



LESOTHO

Government Gazette

Vol. 67

Friday – 8th July, 2022

No. 49

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Published by the Authority of His Majesty the King
Price: M307.00

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ACT NO. 9 OF 2022

Insolvency Act, 2022

An Act to repeal the Insolvency Proclamation, 1957¹; to provide for regulation of insolvency practice, corporate rescue and cross border insolvency; and for related matters.

Enacted by the Parliament of Lesotho.

PART 1 - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Insolvency Act, 2022 and shall come into operation on such a date as the Minister may, by notice published in the Gazette, appoint.

(2) Notwithstanding subsection (1) the Minister may appoint different dates for commencement for different parts of this Act.

Interpretation

2. In this Act, unless the context otherwise indicates -

“Administrator” means a person appointed as such under section 136;

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

“associate” means -

- (a) in relation to a natural person -
 - (i) the spouse of such a person;
 - (ii) any person who is by consanguinity related to such a person;

- (iii) partner in a relationship in which the parties live together in a manner resembling marriage even if one or both are in such a partnership with another partner;
 - (iv) the business partner of such person or the spouse of such partner or any person who is related to such partner or spouse in a degree contemplated in subparagraph (ii);
 - (v) a beneficiary of a trust or a trust of which such person or associate of such person is a trustee or beneficiary or a company of which such person is a director or any juristic person of whom such person is a manager or of which he has control;
- (b) in relation to a juristic person -
 - (i) any natural person who is a director of that juristic person or who has control of that juristic person, either alone or together with his associate contemplated in paragraph (a); or
 - (ii) any subsidiary of juristic person which is controlled by the person who controls the holding juristic person;
- (c) in relation to another person, a person who has control of an undertaking of the other person and that person is regarded as having control of an undertaking if the person who manages the undertaking is accustomed to act in accordance with that person's directions or instructions, unless that person gives advice in a professional capacity only;
- (d) a natural person or juristic person who was an associate of another natural person or juristic person at the time of the disposition in question or at the date of the liquidation of the estate or liquidation of one of the parties;

“books” in relation to bookkeeping or the recording or storage of information, includes -

- (a) any electronic or mechanical device by means of which the information in question is recorded or stored and;
- (b) the production, the handing over or the attachment of any book or books, the handing over or the attachment of a print-out or other written version of the information produced by means of such device;

“Companies Act” means the Companies Act, 2011²;

“composition” means an agreement made by an insolvent or debtor with two or more creditors in which the creditors agree to accept one specific partial payment of the total amount of their claims, which is to be divided proportionally among them in full satisfaction of their claims;

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

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

“contributory” in relation to a non-profit company, means any person liable to contribute to the assets of a company in the event of winding up, and for the purposes of all proceedings prior to the final determination of the persons who are to be deemed members;

“corporate rescue practitioner” means a person appointed as such under Part 22;

“Court” means the High Court of Lesotho and a Subordinate Court which has jurisdiction in respect of the matter or offence in question;

“Court messenger” means the messenger of the Subordinate Court;

“date of liquidation” means the date of the first liquidation order or, in the case of a voluntary liquidation by resolution, the date of the registration or filing of the special resolution;

“debtor” means any person or entity that has incurred a debt or whose estate has been liquidated and includes -

- (a) a natural person;
- (b) a company;
- (c) a partnership;
- (d) a trust;
- (e) an association;
- (f) a cooperative;
- (g) the estate of any such person or entity;
- (h) any such debtor or estate of debtor before liquidation; or
- (i) any other body corporate;

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

“disposition” means the transfer or abandonment of a right to property and includes a sale, mortgage, pledge, delivery, payment, release, compromise, cession, donation, surety ship or any contract thereof;

“e-mail” means an electronic mail sent to an e-mail address indicated for use by the intended recipient and provided that no report is received that the electronic mail could not be delivered;

“employee” means any person who works in any capacity under a contract with an employer in a formal or an informal setting, an urban or rural setting, private or other public authority;

“fax” means a facsimile transmission which according to a transmission report has been transmitted successfully;

“financial lease” means a contract between a lessor and a lessee, having as its main purpose the conveyance of use of an asset, with or without an option to purchase all or part of the asset, as specified under regulation 5 of the Financial Lease Regulations, 2013³ and includes a sub-lease, sale, lease back transaction and micro-lease;

“first liquidation order” means a provisional order for the liquidation of the estate of a debtor or where a provisional liquidation order has not been granted a final order;

“free residue” in relation to an insolvent estate, means that portion of the estate which is not subject to any claim by a secured creditor;

“good faith” in relation to the disposition of property, means the absence of any intention to prejudice creditors in obtaining payment of their claims or to prefer one creditor above the other;

“immovable property” means land, property attached to land and any right, title and interest in and to land or minerals which is registered in any office in Lesotho tasked with the registration of title to land or the right to mine;

“insolvent” means a debtor whose estate is under liquidation and, in relation to a debtor who at the date of the liquidation of his estate is married in community of property, includes the spouse of such debtor;

“insolvent estate” means an estate which is under liquidation and, where the joint estate of spouses married in community of property is under liquidation excludes the separate property of the spouse;

“liquidation order” means an order of a Court where the estate of a debtor is placed under liquidation and includes a provisional liquidation order when it has not been set aside;

“liquidator” means a liquidator appointed as such under section 61;

“liquidator’s notice” means notice or delivery by the liquidator by

registered mail, fax, e-mail, or personal delivery supported by an affidavit by the liquidator with a list of the persons given notice or delivered to and includes the method used by the liquidator to send or deliver the notice and any other form of notice approved by the Master where the Master is satisfied that there are exceptional circumstances justifying another form of notice;

“management of a debtor” means -

- (a) in the case of a trust, the trustees of the trust, lawfully acting as such at the time of liquidation or, during three years before liquidation;
- (b) in the case of a company debtor, a director, secretary or other officer of the company at the time of liquidation or, during three years before liquidation;
- (c) in the case of a co-operative society, a member of the committee or other officer of such co-operative at the time of liquidation or during three years before liquidation;
- (d) in the case of another debtor other than a natural person or trust -
 - (i) where the debtor has been created by legislation, a person who at the time of liquidation or during three years before liquidation, was responsible for the management of the debtor in terms of the relevant legislation;
 - (ii) where the debtor has been created by the adoption of a constitution, a person who at the time of liquidation or during three years before liquidation was responsible for the management of the debtor in terms of its constitution;
 - (iii) where the debtor has been created by agreement, a person who at the time of liquidation, or during

three years before liquidation was responsible for the management of the debtor in terms of the agreement or otherwise;

“Master” means the Master of the High Court and includes an officer within the office of the Master acting on behalf of the Master;

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

“preferent creditor” means a creditor whose claim enjoys preference which entitles the creditor to be paid from proceeds of incumbent assets before concurrent creditors;

“prescribed” means as set out in the regulations;

“property” means movable, immovable, corporeal or incorporeal property and includes a right or interest in property;

“Registrar” means the Registrar of the High Court;

“Registrar of Companies” means Registrar of Companies as defined under the Companies Act, 2011;

“reservation of ownership contract” means a sale of corporeal or incorporeal movable property in terms of which -

- (a) all or part of the price is deferred;
- (b) the purchaser enjoys right to use and possess property;
and
- (c) ownership of the property passes to the purchaser only when the contract is fully complied with;

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

“security” in relation to the claim of a creditor of an insolvent estate, means property of the insolvent estate over which the creditor has a

preferent right by virtue of a special bond, landlord's legal hypothec, or pledge, including a cession of rights to secure a debt, right of retention, reservation of ownership, financial lease, or any such right over property in terms of any other Act;

