a) deliver to the administrator any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and
- (b) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

(3) The court, after notice and a hearing, shall—

- (a) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;
- (b) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and
- (c) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition for any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.

(4) After notice and hearing, the bankruptcy court—

- (a) may excuse compliance with subsection (1), (2), or (3) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders

- would be better served by permitting a custodian to continue in possession, custody, or control of such property, and
- (b) shall excuse compliance with subsections (1) and (2)(a) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.

581. Administrator as lien creditor and as successor to certain creditors and purchasers

(1) The administrator shall have, as of the commencement of the case, and without regard to any knowledge of the administrator or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

- (a) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;
- (b) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or
- (c) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(2) The administrator may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 569 of this Part or that is not allowable only under section 569(5) of this Part.

582. Statutory liens

The administrator may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien –

- (a) first becomes effective against the debtor—
- (i) when a case under this Part concerning the debtor is commenced;
- (ii) when an insolvency proceeding other than under this Part concerning the debtor is commenced;
- (iii) when a custodian is appointed or authorized to take or takes possession;
- (iv) when the debtor becomes insolvent;
- (v) when the debtor's financial condition fails to meet a specified standard; or

- (vi) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;
- (b) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists;
- (c) is for rent; or
- (d) is a lien of distress for rent.

583. Limitations on avoiding powers

(1) An action or proceeding under section 581, 582, 584, 585, or 590 of this Part may not be commenced after —

- (a) 2 years after the entry of the order of relief; or
- (b) the time the case is closed or dismissed

whichever is earlier.

(2) The rights and powers of an administrator under sections 581, 582, and 586 of this Part are subject to any generally applicable law that—

- (a) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or
- (b) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(3) If—

- (a) a law described in paragraph (i) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and
- (b) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

(4) Except as provided in section 457 of this Act and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the administrator under sections 581(1), 582, 584, and 586 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

- (a) not later than 45 days after the date of receipt of such goods by the debtor; or
- (b) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

(5) If a seller of goods fails to provide notice in the manner described in subsection (4), the seller still may assert the rights contained in paragraph 570(2)(f).

584. Preferences

(1) In this section—

“inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

“new value” means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the administrator under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

“receivable” means right to payment, whether or not such right has been earned by performance; and

a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(2) Except as provided in subsection (3) and paragraph (a) of this section, the administrator may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (3), avoid any transfer of an interest of the debtor in property—

- (a) to or for the benefit of a creditor;
- (b) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (c) made while the debtor was insolvent;
- (d) made—
 - (i) on or within 90 days before the date of the filing of the petition; or
 - (ii) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (e) that enables such creditor to receive more than such creditor would receive if—
 - (i) the case were a case under Part IV of this Act;
 - (ii) the transfer had not been made; and
 - (iii) such creditor received payment of such debt to the extent provided by the provisions of this Part.

(3) The administrator may not avoid under this section a transfer—

- (a) to the extent that such transfer was—
 - (i) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
 - (ii) in fact a substantially contemporaneous exchange;
- (b) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
 - (i) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
 - (ii) made according to ordinary business terms;
- (c) that creates a security interest in property acquired by the debtor—
 - (i) to the extent such security interest secures new value that was—
 - (A) given at or after the signing of a security agreement that contains a description of such property as collateral;
 - (B) given by or on behalf of the secured party under such agreement;
 - (C) given to enable the debtor to acquire such property; and
 - (D) in fact used by the debtor to acquire such property; and
 - (ii) that is perfected on or before 30 days after the debtor receives possession of such property;
- (d) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—
 - (i) not secured by an otherwise unavoidable security interest; and
 - (ii) not secured by an otherwise unavoidable security interest; and
- (e) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—
 - (i) with respect to a transfer to which subsection (2)(d)(i) of this section applies, 90 days before the date of the filing of the petition; or
 - (ii) with respect to a transfer to which subsection (2)(d)(ii) of this section applies, one year before the date of the filing of the petition; or
 - (iii) the date on which new value was first given under the security agreement creating such security interest;

- (a) that is the fixing of a statutory lien that is not avoidable under section 582 of this Part;

(4) The administrator may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the administrator under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the administrator or the amount paid to the administrator.

(5) For the purposes of this section—

- (a) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and
- (b) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(6) For the purposes of this section, except as provided in subsection (7) of this section, a transfer is made—

- (a) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (3)(c)(ii);
- (b) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or
- (c) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—
 - (i) the commencement of the case; or
 - (ii) 30 days after such transfer takes effect between the transferor and the transferee.

(7) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.

(8) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

(9) For the purposes of this section, the administrator has the burden of proving the avoidability of a transfer under subsection (2) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (3) of this section.

(10) If the administrator avoids under subsection (2) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

585. Fraudulent transfers and obligations

(1) The administrator may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

- (a) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
- (b) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
 - (i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
 - (ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
 - (iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
 - (iv) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) The administrator of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(3) Except to the extent that a transfer or obligation voidable under this section is voidable under section 581, 582, 584 of this Part, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(4) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in

such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

(5) In this section “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor.

(6) In addition to any transfer that the administrator may otherwise avoid, the administrator may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

- (a) such transfer was made to a self-settled trust or similar device;
- (b) such transfer was by the debtor;
- (c) the debtor is a beneficiary of such trust or similar device; and
- (d) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(7) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by any violation of securities laws or fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security.

586. Postpetition transactions

(1) Except as provided in subsection (1) or (2) of this section, the administrator may avoid a transfer of property of the estate—

- (a) that occurs after the commencement of the case; and
- (b) that is either authorized only under section 556(5) or 579(3) of this Part, or that is not authorized under this Part or by the Court.

(2) In an involuntary case, the administrator may not avoid under subsection (1) of this section, a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(3) The administrator may not avoid under subsection (1) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the

property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(4) An action or proceeding under this section may not be commenced after the earlier of—

- (a) two years after the date of the transfer sought to be avoided; or
- (b) the time the case is closed or dismissed.

587. Liability of transferee of avoided transfer

(1) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 581, 582, 584, 585, 586, or 590(2) of this Part, the administrator may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—

- (a) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (b) any immediate or mediate transferee of such initial transferee.

(2) The administrator may not recover under subsection (1)(b) of this section from—

- (a) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
- (b) any immediate or mediate good faith transferee of such transferee.

(3) If a transfer made between 90 days and one year before the filing of the petition—

- (a) is avoided under section 584(2) of this Part; and
- (b) was made for the benefit of a creditor that at the time of such transfer was an insider;
- (c) the administrator may not recover under subsection (1) from a transferee that is not an insider.

(4) The administrator is entitled to only a single satisfaction under subsection (1) of this section.

(5) A good faith transferee from whom the administrator may recover under subsection (1) of this section has a lien on the property recovered to secure the lesser of—

- (a) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
- (b) any increase in the value of such property as a result of such improvement, of the property transferred.

(6) In this subsection, "improvement" includes—

- (a) physical additions or changes to the property transferred;

- (b) repairs to such property;
- (c) payment of any tax on such property;
- (d) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and
- (e) preservation of such property.

(7) An action or proceeding under this section may not be commenced after the earlier of—

- (a) one year after the avoidance of the transfer on account of which recovery under this section is sought; or
- (b) the time the case is closed or dismissed.

588. Automatic preservation of avoided transfer

Any transfer avoided under section 581, 582, 584, 585, or 586 of this Part, or any lien void under section 572(4) of this Part, is preserved for the benefit of the estate but only with respect to property of the estate.

589. Postpetition effect of security interest

(1) Except as provided in subsection (2) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(2) Except as provided in sections 565, 572(3), 581, 582, 584, and 585 of this Part, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(3) Except as provided in sections 565, 572(3), 581, 582, 584, and 585 of this Part, and notwithstanding section 587(b) of this Part, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

590. Setoff

(1) Except as otherwise provided in this section and in sections 564 and 565 of this Part, this Part does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

- (a) the claim of such creditor against the debtor is disallowed;
- (b) such claim was transferred, by an entity other than the debtor, to such creditor—
 - (i) after the commencement of the case; or
 - (ii) after 90 days before the date of the filing of the petition and while the debtor was insolvent; or
- (c) the debt owed to the debtor by such creditor was incurred by such creditor—
 - (i) after 90 days before the date of the filing of the petition;
 - (ii) while the debtor was insolvent; and
 - (iii) for the purpose of obtaining a right of setoff against the debtor.

(2) If a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the administrator may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

- (a) 90 days before the date of the filing of the petition; and
- (b) the first date during the 90 days immediately preceding the date of the filing of the petition and on which there is an insufficiency.

(3) In this subsection, “insufficiency” means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

(4) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

591. Abandonment of property of the estate

(1) After notice and a hearing, the administrator may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(2) On request of a party in interest and after notice and a hearing, the court may order the administrator to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(3) Unless the court orders otherwise, any property scheduled under section 573(a) of this Part not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered.

(4) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

DIVISION D: REORGANISATION

592. Creditors' committees

(1) On request of a party in interest, the court may order the appointment of a committee of creditors holding unsecured claims to the extent the court deems necessary to ensure the adequacy of representation of such interests.

(2) A committee of creditors appointed under subsection (1) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organised by creditors before the commencement of the case under this Part, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

593. Powers and duties of committees

(1) At a scheduled meeting of a committee appointed under section 592 of this Part, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorise the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

(2) An attorney or accountant employed to represent a committee appointed under section 592 of this Part may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

(3) A committee appointed under section 592 of this Part may—

- (a) consult with the administrator or debtor concerning the administration of the case;
- (b) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
- (c) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan; and
- (d) perform such other services as are in the interest of those represented.

(4) As soon as practicable after the appointment of a committee under section 592 of this Part, the administrator shall meet with such committee to transact such business as may be necessary and proper.

594. Authorisation to operate business

Unless the court, on request of an interested party and after notice and a hearing, orders otherwise for cause, the administrator may operate the debtor's business.