“separate property of spouse” means -

- (a) property of the spouse owned before marriage;
- (b) gifts of spouse acquired before marriage;
- (c) inheritance received by spouse before or during marriage and the testator has excluded the inheritance from joint estate of the heir or where the beneficiary is married in community or property;
- (d) property which the spouses made an agreement in writing that the property is separate from their joint estate;
- (e) property which is acquired using separate assets with the intention of keeping it separate;

“sheriff” means the sheriff of the High Court;

“social benefit” means a pension, allowance or benefits payable to a person in terms of any relevant law;

“special resolution” means -

- (a) in the case of a trust, a resolution to liquidate the trust;
- (b) in the case of a company, a special resolution to liquidate the company passed by the company in accordance with the Companies Act, 2011, excluding an external company as defined in that Act;
- (c) in the case of any other debtor -
 - (i) if such debtor has been created by legislation, a

resolution to liquidate the debtor, passed by the management of such debtor in the manner provided for in the enabling legislation;

- (ii) if such debtor has been created by the adoption of a constitution, a resolution to liquidate the debtor, passed by the members of such debtor in terms of the provisions of such constitution;
- (iii) if such debtor has been created by agreement, a resolution to liquidate the debtor, passed by the members of such debtor in terms of such agreement;

“spouse” means a person’s partner in civil or customary marriage;

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

Application of the Act

3. Notwithstanding the provisions of any other law relating to liquidation, the provisions of this Act shall supersede any such provisions.

Administration of insolvency procedures and processes

4. (1) The Office of Master of High Court shall be responsible for liquidation of natural persons.

(2) The Office of Registrar of Companies shall be responsible for liquidation of trusts, companies or other debtors and business rescue.

(3) For purposes of an insolvent debtor who is -

- (a) a natural person, “Minister” means Minister of Justice; and
- (b) an insolvent debtor who is not a natural person, “Minister” means Minister of Trade and Industry.

(4) The provisions relating to insolvency processes under this Act shall apply with necessary modifications to the functions of the Master with respect to liquidation of natural person and Registrar of Companies with respect to liquidation of trusts, companies or other debtors and business rescue.

PART 2 - DETERMINATION OF DEBTOR'S INABILITY TO PAY DEBTS AND MANNER IN WHICH DEBTOR MAY BE LIQUIDATED

Debtor unable to pay debts

5. (1) A debtor is unable to pay its debts upon proof that the debtor is generally unable to pay debts which are due and payable or proof that the debtor's liabilities exceed the value of the debtor's assets.

(2) A debtor is unable to pay its debts and may be declared insolvent if -

- (a) a creditor, by cession or otherwise, to whom the debtor is indebted an amount of not less than Fifteen Thousand Maloti or any other prescribed amount, has served on the debtor, a letter of demand in a manner provided for in subsection (3), for payment of the amount which is due and payable -
 - (i) to give security to the reasonable satisfaction of the creditor for such amount; or
 - (ii) to enter into a compromise, and the debtor has for twenty-one days, neglected to pay the sum to secure or compound for it to the reasonable satisfaction or creditor; or
- (b) it appears from the return of the officer charged with the execution of a judgment of a Court against the debtor that the judgment has not been satisfied after a valid execution of the judgment.

(3) The letter of demand provided for in subsection (2) shall be in the form set out in Form G of Schedule 1 and served on the debtor in terms of subsection (2), by the sheriff, the creditor's attorney or the attorney's clerk by -

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

(4) In determining whether a debtor is unable to pay its debts, the Court shall take into account, the contingent and prospective liabilities of the debtor.

Application for liquidation of estate of natural person

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

(2) An application referred to in subsection (1) shall contain -

- (a) full name and date of birth of the debtor and identity number;
- (b) any other names under which the debtor traded; and
- (c) marital status of the debtor and if he is married in community of property, the full name, identity number and date of birth of his spouse.

(3) The particulars in subsection (2) shall appear in the heading of the application.

(4) An application referred to in subsection (1) shall be accompanied by -

- (a) a statement of affairs of the debtor as set out in Form A of Schedule 1;

- (b) a certificate of the Master, issued not more than fourteen days before the date on which the application is to be heard by the Court, which indicates that sufficient security has been given for the payment of all costs in respect of the application that might be awarded against the applicant and all costs of the liquidation of the estate, referred to in section 110 which are not recoverable from other creditors of the estate.

(5) The applicant shall lodge the application with the Registrar of the High Court for enrolment and shall submit, by standard notice -

- (a) a copy of the application;
- (b) two copies of the statement of affairs referred to in subsection (4)(a); and
- (c) a copy of the affidavit in support of the application, to the Master before the end of business on the fifth Court day before the application is to be heard by the Court.

(6) The applicant shall, before the documents are lodged with the Master, give notice of the application to -

- (a) the head office of every registered trade union which, to the knowledge of the applicant, represents any of the employees of the debtor and a copy of the document signed as the founding affidavit in the application shall be attached to the notice; and
- (b) to the employees of the debtor -
 - (i) by affixing a copy of the notice to any notice board which the employees have access to, inside the debtor's premises; or
 - (ii) if there is no access to the premises by the employees, by affixing a copy of the notice to the front gate of the premises, where applicable; or

(iii) to the front door of the premises from which the debtor conducted any business immediately prior to the date of the application; and

(c) the Lesotho Revenue Authority and the head office of bondholders with special bonds registered against property of the debtor.

(7) If an applicant is unable to comply with any of the requirements of subsection (2) he shall state reasons why he is unable to do so, and the Court may dispense with such requirement.

(8) The Court may, where satisfied that there are exceptional justifiable circumstances, authorise the applicant to give notice in a manner other than the one provided for under subsection (6)(b) i which the Court regards as appropriate under the circumstances to bring the matter to the notice of the employees and the applicant shall give direct notice to the head office of each registered trade union which, to the applicant's knowledge, represents any of the debtor's employees and to the head office of bondholders with special bonds registered against property of the debtor.

(9) The affidavit in support of the application for liquidation, shall confirm that the requirements of subsections (5) and (6) have been complied with.

(10) The Master may require the applicant to cause the property enumerated in the statement of affairs to be valued by a property evaluator or some other person approved by the Master.

(11) The Court may, after considering an application referred to in terms of subsection (5) -

(a) make an order contemplated in section 12 if -

(i) the debtor is insolvent;

(ii) the liquidation of the estate of the debtor will be to the advantage of his creditors; and

(iii) post-liquidation composition, where applicable,

would not be more appropriate than a liquidation order; or

- (b) make a ruling it regards as just in the circumstances.

Application by debtor for liquidation of trust, company or any other debtor other than natural person or partnership

7. (1) An application to the Court for the liquidation of a debtor other than a natural person or partnership shall be made -

- (a) by the debtor if the Court has resolved that the liquidation is to be made by the Court in terms of a special resolution and the debtor is not prevented by law, agreement or any other legally enforceable reason, from passing such resolution;
- (b) by a company, one or more directors or one or more members or shareholders of the company for an order to wind up the company on the grounds that -
- (i) the directors are deadlocked in the management of the company, and the members are unable to break the deadlock, and -
- (aa) irreparable injury to the company is resulting or may result, from the deadlock; or
- (bb) the company's business cannot be conducted to the advantage of members or shareholders of the company generally, as a result of the deadlock;
- (ii) the members are deadlocked in voting power and have failed, for a period of at least two financial years, to elect successors to directors whose terms have expired; or
- (iii) it is otherwise just and equitable for the company

to be wound up;

- (c) by a member or shareholder of the company, with leave of the Court, for an order to wind up the company on the grounds that -
 - (i) the directors, shareholders, members, an officer of the company or any other person in control of the company are acting in a manner that is fraudulent or otherwise illegal; or
 - (ii) the company's assets are being misapplied or wasted;
- (d) by the Registrar of Companies, on the grounds that the company, its directors, members, shareholders or officers of the company are acting or have acted in a manner that is fraudulent or otherwise illegal, as determined by an investigation conducted in terms of section 87(9) of the Companies Act, 2011;
- (e) by a corporate rescue practitioner of a company appointed during corporate rescue proceedings who applies for liquidation in terms of Part 22 on the grounds that there is no reasonable prospect of the company being rescued;
- (f) jointly by any or all of the parties mentioned in paragraphs (a) to (e);
- (g) by the debtor, or any creditor, shareholder or member of that debtor, in the case of any debtor being liquidated voluntarily in terms of a special resolution adopted in accordance with section 16.