595. Right to be heard

A party in interest, including the debtor, the administrator, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

596. Claims and interests

(1) A proof of claim or interest is deemed filed under section 568 of this Part for any claim or interest that appears in the schedules filed under section 573(a) of this Part, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

(2) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 569 of this Part the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

- (a) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of subsection (4); or
- (b) such holder does not have such recourse and such property is sold under section 565 of this Part or is to be sold under the plan.

(3) A class of claims may not elect application of subsection (4) if—

- (a) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or
- (b) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 565 of this Part or is to be sold under the plan.

(4) If such an election is made, then notwithstanding section 572(1) of this Part, such claim is a secured claim to the extent that such claim is allowed.

597. Dismissal

(1) Except as provided in subsections (2) and (3), on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this Part for cause if it is in the best interests of creditors and the estate.

(2) The court may not dismiss a case under this Part if the court finds and specifically identifies unusual circumstances establishing that dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that the grounds

for converting or dismissing the case include an act or omission of the debtor other than under paragraph (a) of subsection (5):

- (a) for which there exists a reasonable justification for the act or omission; and
- (b) that will be cured within a reasonable period of time fixed by the court.

(3) The court may not dismiss a case under this Part if the case involves a debtor that is a systemically important company unless the Minister of Finance has either consented to such dismissal or the Court determines that the decision to withhold consent by Minister of Finance is arbitrary and capricious.

(4) The court shall commence the hearing on a motion under this section not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this section.

(5) For purposes of this subsection, the term “cause” includes—

- (a) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (b) gross mismanagement of the estate;
- (c) failure to maintain appropriate insurance that poses a risk to the estate or to the public;
- (d) unauthorised use of cash collateral substantially harmful to 1 or more creditors;
- (e) failure to comply with an order of the court;
- (f) unexcused failure to satisfy timely any filing or reporting requirement established by this Part or by any rule applicable to a case under this chapter;
- (g) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (h) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this Part or by order of the court;
- (i) revocation of an order of confirmation under section 609;
- (j) inability to effectuate substantial consummation of a confirmed plan;
- (k) material default by the debtor with respect to a confirmed plan; and
- (l) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan.

598. Who may file a plan

(1) The administrator may file a plan at any time in a voluntary case or an involuntary case.

(2) Except as otherwise provided in this section, only the administrator may file a plan until after 120 days after the date of the order for relief under this chapter.

(3) Any party in interest, including the debtor, the administrator, a creditors’ committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—

- (a) the administrator has not filed a plan before 120 days after the date of the order for relief under this chapter; or
- (b) the administrator has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.

(4) Subject to subsection (5), at the request of an interested party made within the respective periods specified in subsections (2) and (3) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(5) The 120-day period specified in subsection (4) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(6) The 180-day period specified in subsection (4) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

599. Classification of claims or interests

(1) Except as provided in subsection (2) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(2) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

600. Contents of plan

(1) Notwithstanding any otherwise applicable law, a plan shall—

- (a) designate, subject to the confirmation of the Plan, classes of claims that may be given priority, other than claims that must be paid in cash, in full, including allowed administrative expenses under section 570 and claims that are described in section 457 of the Act;
- (b) specify any classes of claims or interests that is not impaired under the plan;
- (c) specify the treatment of any class of claims or interests that is impaired under the plan;
- (d) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
- (e) provide adequate means for the plan's implementation, such as:
 - (i) retention by the debtor of all or any part of the property of the estate;
 - (ii) transfer of all or any part of the property of the estate to one or more entities, whether organised before or after the confirmation of such plan;
 - (iii) merger or consolidation of the debtor with one or more persons;

- (iv) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
 - (v) satisfaction or modification of any lien;
 - (vi) cancellation or modification of any indenture or similar instrument;
 - (vii) curing or waiving of any default;
 - (viii) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
 - (ix) amendment of the debtor's charter; or
 - (x) issuance of securities of the debtor, or of any entity referred to in section (2) or (3), for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;
- (f) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (e)(ii) or (e)(iii) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and
- (g) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.

(2) Subject to subsection (1-) of this section, a plan may—

- (a) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
- (b) subject to section 567 of this Part, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
- (c) provide for
 - (i) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or
 - (ii) the retention and enforcement by the debtor, administrator, or by a representative of the estate appointed for such purpose, of any such claim or interest;
- (a) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

- (b) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
- (c) include any other appropriate provision not inconsistent with the applicable provisions of this Part.

(3) Notwithstanding subsection (1) of this section and sections 572(2), 605(1), and 605(2) of this Part, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable law.

601. Impairment of claims or interests

Except as provided in section 600(1)(d) of this Part, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan –

- (a) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or
- (b) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—
- (c) cures any such default that occurred before or after the commencement of the case under this Part, other than a default of a kind specified in section 567(3) of this Part or of a kind that section 567(3) expressly does not require to be cured;
- (d) reinstates the maturity of such claim or interest as such maturity existed before such default;
- (e) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;
- (f) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 567(3), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
- (g) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

602. Acceptance of plan

(1) The holder of a claim or interest allowed under section 569 of this Part may accept or reject a plan following the disclosure of the plan determined by the court to be adequate for purposes of soliciting the vote of such holders. If Antigua and Barbuda is a creditor or equity

security holder, the Accountant General may accept or reject the plan on behalf of Antigua and Barbuda.

(2) For the purposes of subsections (3) and (4) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this Part is deemed to have accepted or rejected such plan, as the case may be, if—

- (a) the solicitation of such acceptance or rejection was in compliance with any applicable law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or
- (b) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as determined by the court.

(3) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(4) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (5) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (5) of this section, that have accepted or rejected such plan.

(5) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this Part.

(6) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(7) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

603. Modification of a plan

(1) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 599 and 600 of this Part. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

(2) The proponent of a plan or the reorganised debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 599 and 600 of this Part. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 605 of this Part.

(3) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

(4) The plan, as modified, shall become the plan only after there has been disclosure under section 606 as the court may direct, notice and a hearing, and such modification is approved.

604. Confirmation hearing

(1) After notice, the court shall hold a hearing on confirmation of a plan.

(2) A party in interest may object to confirmation of a plan.

605. Confirmation of plan

(1) The court shall confirm a plan only if all of the following requirements are met—

- (a) the plan complies with the applicable provisions of this Part;
- (b) the proponent of the plan complies with the applicable provisions of this Part;
- (c) the plan has been proposed in good faith and not by any means forbidden by law;
- (d) any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable;
- (e) the proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and
- (f) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganised debtor, and the nature of any compensation for such insider.

(2) With respect to each impaired class of claims or interests—

- (a) each holder of a claim or interest of such class (1) has accepted the plan; or (2) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were subject to a winding up order under Part IV of this Act on such date; or
- (b) if section 596(5) of this Part applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(3) With respect to each class of claims or interests—

- (a) such class has accepted the plan; or
- (b) such class is not impaired under the plan.

(4) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides for the settlement of administrative expenses under section 570 and for the payment in cash, in full, of claims that are described in section 457 of this Act within 12 months of the granting of the order for rehabilitation unless extended by the court.

(5) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(6) Confirmation of the plan is not likely to be followed by the winding up, or the need for further financial reorganisation, of the debtor or any successor to the debtor under the plan, unless such winding down or reorganisation is proposed in the plan.

(7) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

(8) If all of the applicable requirements of subsection (1) of this section are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such subsection if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(9) For the purpose of this subsection (2), the conditions that a plan be fair and equitable with respect to a class includes the following requirements:

- (a) with respect to a class of secured claims, the plan provides—
 - (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or

- transferred to another entity, to the extent of the allowed amount of such claims; and
- (ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
 - (iii) for the sale, subject to section 565(6) of this Part, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds in accordance with this subsection; or
 - (iv) for the realisation by such holders of the indubitable equivalent of such claims.

(b) With respect to a class of unsecured claims—

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
- (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

(10) Notwithstanding subsections (1) and (2) of this section and except as provided in section 608(2) of this Part, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 609 of this Part. If the requirements of subsections (1) and (2) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

606. Effect of confirmation

(1) Except as provided in subsections (5) and (6) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(2) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(3) Except as provided in subsections (5) and (6) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

(4) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan (A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 569(8) or 569(8) of this Part, whether or not (1) a proof of claim based on such debt was filed or deemed filed under section 568 of this Part; (2) such claim is allowed under section 568 of this Part; or (3) the holder of such claim has accepted the plan; and (B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(5) The confirmation of a plan does not discharge a debtor if (A) the plan provides for the liquidation of all or substantially all of the property of the estate; and (B) the debtor does not engage in business after consummation of the plan.

(6) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this Part.

(7) Notwithstanding subsection (i), the confirmation of a plan does not discharge a debtor that is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax or such customs duty.

607. Implementation of plan

(1) Notwithstanding any otherwise applicable law, rule, or regulation relating to financial condition, the debtor and any entity organised or to be organised for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.

(2) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

608. Distribution

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the plan.

609. Revocation of an order of confirmation

On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—

- (a) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and

- (b) revoke the discharge of the debtor.

610. Special tax provisions

(1) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 605 of this Part, may not be taxed under any law imposing a stamp tax or similar tax.

(2) The court may authorise the proponent of a plan to request a determination, limited to questions of law, by a governmental unit charged with responsibility for collection or determination of a tax. In the event of an actual controversy, the court may declare such effects after the earlier of—

- (a) the date on which such governmental unit responds to the request under this subsection; or
(b) 270 days after such request.

Passed the House of Representatives on
the 11th day of July, 2020.

Passed the Senate on the 13th day of
July, 2020.

Gerald Watt, Q.C.,
Speaker of the House

Alincia Williams Grant,
President of the Senate

A. Peters,
Clerk to the House of Representatives. (Ag.)

A. Peters,
Clerk to the Senate. (Ag.)

CAYMAN ISLANDS



COMPANIES (AMENDMENT) ACT, 2021

(Act 6 of 2021)

Supplement No. 3 published with Legislation Gazette No. 72 dated 16th December, 2021.