(2) A shareholder or member of the company may not apply to a Court as contemplated in subsection (1)(b) or (c) unless the shareholder or member of the company -

- (a) has been a shareholder or member of the company

continuously for at least twelve months immediately before the date of the application; or

- (b) became a shareholder or member of the company as a result of -
 - (i) acquiring shares or membership; or
 - (ii) the distribution of the estate of a former shareholder or member of the company and the present shareholder or member, and other or former shareholder or member of the company satisfied the requirements of paragraph (a).

(3) A Court may not make an order applied for in terms of subsection (1)(c) or (d) if, before the conclusion of the Court proceedings, any of the directors have resigned or have been removed in terms of the Companies Act, 2011, and the Court concludes that the remaining directors were not materially implicated in the conduct on which the application was based.

(4) An application to the Court referred to in subsection (1) shall be accompanied by -

- (a) a statement of affairs of the debtor as set out in Form A of Schedule 1; and
- (b) a certificate of the Master, issued not more than 14 days before the date on which the application is to be heard by the Court, which indicates that sufficient security has been given for the payment of all costs in respect of the application which may be awarded against the applicant and all costs of the liquidation of the estate referred to in section 110 which are not recoverable from other creditors of the estate.

(5) Section 6(5)(6) and (7) shall apply to all applications in terms of this section.

(6) After having considered an application referred to in subsection (1) or (2), the Court may grant any order in terms of section 10, but the Court

shall not refuse to grant a liquidation order only on the ground that the assets of the debtor have been mortgaged to an amount equal to or in excess of those assets or that the debtor has no assets.

(7) Where an application is presented by shareholders or members of the debtor and it appears to the Court that the applicants are entitled to relief, the Court shall grant a liquidation order unless it is satisfied that another remedy is available to the applicants and that they are acting unreasonably in seeking to have the debtor liquidated instead of pursuing that other remedy.

(8) Where an application is presented to the Court by -

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

Application by creditor for liquidation of debtor's estate

8. (1) A creditor who -

- (a) has a liquidated claim of not less than an amount of Fifteen Thousand Maloti or a prescribed amount; or
- (b) in conjunction with other creditors of the debtor who in the aggregate have liquidated claims against a debtor for not less than such an amount, may apply to a Court for the liquidation of a debtor's estate who is -
 - (i) unable to pay his debts; or
 - (ii) a company which -
 - (aa) corporate rescue proceedings have ended in the manner contemplated in

Part 22 and it appears to the Court that it is just and equitable in the circumstances for the company to be wound up; or

- (bb) is otherwise just and equitable for the company to be wound up.

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

(3) An application contemplated in subsection (1) shall be made by a direct notice to the debtor and, in the case of a natural person debtor, to the spouse of the debtor if he is married in community of property, unless the Court dispenses with notice where the Court is satisfied that it would be in the interest of the debtor or of the creditors to dispense with it.

(4) When an application is presented to Court, the applicant shall furnish a copy of the notice -

- (a) to the head office of every registered trade union stating that, as far as the applicant can reasonably ascertain, represents any of the employees of the debtor; and
- (b) to the employees-
 - (i) by affixing a copy of the notice to a notice board which the applicant and employees have access to, inside the debtor's premises; or
 - (ii) if there is no access to the premises, by the applicant and the employees, by affixing -
 - (aa) a copy of the notice to the front gate of the premises, where applicable; or
 - (bb) to the front door of the premises from which the debtor conducted any business immediately prior to the date of the

application; and

- (ii) by direct notice to the Lesotho Revenue Authority and the head office of bond holders with special bonds registered against property of the debtor.

(5) A copy of the document signed as the founding affidavit in the application shall be attached to the notice to the head office of a registered trade union.

(6) An application contemplated in subsection (1) shall state -

- (a) in the case of a natural person-
 - (i) the full name and date of birth of the debtor; and
 - (ii) if an identity number has been assigned to him, that identity number;
- (b) in the case of any other debtor, the registration number or other reference number which has been assigned to such debtor and if no such registration number or reference number exists, this fact shall be stated;
- (c) any other names under which the debtor traded;
- (d) in the case of a natural person, the marital status of the debtor and, if he is married in community of property, the full name and date of birth of his spouse and if an identity number has been assigned to the spouse, such identity number;
- (e) the amount, cause and nature of the claim;

whether or not security has been given for the claim and if so, the nature and value of the security; and

- (f) the circumstance on which the application is founded.

(7) The information stated in the application shall be supported by an affidavit and the application shall be accompanied by a certificate of the Master, issued not more than fourteen days before the date on which the application is to be heard by the Court, stating that sufficient security has been given for the payment of all costs in respect of the application that might be awarded against the applicant and all costs of the liquidation of the estate referred to in section 110, which are not recoverable from creditors of the estate.

(8) The particulars in subsection (6)(a) and (c) shall appear in the heading of the application and if the applicant is unable to furnish all such particulars he shall mention the reason why he is unable to do so, and the Court may dispense with the requirements.

(9) The applicant shall lodge the application with the Registrar of the Court for enrolment before noon on the fifth Court day before the application is to be heard by the Court and unless notice to the debtor has been dispensed with, a copy of the application and copies of all annexures shall be served on the debtor and the spouse of the debtor, if any.

(10) If the debtor wishes to oppose the application, he shall lodge a notice and replying affidavit with the registrar and serve a copy of the notice and affidavit on the applicant before noon on the second Court day, a day before the application is to be heard by the Court.

(11) When the application is lodged with the Registrar, a copy of the application and of every affidavit in support of the information shall be submitted by notice to the Master and Regulator.

(12) If an applicant is unable to comply with any of the requirements of subsection (6), he shall state reasons why he is unable to do so, and the Court may dispense with such requirements and dispose of the application in the manner that it finds just.

(13) Where the Court is satisfied that there are exceptional justifiable circumstances, the Court may authorise the applicant to give notice in a manner which the Court regards as appropriate under the circumstances to bring the matter to the notice of the employees other than under subsection (4).

(14) Where so authorised under subsection (4), the applicant shall give direct notice to the head office of -

-
- (a) each registered trade union which, to the applicant's knowledge, represents any of the debtor's employees; and
 - (b) bondholders with special bonds registered against property of the debtor.

(15) After considering the application, the Court may make an order contemplated in section 11 or 12 or may dismiss the application or postpone its hearing or make any other order that it considers just.

Liquidation of partnership estate

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

(2) An application by debtor for liquidation of estate of natural person in so far as it is applicable, applies in respect of an application submitted by members of a partnership for the liquidation of the partnership estate and application by creditor for liquidation of debtor's estate, in respect of an application by a creditor of a partnership for the liquidation of the estate of the partnership.

(3) A Court granting a provisional or a final order for the liquidation of the estate of a partnership shall simultaneously grant an order for the liquidation of the individual estates of every partner, except a partner who is not liable for partnership debts or a partner in respect of whom there is a lawful bar to the liquidation of his estate, but if a partner has undertaken to pay the debts of the partnership within a period determined by the Court and has given security for such payment to the satisfaction of the Registrar, the individual estate of that partner shall not be liquidated by reason only of the liquidation of the estate of the partnership.

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

any statutory requirement in respect of the partnership estate, regarded as a person whose estate is under liquidation.

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

(6) If a partnership has been dissolved and the partnership estate is unable to pay its debts, the partnership estate may, on the application of a creditor of the partnership or a former partner, be liquidated as an insolvent estate and the provisions of subsections (1), (2), (3), (4) and (5), shall apply to the liquidation.

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

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

PART 3 - LIQUIDATION ORDERS AND COMMENCEMENT OF LIQUIDATION

Provisional liquidation order

11. (1) The Court may grant a provisional order for the liquidation of an estate of a debtor if the Court is satisfied on the face of the documents, that the applicable requirements as set out in section 6, 7 or 8 have been complied with and -

- (a) in the case of a debtor other than a natural person or partnership, the debtor has resolved that the estate be liquidated by the Court in terms of a special resolution, as long as the debtor is not prevented by law, agreement or any other legally enforceable reason, from passing such resolution;

-
- (b) in the case of a debtor other than a natural person, partnership or trust, it is just and equitable that the debtor should be liquidated; or
 - (c) the Court is satisfied on the face of the documents that -
 - (i) in the case of a natural person, there is reason to believe that the liquidation of the estate of the debtor will be to the advantage of his creditors;
 - (ii) the debtor's liabilities, exceed his assets or is unable to pay its debts in terms of section 5; and
 - (iii) any of the following, where applicable, are not more appropriate than winding up:
 - (aa) corporate rescue proceedings in terms of Part 22;
 - (bb) a pre-liquidation composition in terms of section 136.

(2) A Court granting a provisional liquidation order may simultaneously call upon all interested parties and the respondent to appear on a date mentioned in the interim order and to show cause why his estate should not be finally liquidated.

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

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

(5) Where the Court grants a provisional liquidation order, the Registrar shall ensure that the particulars which are required in making an application

by -

- (a) debtor for liquidation of estate of natural person; and
- (b) creditor for liquidation of debtor's estate,

which appear in the heading of the application, also appear on the order.

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

Final liquidation order

12. (1) The Court may make an order for the final liquidation of the estate of a debtor at the hearing of an application contemplated in section 6, 7 or 8, or pursuant to a provisional liquidation contemplated in section 11, if -

- (a) the applicable requirements of section 6, 7, or 8, have been complied with;
- (b) the debtor's liabilities exceed his assets, or the debtor is unable to pay its debts in terms of section 5;
- (c) in the case of a debtor who is a natural person, there is reason to believe that it will be to the advantage of the creditors of the debtor if his estate is liquidated; and
- (d) any of the following, where applicable, are not more appropriate than issuing a liquidation order:
 - (i) corporate rescue proceedings in terms of Part 22;
 - (ii) a compromise in terms of section 144 to 149 of

the Companies Act, 2011; or

- (iii) a post liquidation composition in terms of section 142.

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

(3) When a final liquidation order is granted, the Registrar shall ensure that the particulars which, in terms of section 6(2) and 8(6) appear in the heading of the application, also appear on the order.

Obligations of creditor upon whose application a liquidation order is made

13. (1) A creditor upon whose application a liquidation order is made, shall, at his own cost, prosecute all the proceedings in the liquidation until a liquidator is appointed.

(2) A liquidator appointed in terms of subsection (1), shall pay to the creditor, costs in respect of the prosecution of the liquidation proceedings as costs of the liquidation and the costs so payable to the creditor shall be taxed according to the tariff applicable in the Court that made the liquidation order.

Notice of liquidation

14. (1) The Registrar shall submit a copy of first liquidation order to -
- (a) the Registrar of Lands;
 - (b) the Registrar of Companies;
 - (c) the Sheriff; and
 - (d) the Governor of the Central Bank in respect of entities regulated by the Central Bank,

within seven days after the issuance of the order.

(2) A Registrar of Lands who receives a copy of a first liquidation order or a copy of the special resolution referred to in sections 15 or 16, shall enter a statutory injunction against the transfer of all immovable property or the cancellation or cession of every bond registered in the name of or belonging to the debtor and if the Registrar receives a copy of an order discharging a liquidation order, he shall cancel every statutory injunction entered into, in respect of the first liquidation order.

(3) A statutory injunction entered into in terms of subsection (2), expires ten years after the date of the liquidation order in question or ten years after the date of the registration of a duly registered special resolution referred to in sections 15 or 16.

(4) The Registrar of the High Court shall within seven days of the granting the liquidation order, submit a copy of the liquidation order and any other order made by the Court in respect of the debtor or the liquidator of the insolvent estate to the Master or Registrar of Companies.

(5) Upon the granting of a first liquidation order, the applicant who applied for the order shall, within fourteen days of the granting of the order, cause a notice of the order to be published-

- (a) in a newspaper with wide circulation for three consecutive weeks; and
- (b) on a radio station with national coverage for three consecutive days.

Voluntary liquidation of insolvent debtor by resolution

15. (1) A debtor, other than a natural person, partnership or company that is an external company in terms of the Companies Act 2011, who is unable to pay its debts or whose liabilities exceed its assets, may be liquidated as a voluntary liquidation by creditors if the debtor has passed a special resolution resolving that the debtor be liquidated voluntarily as a voluntary liquidation by creditors.

(2) A special resolution contemplated in subsection (1) shall be filed with the Registrar of Companies and a voluntary liquidation commences upon filing of such a resolution.

Voluntary liquidation of solvent company

16. (1) A solvent company, other than a solvent company that is an external company in terms of the Companies Act 2011, may be liquidated voluntarily if the company has adopted a special resolution to be liquidated as a voluntary liquidation by its members or shareholders.

(2) A special resolution contemplated in subsection (1) shall be filed with the Registrar of Companies and a voluntary liquidation of a solvent company commences upon the filing of such a resolution.

(3) A company shall, before the special resolution for the voluntary liquidation of the company is filed with the Registrar of Companies -

- (a) arrange for security, to the satisfaction of the Registrar of Companies for the payment of the company's debts within no more than twelve months after the start of the liquidation of the company; or
- (b) obtain the consent of the Registrar of Companies to dispense with security, which the Registrar of Companies may do only if the company has submitted to the Registrar of Companies -
 - (i) a affidavit by a director authorised by the shareholders of the company, stating that the company has no debts; and
 - (ii) an audit report, or if it does not have an auditor financial statements prepared by the accountant, stating that the company appears to have no debts.

(4) Any costs incurred in furnishing the security referred to in subsection (3) may be paid by the company.

(5) A special resolution for the voluntary liquidation of a company by its members or shareholders under subsection (1) may include the nomination of a person to be appointed as liquidator of the company and the Registrar of Companies shall appoint the nominated person if he qualifies for appointment

under section 59(2).

(6) If a special resolution under subsection (5) does not include the nomination of a liquidator or if the nominated liquidator does not qualify for appointment in terms of the provisions of section 61, the Registrar of Companies shall in his discretion appoint a suitable person as liquidator.