PUBLISHING DETAILS



CAYMAN ISLANDS**COMPANIES (AMENDMENT) ACT, 2021****(Act 6 of 2021)****Arrangement of Sections**

Section	Page
1. Short title and commencement	5
2. Amendment of section 86 of the Companies Act (2021 Revision) - power to compromise with creditors and members.....	5
3. Deletion and substitution of Part heading of PART V - winding up of companies and associations.....	6
4. Insertion of Division - company restructuring.....	6
5. Amendment of section 94 - application for winding up.....	14
6. Amendment of section 97 - avoidance of attachments and stay of proceedings.....	15
7. Amendment of section 100 - commencement of winding up by the Court	15
8. Amendment of section 104 - appointment and powers of provisional liquidator	16
9. Amendment of section 109 - remuneration of official liquidators.....	16
10. Amendment of section 110 - function and powers of official liquidators	17
11. Amendment of section 116 - circumstances in which a company may be wound up voluntarily	17
12. Amendment of section 134 - fraud etc. in anticipation of winding up	17
13. Amendment of section 135 - transactions in fraud of creditors	17
14. Amendment of section 136 - misconduct in course of winding up.....	17
15. Amendment of section 137 - material omissions from statement relating to company's affairs	17
16. Amendment of section 145 - voidable preference	17
17. Amendment of section 148 - supply of utilities	17
18. Amendment of section 154 - Insolvency Rules Committee.....	18

CAYMAN ISLANDS

(Act 6 of 2021)

I Assent,

**Martyn Roper**
Governor

Date: 15th day of December, 2021

COMPANIES (AMENDMENT) ACT, 2021**(Act 6 of 2021)**

AN ACT TO AMEND THE COMPANIES ACT (2021 REVISION) TO PERMIT A COMPANY TO RESTRUCTURE UNDER THE SUPERVISION OF A RESTRUCTURING OFFICER; TO PROVIDE FOR A STAY OF PROCEEDINGS, OTHER THAN CRIMINAL PROCEEDINGS, WHERE A COMPANY IS RESTRUCTURING, WHERE A PROVISIONAL LIQUIDATOR IS APPOINTED OR WHERE A WINDING UP ORDER IS MADE; TO PROVIDE FOR AN APPLICATION TO A COURT IN WHICH CRIMINAL PROCEEDINGS ARE PENDING FOR A STAY OF THE CRIMINAL PROCEEDINGS WHERE A COMPANY IS RESTRUCTURING, WHERE A PROVISIONAL LIQUIDATOR IS APPOINTED OR WHERE A WINDING UP ORDER IS MADE; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Act may be cited as the Companies (Amendment) Act, 2021.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Amendment of section 86 of the Companies Act (2021 Revision) - power to compromise with creditors and members

2. The *Companies Act (2021 Revision)*, in this Act referred to as the “principal Act”, is amended in section 86 as follows —

- (a) in subsection (1), by inserting after the words “member of the company”, the words “, or of a restructuring officer appointed in respect of the company”;
- (b) in subsection (2) as follows —
 - (i) by deleting the words “or members or class of members,”; and
 - (ii) by deleting the words “or on the members or class of members,”;
- (c) by inserting after subsection (2), the following subsection —

“(2A) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company or, where a company is in the course of being wound up, on the liquidator and contributories of the company.”; and
- (d) in subsection (3), by inserting after the words “subsection (2)”, the words “or (2A)”.

Deletion and substitution of Part heading of PART V - winding up of companies and associations

3. The principal Act is amended in Part V, by deleting the Part heading and substituting the following Part heading —

“PART V- Company Restructuring and Winding up of Companies and Associations”.

Insertion of Division - company restructuring

4. The principal Act is amended by inserting after section 91, the following Division heading and sections —

“Company Restructuring

Interpretation of “company”

91A. For the purposes of sections 91B, 91C, 91D, 91E, 91F, 91G, 91H, 91I and 91J, “company” means —

- (a) any company liable to be wound up under section 91; or
- (b) any other entity or partnership to which the provisions of this Part apply in respect of the entity’s or partnership’s winding up.



Appointment of a restructuring officer

- 91B.**(1) A company may present a petition to the Court for the appointment of a restructuring officer on the grounds that the company —
- (a) is or is likely to become unable to pay its debts within the meaning of section 93; and
 - (b) intends to present a compromise or arrangement to its creditors (or classes thereof) either, pursuant to this Act, the law of a foreign country or by way of a consensual restructuring.
- (2) A petition under subsection (1) may be presented by a company acting by its directors, without a resolution of its members or an express power in its articles of association.
- (3) The Court may, on hearing a petition under subsection (1) —
- (a) make an order appointing a restructuring officer;
 - (b) adjourn the hearing conditionally or unconditionally;
 - (c) dismiss the petition; or
 - (d) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.
- (4) A restructuring officer appointed by the Court under subsection (3)(a) shall have the powers and carry out only such functions as the Court may confer on the restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.
- (5) Where the Court makes an order under subsection (3)(a), the Court shall set out in the order —
- (a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —
 - (i) the company's creditors, including any contingent or prospective creditors;
 - (ii) the company's contributories; and
 - (iii) the Authority, in respect of any company which is carrying on regulated business;
 - (b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and

- (c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.
- (6) Where a company which is carrying on a regulated business presents a petition under subsection (1), the directors of the company shall, immediately after presenting the petition, serve notice of the petition on the Authority.
- (7) A director who fails to comply with subsection (6) commits an offence and is liable to a fine of ten thousand dollars.