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

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

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

(9) Despite any provision to the contrary in a Articles of Incorporation of a company -

- (a) the company remains a juristic person and retains all of its powers while it is being liquidated voluntarily; and
- (b) from the commencement of the liquidation of the company -
 - (i) it shall stop carrying on its business except to the extent required for the beneficial liquidation of the company; and
 - (ii) all of the powers of the director of the company cease, except to the extent authorised by the liquidator or the shareholders in a special meeting.

(10) If a meeting of creditors and shareholders or members has nominated a different person as a liquidator, the Registrar of Companies shall, subject

to sections 45 and 61 appoint all or any of the person so nominated, as liquidator or liquidators.

(11) If there is a difference between the directions given by creditors and shareholders of members at such meetings, the liquidator may apply to the Registrar of Companies for directions.

PART 4 - EFFECT OF LIQUIDATION

Effect of liquidation on debtor and his property

17. (1) The issuing of a first liquidation order or the registration of a special resolution in terms of section 15 or 16, in respect of a debtor has the effect that all the property of the debtor in question, shall be regarded as being in the custody and under the control of the Master or Registrar of Companies until a liquidator has been appointed, and the insolvent estate shall be regarded as being in the custody and under the control of the liquidator.

(2) The estate of the debtor remains in the custody and under the control of the liquidator until it reverts to the debtor in terms of a composition or compromise contemplated in Part 21 or Sections 144 to 149 of Companies Act 2011, or until the property is re-vested in the debtor or the debtor's estate because of the setting aside of the liquidation order or special resolution.

(3) If the liquidator vacates his office, dies or becomes incompetent to exercise his powers and perform his duties, the estate vests in any remaining liquidator or if there is none, in the Master or Registrar of Companies, until the appointment of a new liquidator.

(4) After the expiry of every statutory injunction entered in terms of section 14(3), 77 or 126 (3) in respect of the property of a debtor, any act of registration in respect of such property brought about by such debtor, is valid in spite of the fact that the property formed part of the insolvent estate.

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

- (a) the debtor or former debtor;

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

(6) The execution of a judgment in respect of property of the debtor shall be stayed as soon as the sheriff becomes aware of the issuing of a liquidation order against the debtor, unless the Court orders otherwise.

(7) The execution of a judgment in respect of property of the debtor shall be stayed as soon as the sheriff becomes aware of the adoption of a special resolution by the debtor in terms of section 15 or 16;

(8) The sheriff shall hold over an execution of a judgment under subsection (7) until such time as he is satisfied that a special resolution in question has been filed or registered with the necessary authority in terms of section 16, failing which he shall continue with the execution of the judgment as if the special resolution in question had not been adopted.

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

(10) The liquidator of an insolvent estate is entitled to recover from a creditor of the debtor, the net amount of any payment in pursuance of the execution of any judgment made to such creditor, after the granting of the first liquidation order or after the adoption of a special resolution in pursuance of section 15 or 16.

(11) For purposes of this section, the following property shall be ex-

cluded from the insolvent estate of a debtor who is a natural person -

- (a) the necessary beds, bedding and wearing apparel;
- (b) household utensils and the necessary furniture, other than beds, of the insolvent in so far as they do not exceed the amount of Two Thousand Maloti or the amount prescribed from time to time;
- (c) stock, tools and agricultural implements of a farmer, in so far as they do not exceed Two Thousand Maloti in value or the amount prescribed from time to time;
- (d) the supply of food and drink in the house sufficient for the needs of the insolvent and his family for a period of one month;
- (e) tools and implements of trade, in so far as they do not exceed the amount or Two Thousand Maloti or the amount prescribed from time to time;
- (f) professional books, documents or instruments necessarily used by the insolvent in his profession, in so far as they do not exceed the amount of Two Thousand Maloti or the amount prescribed from time to time;
- (g) such arms and ammunition as the insolvent is required by law, regulation or disciplinary order to have in his possession as part of his equipment; and
- (h) necessary medicine and medical devices.

(12) All other property of the debtor at the date of the issuing of the first liquidation order, or at the date of the adoption of a special resolution in pursuance of section 15 or 16, including property or the proceeds which are in the hands of the sheriff under a writ of attachment or a warrant of execution and, subject to section 19, acquired by or which accrued to the debtor during his insolvency, forms part of the debtor's insolvent estate.

Effect of liquidation on civil proceedings by or against debtor

18. (1) The issuing of a liquidation order in respect of a debtor or the adoption and subsequent registration of a special resolution as provided for in section 15 or 16, has the effect that all civil proceedings instituted in a Court by or against the debtor are stayed, subject to section .

(2) Proceedings that have been stayed under subsection (1) may, with the consent of the Court or liquidator or with a notice of three weeks to the liquidator, be continued against the insolvent estate and the opposing party may apply to the court to substitute the liquidator for the debtor in the proceedings.

(3) The liquidator may, by giving liquidator's notice to all parties and to the court, substitute himself as party for the debtor in proceedings by or against the debtor, other than proceedings contemplated in section 23.

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

(5) No person may institute legal proceedings against the insolvent estate in respect of any liability that arose before the date of liquidation after the confirmation of the first account of liquidator by the Master or Registrar of Companies and more than 3 months after the conclusion of the first meeting, but the Court may, subject to section 119 and subject to such conditions as the Court may impose, permit the institution of the proceedings if it is of the opinion that there was a reasonable excuse for the delay in instituting the proceedings.

PART 5 - RIGHTS AND OBLIGATIONS OF DEBTOR
DURING INSOLVENCY

Rights and obligations of debtor who is a natural person entering into a contract during insolvency

19. (1) Where a debtor, who is a natural person and is insolvent, enters into a contract, the validity of that contract shall not be affected if -

-
- (a) the debtor purports to dispose of any property of his insolvent estate; or
 - (b) without the consent in writing of the liquidator, the debtor enters into any contract where any earnings that accrue to his insolvent estate in terms of professional or occupational services under subsection (3) are or are likely to be adversely affected.

(2) The contract under subsection (1) is voidable at the option of the liquidator, but is subject to section 27.

(3) A debtor, who is a natural person, subject to subsection (4), may collect for his own benefit, any remuneration for work done or payment for professional or occupational services rendered by him or someone on his behalf after the issuing of the liquidation order.

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

Payment to creditor of debtor as a result of illegal conduct

20. (1) A person who becomes a creditor of the debtor as a result of an illegal conduct on the part of the debtor after the date of liquidation of the estate of the debtor, is entitled to payment of the debt out of any assets that accrued to the insolvent estate as a result of the illegal conduct to the extent that such debt cannot be recovered from the debtor personally and after payment of all costs attributable to such assets.

(2) If the creditor knew or ought to have known, by exercising reasonable care, of the illegal conduct at the time when he became a creditor, that creditor is not entitled to payment in terms of subsection (1).

(3) If an emolument attachment order issued by a Court in respect of a judgment to the debtor prior to the date of liquidation of his estate is in force when his estate is liquidated, the order remains in force and the employer, upon whom the emolument attachment order was served on, shall, in accordance with the order, make payments to the debtor for a period of 6 months from the date

of the first liquidation order.

(4) The debtor shall keep a record of the emoluments referred to in sub section (3) and shall provide the liquidator with such record and relevant documents as may be require by the liquidator.

Keeping of records of assets and income received after liquidation

21. (1) A debtor who is a natural person shall keep a detailed record of all -

- (a) assets and income received by him from whatever source after liquidation; and
- (b) expenses incurred by him.

(2) A debtor shall, for a period of one year from the issuing of the first liquidation order, during the preceding month, supply the liquidator monthly, with a statement of his income and expenses, confirmed by an affidavit or a solemn declaration, on the first week of every month.

(3) A debtor shall, after the expiry of the period of one year, supply the liquidator annually, with a return of his income and expenses for the preceding year, confirmed by an affidavit or a solemn declaration.

(4) A debtor shall, within seven days after a written request from the liquidator, supply the liquidator with particulars of income received and expenses incurred by him, for the period indicated by the liquidator, notwithstanding the fact that the debtor has complied with subsections (1), (2) and (3).

(5) A liquidator may, at all reasonable times, inspect the records referred to in subsection (1) and may require the debtor to supply proof in support of such records and of expenses which he claims to have incurred for his own support or that of his dependents.

Debtor to appear at hearing before the Master

22. (1) A liquidator may issue a notice to a debtor who is a natural person to appear at a hearing before the Master on a date specified in the notice to -

-
- (a) give evidence on; and
 - (b) supply proof of -
 - (i) all assets and income received by the debtor or his dependents from any source; and
 - (ii) his estimated expenses for his own support and that of his dependents.

(2) The notice shall be as set out in Form F1 of Schedule 1 and shall be signed by the liquidator and served by the Sheriff on the debtor at least seven days before the date specified in the notice.

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

(4) The Master shall, on the day of the hearing of the debtor, call upon the debtor to give evidence under oath or affirmation on the matters contemplated in subsection (1) and may receive further evidence as may be adduced either orally or by affidavit or in such other manner as the Master may order.

(5) The Master shall, after the hearing, issue a certificate indicating which proportion of the future earnings of the debtor, if any, is not required for support and shall accrue to his insolvent estate.

(6) The liquidator may submit a copy of a certificate issued under subsection (5), to the employer of the insolvent by notice, and the employer is obliged to transmit the amount stated in the notice, to the liquidator in accordance with the certificate.

(7) Any property which the debtor obtains after the date of the first liquidation order with earnings that do not in terms of a certificate issued under subsection (5) accrues to his insolvent estate, do not form part of the insolvent estate.

Capacity to sue or be sued for earnings accrued after the date of the liquidation

23. (1) A debtor who is a natural person, may sue or be sued in his own name without reference to the liquidator of his estate in any matter relating to status or any right in so far as it does not affect his insolvent estate or in respect of any claim due to or against him under this section, but no cession of his earnings after the date of liquidation of his estate, whether made before or after the issuing of the first liquidation order, is of any effect so long as his estate is under liquidation.

(2) A debtor who is a natural person may be sued in his own name for any delict committed by him after the date of liquidation of his estate, and his insolvent estate shall not be held liable for such delict.

(3) A debtor who is a natural person may, for his own benefit, recover any compensation for any loss or damage which he may have suffered, whether before or after the date of liquidation of his estate, by reason of any defamation or personal injury.

(4) Where a compensation recovered by the debtor under subsection (3) includes medical or other expenses, a creditor in respect of such expenses, is entitled to be paid out of the compensation or recover the compensation from the debtor even though the claim for such expenses arose before the date of liquidation of the estate and the debtor may not without leave of the Court, institute any action against the liquidator of his estate on the ground of malicious prosecution or defamation.

Property claimable from debtor

24. Any property claimable by the liquidator from the debtor may be recovered from the debtor by warrant of execution to be issued by the registrar upon the production to him of a certificate by the Master that the property stated is so claimable.

Debtor to assist liquidator in collecting property

25. (1) A debtor who is a natural person, a partnership or the management of any other debtor shall, at the request of the liquidator, assist the liquidator to the best of his ability in collecting, taking charge of or realising any property

belonging to the insolvent estate.

(2) In the case of a natural person, the liquidator shall during the period of such assistance, give to the debtor out of the insolvent estate, an allowance in money or goods as is, in the opinion of the Master, necessary to support the debtor and his dependents.

Notice of debtor postal and residential address

26. (1) A debtor, who is a natural person, shall keep the liquidator informed in writing of his postal and residential address.

(2) If a notice is to be conveyed to a debtor who is a natural person in terms of this Act, the notice shall be sent to such debtor at the address referred to in subsection (1).

PART 6 - IMPEACHABLE DISPOSITIONS

Alienation by debtor of property to third party in good faith

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

Presumptions relating to property in possession of debtor

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

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

Disposition without value

29. (1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by the debtor within two years before the presentation of the application to the Court for liquidation of his estate.

(2) If the disposition was made in favour of an associate, but if it is proved by someone opposing the setting aside of the disposition that the liabilities of the debtor at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, the disposition may be set aside only to the extent of such excess.

(3) A disposition of property not made for value, which was set aside under subsection (1) or (2) or which was not completed by the debtor, does not give rise to any claim in competition with the creditors of the estate of debtor, unless in the case of a disposition of property not made for value, which was not completed by the debtor and which -

- (a) was made by way of surety-ship, guarantee or indemnity; and
- (b) has not been set aside under subsection (1),

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

Ante-nuptial contracts

30. No immediate benefit under a duly registered ante nuptial contract given in good faith by one spouse to the other or to any child to be born of the marriage may be set aside as a disposition without value, unless -

- (a) the application for the liquidation of the estate of the spouse who gave the benefit was presented to the Court within two years of the marriage; and

- (b) when the benefit was given, the liabilities of the giving spouse exceeded his assets.

Voidable preferences

31. (1) The Court may set aside a disposition of property made by a debtor which has the effect that any one of his creditors receives a benefit to which he would not have been entitled had the estate of debtor been under liquidation at the time of the making of the disposition, if -

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

unless the person for whose benefit the disposition was made -

- (i) proves that it was made in the ordinary course of business and that it was not intended to prefer one creditor above the other; and
- (ii) if he is an associate of the debtor, also proves that he was not aware and had no reason to suspect that the liabilities of the debtor would exceed the value of his assets immediately after the making of the disposition.

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

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

than that originally agreed upon,

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

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

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

Collusive dealings for prejudicial disposition of property

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

(2) A person who was a party to a collusion under subsection (1) is liable to make good any loss incurred by the insolvent estate as a result of the collusion and shall pay for the benefit of the estate, by way of penalty, such sum as the Court may determine, which sum may not be more than the amount by which he would have benefited if the disposition had not been set aside and if he is a creditor he also forfeits his claim against the insolvent estate.

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

Attachment of property in possession of associate

33. (1) If a liquidator suspects that a disposition of property by the debtor to an associate of the debtor may be liable to be set aside, the liquidator

may instruct the sheriff to attach such property.

- (2) The Sheriff shall -
 - (a) take into his personal custody and compile a list of all cash, share certificates, bonds, bills of exchange, promissory notes and other securities;
 - (b) without delay, deposit in a banking account under section 113(1)(a) or (b) all cash taken into his custody;
 - (c) as soon as possible leave all other movable property which he has attached, other than animals, in a properly locked storage place or appoint a suitable person to keep the property in his custody, in which case he shall hand to the person a copy of an inventory of the property left in his custody and he shall draw the attention of that person to the offences set out in section 221(2)(f) in respect of the unauthorised disposition of property under attachment;
 - (d) is entitled to fees in accordance with Tariff A in Schedule

2.

(3) The Sheriff shall release the property if instructed to do so by the liquidator.

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

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

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

Certain rights not affected by improper disposition

34. The setting aside of a disposition made by a debtor in terms of section 29, 31 or 32 shall not discharge a surety for the debtor.

Set-off

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

- (a) two persons have entered into a transaction the results of which is a set-off, wholly or in part of debt which they owe one another and the estate of one of the is liquidated within a period of six months after the taking place of the set-off; or
- (b) a person who had a claim against another person, in this section referred to as “the debtor” has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set-off, wholly or in part, against the other and within a period of one year after the cession the estate of the debtor is liquidated.