Appointment of an interim restructuring officer

- 91C.**(1) A company may, where it is in the interests of the company to do so, make an *ex parte* application to the Court for the appointment of a restructuring officer on an interim basis pending the hearing of the petition under section 91B(1).
- (2) An application under subsection (1) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
 - (3) The Court may, on hearing an application under subsection (1), appoint a restructuring officer on an interim basis, on such terms and conditions as the Court thinks fit.
 - (4) A restructuring officer appointed on an interim basis by the Court under subsection (3) shall have the powers and carry out only such functions as the Court may confer on that restructuring officer in the order appointing the restructuring officer, including the power to act on behalf of the company.
 - (5) Where the Court makes an order under subsection (3), the Court shall set out in the order —
 - (a) the manner and time within which the restructuring officer shall give notice of the restructuring officer's appointment to —
 - (i) the company's creditors, including any contingent or prospective creditors;
 - (ii) the company's contributories; and
 - (iii) the Authority, in respect of any company which is carrying on regulated business;
 - (b) the manner and extent to which the powers and functions of the restructuring officer shall affect and modify the powers and functions of the board of directors; and



- (c) any other conditions to be imposed on the board of directors that the Court considers appropriate, in relation to the exercise by the board of directors of its powers and functions.
- (6) Where a company which is carrying on a regulated business makes an application under subsection (1), the directors of the company shall, immediately after making the application, serve notice of the application on the Authority.
- (7) A director who fails to comply with subsection (6), commits an offence and is liable to a fine of ten thousand dollars.

Restructuring officer

- 91D.**(1) A restructuring officer appointed under section 91B or 91C shall be a qualified insolvency practitioner.
- (2) Where two or more persons are appointed as restructuring officers under section 91B or 91C, they shall be authorised to act jointly and severally, unless their powers are expressly limited by an order of the Court.
 - (3) A restructuring officer appointed under section 91B or 91C is an officer of the Court.
 - (4) Notwithstanding subsection (1), where the Court has appointed a qualified insolvency practitioner to act as a restructuring officer, the Court may appoint a foreign practitioner to act as a restructuring officer in addition to the qualified insolvency practitioner.
 - (5) A foreign practitioner appointed by the Court to act as a restructuring officer shall not act as the sole restructuring officer of a company.
 - (6) The remuneration of a restructuring officer appointed under section 91B or 91C shall, on the application of the restructuring officer, be fixed by the Court from time to time in accordance with section 109.
 - (7) A restructuring officer, a creditor of the company, including a contingent or prospective creditor, or a contributory of the company may apply to the Court to determine any question arising in the course of carrying out the restructuring officer's functions.

Variation or discharge of the order appointing a restructuring officer

- 91E.**(1) At any time after the appointment of a restructuring officer by the Court under section 91B or 91C —
- (a) the company acting by its directors;
 - (b) a restructuring officer appointed under section 91B or 91C;

- (c) a creditor of the company, including a contingent or prospective creditor;
- (d) a contributory of the company; or
- (e) the Authority, in respect of any company which is carrying on a regulated business,

may apply by way of summons to the Court for the variation or discharge of the order appointing the restructuring officer.

- (2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
- (3) The Court may, on hearing an application under subsection (1) —
 - (a) vary the order appointing the restructuring officer;
 - (b) discharge or continue the order appointing the restructuring officer;
 - (c) adjourn the hearing conditionally or unconditionally;
 - (d) dismiss the application; or
 - (e) make any other order as the Court thinks fit, except an order placing the company into official liquidation, which the Court may only make in accordance with sections 92 and 95 if a winding up petition has been presented in accordance with sections 91G and 94.

Removal and replacement of restructuring officers

- 91F.**(1) A restructuring officer may be removed from office and replaced by an alternative restructuring officer by order of the Court made on the application of —
- (a) the company acting by its directors;
 - (b) a creditor of the company, including a contingent or prospective creditor;
 - (c) a contributory of the company; or
 - (d) the Authority, in respect of any company which is carrying on a regulated business.
- (2) An application under subsection (1)(a) may be presented by a company acting by its directors without a resolution of its members or an express power in its articles of association.
 - (3) A restructuring officer who has been removed and replaced pursuant to subsection (1) shall prepare a report and accounts for the restructuring officer replacing the removed restructuring officer, within twenty-one days of the date of removal and replacement.



Stay of proceedings**91G.(1)** At any time —

- (a) after the presentation of a petition for the appointment of a restructuring officer under section 91B, but before an order for the appointment of a restructuring officer is made, and when the petition has not been withdrawn or dismissed; and
- (b) when an order for the appointment of a restructuring officer is made, until the order appointing the restructuring officer has been discharged,

no suit, action or other proceedings, other than criminal proceedings, shall be proceeded with or commenced against the company, no resolution shall be passed for the company to be wound up and no winding up petition may be presented against the company, except with the leave of the Court and subject to such terms as the Court may impose.