Payment of debt to debtor after completion of liquidation

36. If after completion of liquidation of an estate of a debtor, the debtor of the insolvent estate pays, to the insolvent estate, a debt that was due before the date of liquidation, or otherwise fulfils any obligation towards the insolvent estate, the cause of which arose before the date of liquidation, the payment or fulfillment shall be deposited into the insolvency surplus account in accordance with section 122.

Disposition and share transfers or transfer of shareholders interest after liquidation void

37. (1) Every transfer of an interest in a trust, shares of a company, or other right conferred by agreement or the constitution of an association of persons being liquidated, or alteration in the status of its shareholders or members or beneficiaries effected after the commencement of the liquidation without the sanction of the liquidator, is void.

(2) Every disposition of its property including rights of action by any debtor being liquidated made after the commencement of the liquidation is void, unless the court orders otherwise.

Institution of proceedings on behalf of insolvent estate

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

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

(3) In any such proceedings, the debtor, or the management of a debtor, may be compelled to give evidence on a subpoena issued on the application of any party to the proceedings or he may be called upon by the Court to give evidence and section 85 (6) applies with the necessary changes to the giving of evidence at such proceedings.

(4) In any such proceedings under section 29 or 31 it is presumed, until the contrary has been proved, that the liabilities of the debtor exceeded the value of his assets at any time within one year before the date of the presentation of the application for liquidation.

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

PART 7 - EFFECT OF LIQUIDATION UPON CERTAIN CONTRACTS

Uncompleted acquisition of immovable property by debtor

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

(2) The liquidator shall notify the other party to the contract of the choice he has made under subsection (1).

(3) The other party to the contract may call upon the liquidator by written request to exercise his choice under subsection (1) and if the liquidator fails to exercise his choice and to notify the other party of his choice by notice within six weeks after he has received the written request, the other party may apply to the Court for an order for the cancellation of the contract and for restoring the immovable property which came in possession or under the control of the debtor or the liquidator by virtue of the contract.

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

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

Effect of liquidation on estate of seller under reservation of ownership contract

40. The liquidation of the estate of a seller under a reservation of ownership contract entitles the liquidator of the estate to the same rights, obligations priv-

ileges and limitations as the insolvent debtor.

Goods purchased not on credit but not paid for

41. (1) If a debtor received delivery of movable property bought by him before the date of liquidation of his estate and the purchase price of the property was not paid in full at the time of the delivery despite a term of the contract that the purchase price is to be paid on delivery of the property, the seller may reclaim the property after the liquidation of the purchaser's estate, if, within fourteen days after the delivery of the property, he has given notice that he reclaims the property, to the purchaser liquidator.

(2) If the liquidator disputes the right of the seller to reclaim the property he shall, within fourteen days after having received notice of the claim, notify the seller that he disputes the claim and the seller may, within fourteen days after the receipt of the notice, institute legal proceedings to enforce his right.

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

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

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

Effect of liquidation upon lease

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

(2) A lease agreement or contract of movable or immovable property to which the insolvent or debtor is a party to is not terminated by the liquidation

of the estate of the lessee.

(3) The liquidator shall, where the lease agreement or contract is not fulfilled, acquire similar rights which accrued to the insolvent or debtor and shall perform the obligations entrusted to the insolvent or debtor in accordance with the terms of the lease agreement or contract.

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

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

Effect of liquidation on contract of service

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

(2) Without limiting subsection (1), during the period of suspension of a contract of service -

- (a) an employee whose contract is suspended, is not required to render services in terms of the contract and is not entitled to any remuneration in terms of the contract; and
- (b) no employment benefit accrues to an employee in terms of the contract of service which is suspended.

(3) An employee whose contract of service is suspended is entitled to unemployment benefits under the Labour Code, 1992⁴ from the date of such suspension and subject to the provisions of that Act.

(4) A liquidator appointed may terminate the contracts of service of employees, subject to subsections (5) and (8).

(5) A liquidator who has received proposals referred to in subsection (7) or who intends to terminate the contracts of service of employees shall,

in accordance with the Labour Code, consult with -

- (a) a person whom the insolvent employer was required to consult, immediately before the liquidation, in terms of a collective agreement defined in the Labour Code;
- (b) in the absence of a collective agreement immediately prior to the liquidation -
 - (i) a workplace forum defined in the Labour Code, 1992; and
 - (ii) any registered trade union whose members are likely to be affected by the termination of contract of service;
- (c) a registered trade union representing employees whose contracts of service were suspended in terms of subsection (1) and who are likely to be affected by the termination of the contract of service, if there is no workplace forum; or
- (d) the employees whose contracts of service were suspended in terms of subsection (1) and who are likely to be affected by the termination of the contract of service or their representatives nominated for that purpose, if there is no trade union.

(6) The consultation referred to in subsection (5) shall be aimed at reaching consensus on appropriate measures to save the whole or part of the business of the insolvent employer -

- (a) by the sale of the whole or part of the business of the insolvent employer; or
- (b) by a compromise referred to in section 144 to 149 of the Companies Act 2011; or
- (c) in any other manner as may be determined by the liquidator.

(7) The liquidator shall disclose, to the consulting parties, all relevant information that will allow the parties to consult effectively.

(8) If a party referred to in subsection (5) wishes to make proposals concerning any matter contemplated in subsection (6), that party shall lodge proposals with the liquidator within twenty-one days of the appointment of the liquidator unless the liquidator and an employee agree otherwise.

(9) A creditor of the insolvent employer may, with the consent of the liquidator, participate in any consultation contemplated in this section.

(10) Unless the liquidator and an employee have agreed on continued employment of the employee in view of measures contemplated in subsection (6), all suspended contracts of service terminate forty-five days after the date of the appointment of a liquidator.

(11) An employee whose contract of service has been -

(a) suspended in terms of subsection (1); or

(b) terminated in terms of subsection (4) or (10),

is entitled to claim compensation from the insolvent estate of his former employer for loss suffered by reason of the suspension or termination of a contract of service prior to its expiration.

(12) An employee whose contract of service terminates or has been terminated in terms of this section is entitled to claim severance benefits from the estate of the insolvent employer in accordance with the Labour Code, 1992.

PART 8 - INSOLVENCY REGULATOR

Establishment of Insolvency Regulator

44. (1) The Minister responsible for trade and industry is responsible for the administration of this part.

(2) The insolvency practice shall be regulated by an Insolvency Regulator, who is an officer designated as such in the Public Service Commission.

-
- (3) The functions of the Regulator are to -
- (a) oversee the administration of insolvency practice in Lesotho; and
 - (b) regulate the registration of insolvency practitioners by -
 - (i) registering insolvency practitioners;
 - (ii) issue licenses to;
 - (iii) suspend or cancel a license of the insolvency practitioner;
 - (iv) receive reports from insolvency practitioners on the administration of insolvent estates;
 - (v) monitor the performance of insolvency practitioners;
 - (vi) discipline insolvency practitioner and remove the insolvency practitioner from the register;
 - (vii) establish and maintain communication and liaison with international agencies, in the area of international insolvency and insolvency administration;
 - (viii) advise the Minister responsible for trade and industry on any matter relating to the law and practice of insolvency and insolvency administration; and
 - (ix) develop codes of conduct, guidelines and standards for insolvency practitioners and administration of insolvency.

Qualifications for registration

45. (1) A person shall be qualified to apply for registration as an insol-

veny practitioner if he is registered as a -

- (a) legal practitioner in terms of the Legal Practitioners Act, 1983⁵; or
- (b) public accountant or public auditor in terms of the Accountants Act, 1977⁶; or
- (c) possesses such qualifications, additionally or alternatively, and has such experience as the Regulator considers qualifies him for registration.