- (2) Where at any time referred to in subsection (1), there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

- (a) the company acting by its directors;
- (b) a creditor of the company, including a contingent or prospective creditor;
- (c) a contributory of the company; or
- (d) the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.

- (3) In this section —

- (a) references to a suit, action or other proceedings include a suit, action or other proceedings in a foreign country; and
- (b) references to other proceedings include any court supervised insolvency or restructuring proceedings against the company.

Enforcement of creditors' security

91H. Notwithstanding the presentation of a petition for the appointment of a restructuring officer or the appointment of a restructuring officer by the Court under section 91B or 91C, a creditor who has security over the whole or part of the assets of the company is entitled to enforce the creditor's security without the leave of the Court and without reference to the restructuring officer appointed under section 91B or 91C.

Power to compromise with creditors and members within restructuring officer proceeding

- 91I.** (1) Where a restructuring officer is appointed to a company and a compromise or arrangement is proposed between the company and its creditors or any class of them, or the company and its members or any class of them, the Court may, on the application of the restructuring officer, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in such manner as the Court directs.
- (2) If a majority in number representing seventy-five per cent in value of the creditors or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, as the case may be, and also on the company.
- (3) If seventy-five per cent in value of the members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the members or class of members, as the case may be, and also on the company.
- (4) An order made under subsection (2) or (3) shall have no effect until a copy of the order has been delivered to the Registrar for registration, and a copy of every such order shall be annexed to every copy of the memorandum of association of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.
- (5) If a company makes default in complying with subsection (4), the company and every officer of the company who is in default shall be liable to a fine of two dollars for each copy in respect of which default is made.



- (6) In this section, “**arrangement**” includes a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

Provisions for facilitating reconstruction and amalgamation of companies

91J.(1) Where an application is made to the Court under section 91I for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are specified in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purpose of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”) the Court, may either by the order sanctioning the compromise or arrangement or by any subsequent order make provision for —

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company;
 - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
 - (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
 - (d) the dissolution, without winding up, of any transferor company;
 - (e) the provisions to be made for any person who within such time and in such manner as the Court directs dissents from the compromise or arrangement; and
 - (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.
- (2) Where an order under this section provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee

company, and any such property shall, if the order so directs, be freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

- (3) Where an order is made under this section, every company in relation to which the order is made shall cause a copy thereof to be delivered to the Registrar for registration within seven days after the making of the order, and if default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.
- (4) In this section —
 - “**property**” includes property, rights and powers of every description;
 - “**liabilities**” includes duties; and
 - “**transferee company**” means any company or body corporate established in the Islands or in any other jurisdiction.”.

Amendment of section 94 - application for winding up

- 5. The principal Act is amended in section 94 by repealing subsection (2) and substituting the following subsections —
 - “(2) Where expressly provided for in the articles of association of a company, the directors of a company incorporated before the commencement of this amending Act have the authority to —
 - (a) present a winding up petition; or
 - (b) where a winding up petition has been presented, apply for the appointment of a provisional liquidator,on behalf of the company without the sanction of a resolution passed at a general meeting.
 - (2A) Subject to subsection (2B), the directors of a company incorporated after the commencement of this amending Act may present a winding up petition on behalf of the company on the grounds that the company is unable to pay its debts within the meaning of section 93 or where a winding up petition has been presented, apply on behalf of the company, for the appointment of a provisional liquidator.
 - (2B) The articles of association of a company may expressly remove or modify the directors’ authority to present a winding up petition or apply for the appointment of a provisional liquidator on the company’s behalf.”.



Amendment of section 97 - avoidance of attachments and stay of proceedings

6. The principal Act is amended in section 97 as follows —

- (a) in subsection (1), by deleting the words “including criminal proceedings” and substituting the words “other than criminal proceedings”; and
- (b) by inserting after subsection (1), the following subsection —

“(1A) Where a winding up order is made or a provisional liquidator is appointed in respect of a company, and there are criminal proceedings pending against the company in a summary court, the Court, the Court of Appeal or the Privy Council —

- (a) the company;
- (b) a creditor of the company;
- (c) a contributory of the company; or
- (d) subject to section 94(4), the Authority, in respect of any company which is carrying on regulated business,

may apply to the court in which the proceedings are pending for a stay of the proceedings and the court to which the application is made, may stay the proceedings on such terms as it thinks fit.”.

Amendment of section 100 - commencement of winding up by the Court

7. The principal Act is amended in section 100 by repealing subsection (1) and substituting the following subsection —

“(1) If, before the presentation of a petition for the winding up of a company by the Court —

- (a) a resolution has been passed by the company for voluntary winding up;
- (b) the period, if any, fixed for the duration of the company by the articles of association has expired;
- (c) the event upon the occurrence of which it is provided by the articles of association that the company is to be wound up has occurred; or
- (d) a restructuring officer has been appointed pursuant to section 91B or 91C and the order appointing the restructuring officer has not been discharged,

the winding up of the company is deemed to have commenced at the time of passing of the relevant resolution or the expiry of the relevant period or the occurrence of the relevant event or the date of the presentation of the petition to appoint a restructuring officer pursuant to section 91B.”.

Amendment of section 104 - appointment and powers of provisional liquidator

8. The principal Act is amended in section 104 by repealing subsection (3) and substituting the following subsection —
- “(3) An application for the appointment of a provisional liquidator may be made under subsection (1) by the company and on such an application the Court may appoint a provisional liquidator if it considers it appropriate to do so.”.

Amendment of section 109 - remuneration of official liquidators

9. The principal Act is amended in section 109 —
- (a) by deleting the section heading and substituting the following section heading —
- “Remuneration of official liquidators and restructuring officers”;**
- (b) in subsection (1), by inserting after the words “remuneration of the liquidator, are” the words “, subject to subsection (2),”; and
- (c) by repealing subsection (2) and substituting the following subsections —
- “(2) Where a company is wound up, the expenses properly incurred in any petition for a restructuring officer and during the term of appointment of the restructuring officer appointed —
- (a) under section 91B(3)(a); or
- (b) on an interim basis under section 91C(3),
- including the remuneration of the restructuring officer, are payable out of the company’s assets in priority to all other claims.
- (3) There shall be paid to a restructuring officer, including a restructuring officer appointed on an interim basis, and the official liquidator, such remuneration, by way of percentage or otherwise, that the Court may direct acting in accordance with rules made under section 155.
- (4) If more than one restructuring officer, including a restructuring officer appointed on an interim basis, is appointed by the Court under section 91B or 91C, the remuneration paid under subsection (3) shall be distributed among the restructuring officers in such proportions as the Court may direct.
- (5) If more than one official liquidator is appointed by the Court when a company is wound up, the remuneration paid under subsection (3) shall be distributed among the official liquidators in such proportions as the Court may direct.”.



Amendment of section 110 - function and powers of official liquidators

10. The principal Act is amended in section 110 by repealing subsection (5) and substituting the following subsection —

“(5) For the purposes of exercising the powers specified under paragraph 3 of Part 1 of Schedule 3, a person shall be treated as related to a company if the person —

- (a) has acted for the company as a professional service provider;
- (b) is or was a shareholder or director of the company or of any other company in the same group as the company;
- (c) has a direct or indirect beneficial interest in the shares of the company; or
- (d) is a creditor or debtor of the company.”.

Amendment of section 116 - circumstances in which a company may be wound up voluntarily

11. The principal Act is amended in section 116(d) by deleting the words “as they fall due”.

Amendment of section 134 - fraud etc. in anticipation of winding up

12. The principal Act is amended in section 134(1) by inserting after the words “voluntary liquidator”, the words “, restructuring officer”.

Amendment of section 135 - transactions in fraud of creditors

13. The principal Act is amended in section 135 by inserting after the words “any officer”, the words “, restructuring officer, controller”.

Amendment of section 136 - misconduct in course of winding up

14. The principal Act is amended in section 136(1) by inserting after the words “was a director, officer”, the words “, restructuring officer, controller”.

Amendment of section 137 - material omissions from statement relating to company's affairs

15. The principal Act is amended in section 137(1) by inserting after the words “a manager”, the words “, restructuring officer, controller”.

Amendment of section 145 - voidable preference

16. The principal Act is amended in section 145(1) by deleting the word “invalid” and substituting the words “voidable upon the application of the company's liquidator”.

Amendment of section 148 - supply of utilities

17. The principal Act is amended in section 148 as follows —

- (a) in subsection (1) as follows —
 - (i) by inserting after the words “(including a provisional liquidator)”, the words “or a restructuring officer”; and
 - (ii) in paragraph (a), by inserting after the words “that the liquidator”, the words “(including a provisional liquidator) or restructuring officer”; and
- (b) in subsection (3) as follows —
 - (i) in paragraph (a), by deleting the word “or” appearing at the end of the paragraph;
 - (ii) in paragraph (b), by deleting the fullstop and substituting the words “; or”; and
 - (iii) by inserting after paragraph (b), the following paragraph —

“(c) the date on which the restructuring officer was appointed.”.

Amendment of section 154 - Insolvency Rules Committee

18. The principal Act is amended in section 154(1) as follows —

- (a) by deleting paragraph (c) and substituting the following paragraph —

“(c) two attorneys-at-law appointed by the Chief Justice on the recommendation of the Cayman Islands Legal Practitioner’s Association;”;
- (b) in paragraph (d), by deleting the word “and” appearing at the end of the paragraph;
- (c) in paragraph (e), by deleting the fullstop and substituting the words “; and”; and
- (d) by inserting after paragraph (e), the following paragraph —

“(f) a qualified insolvency practitioner appointed by the Chief Justice on the recommendation of the Recovery and Insolvency Specialists Association.”.

Passed by the Parliament the 8th day of December, 2021.

Hon. W. McKeeva Bush
Speaker

Zena Merren-Chin
Clerk of the Parliament