(2) The provisions of subsection (1) shall only apply to a person applying for registration as a liquidator after the coming into operation of this Act, or to a person who has been appointed as a liquidator before the coming into operation of the Act but does not meet the transitional requirements set out in subsection (3).

(3) Any person who has taken appointments as an insolvency practitioner for a period of at least three consecutive years immediately prior to the coming into operation of this Act, shall be exempt from complying with the requirements of subsection (1) in order to be registered to act as an insolvency practitioner, if the person has submitted -

- (a) such information to the Regulator as he may require in order to apply the transitional provision contained in this paragraph; or
- (b) an application made in terms of this paragraph as prescribed within a period of 6 months from the coming into operation of this provision.

(4) The Regulator shall have the right to deny any such applicant the right to be registered and licensed under this provision if he or she is of the opinion that such person is not a fit and proper person for the purposes of acting as a duly registered and licensed insolvency practitioner.

(5) Any existing insolvency practitioner who, without good cause, fails to apply for registration under subsection (3) within the specified time limit will be required to meet the requirements of subsection (1) in order to be regis-

tered as an insolvency practitioner.

- (6) A person shall not be qualified for registration if such person -
- (a) is an insolvent;
 - (b) does not reside or have a place of business in the Kingdom of Lesotho;
 - (c) is a minor or any other person under legal disability;
 - (d) is declared under section 61 to be disqualified, while such disqualification lasts, or is removed by the court from an office of trust on account of misconduct;
 - (e) is not a natural person;
 - (f) has been convicted, in Lesotho or elsewhere, of an offence in terms of this Act or an offence of which dishonesty is an element and who was sentenced to imprisonment without the option of a fine or to a fine of not less than One Thousand Maloti;
 - (g) was, at any time, a party to an agreement or arrangement with any debtor or creditor where he undertook that he would, when performing the functions of a liquidator, grant or attempt to grant to, or obtain or attempt to obtain for any debtor or creditor any benefit not provided for by law; or
 - (h) has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to nominate him as liquidator, to vote for him as liquidator or to effect or assist in effecting his election as liquidator of any insolvent estate.

(7) In addition to the disqualifications listed in subsection (6), a person shall not be qualified for registration as an insolvency practitioner if he has behaved in a manner which, in the opinion of the Regulator, is of a disgraceful

or dishonourable nature.

(8) When determining whether the liquidator has behaved in a disgraceful or dishonourable manner, the Regulator shall have regard to any breaches by the liquidator of the Code Governing the Performance and Conduct of Liquidators and Corporate Rescue Practitioners as may be determined by the Regulator.

(9) Before reaching a decision as to whether or not a person does not qualify for registration in terms of subsection (3), or is disqualified for registration in terms of subsection (6) or (7), the Regulator shall -

- (a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Regulator thinks fit; and
- (b) pay due regard to any representations made by him in terms of subsection (8).

Application for registration

46. Any person who wishes to be registered as an insolvency practitioner shall submit to the Regulator an application, in the form and manner prescribed by the Regulator, together with the prescribed registration fee.

Registration

47. (1) The Regulator shall consider every application for registration laid before him in terms of section 46 and -

- (a) if the Regulator is satisfied that the applicant is qualified for registration, he shall register the applicant; or
- (b) if the Regulator is not so satisfied, he or she shall refuse the application and notify the applicant in writing of his decision.

(2) Whenever the Regulator registers a person in terms of this section, he shall issue that person with a certificate of registration in the prescribed

form.

Cancellation of Registration

48. (1) Subject to subsection (2), the Regulator shall cancel the registration of any registered person who -

- (a) is disqualified from being appointed as liquidator in terms of section 61 or in terms of section 45 (7); or
- (b) having been qualified for registration in terms of section 45(1), ceases to be so qualified.

(2) Before reaching a decision as to whether or not a registered person's registration should be cancelled in terms of section, the Regulator shall -

- (a) inform him in writing of the grounds on which he might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Regulator considers it fit; and
- (b) pay due regard to any representations made by him in terms of paragraph (a).

(3) The Regulator shall cancel the registration of a registered person in the Register.

(4) Whenever the Regulator cancels a person's registration in terms of this paragraph, he shall -

- (a) notify that person, in writing, of the cancellation; and
- (b) cause notice of the cancellation to be published in the Gazette; and
- (c) update the Register,

and the person shall be ineligible for appointment as a liquidator under this Act.

Restoration of registration

49. A person whose registration has been cancelled in terms of section 48 may apply for his registration to be restored, and sections 45, 46 and 47 shall apply, with the necessary changes, as if he were applying for registration.

Prohibition against practice without practising certificate

50. (1) No registered person shall perform the work of an insolvency practitioner, whether directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of One Hundred Thousand Maloti or to imprisonment for a period not exceeding 10 year or to both such fine and imprisonment.

(3) A conviction for an offence under subsection (2) shall not be a bar to a further prosecution or conviction if the offence continues.

Application for practising certificate

51. A person who wishes to obtain a practising certificate shall apply to the Regulator in the form and manner prescribed, and shall submit with his application such fee, certificates, documents and information as the Regulator may reasonably require.

Issue or refusal of practising certificate

52. (1) On receipt of an application for a practising certificate in terms of section 51, the Regulator shall issue a practising certificate to the applicant if he or she is satisfied that the applicant is a registered person.

(2) Any person who is aggrieved by a refusal of the Regulator to issue him with a practising certificate in terms of subsection (1) may, within a period of thirty days of having been notified, apply to the court for a review of the Regulator's decision.

(3) In a review in terms of subsection (2) the court may give such

decision in the matter as it thinks appropriate.

Period of validity of practising certificate

53. (1) Subject to subsection (2), a practising certificate shall remain valid for a period of twelve months from the 1st January next following:

- (a) the application; or
- (b) if the applicant so requires, from the date of its issue until the 31st December of the year in which it is issued.

(2) A practising certificate issued to a person whose name is deleted from the Register shall cease to be valid from the date of such deletion, and the person concerned shall forthwith return the practicing certificate to the Regulator for destruction.

Renewal and refusal to renew practising certificate

54. (1) A practising certificate issued to an insolvency practitioner under section 52 shall be renewed annually in line with the period of validity referred to in section 53.

(2) Upon application for renewal by an insolvency practitioner under subsection (1), the Regulator shall, prior to renewing the practising certificate, ensure that the applicant has provided proof that he has completed at least fifteen hours of appropriate continuing professional development during the previous calendar year, but where registration of an insolvency practitioner has not endured a full calendar year, this requirement may be dispensed with.

(3) Any insolvency practitioner who does not comply with the provisions of subsection (2) shall not be issued with a renewed practising certificate until such time as he or she has complied with the requirements of that subparagraph.

(4) An insolvency practitioner applying for the renewal of a practising certificate shall apply to the Regulator in the prescribed form and manner.

Withdrawal of practising certificate

55. If after due inquiry the Regulator is satisfied that a registered person has not complied with any term or condition of a practising certificate held by him, the Regulator may withdraw the practising certificate and, if it does so, the Regulator shall advise the person concerned accordingly.

Surrender of withdrawn or invalid practising certificate

56. A person who has been advised in writing by the Regulator that a practising certificate issued to him or her has been withdrawn or has ceased to be valid, he shall, within thirty days after being so advised, return the practising certificate to the Regulator.

Improper or disgraceful conduct

57. (1) Improper or disgraceful conduct on the part of a registered insolvency practitioner shall include the commission of any of the following acts -

- (a) touting;
- (b) advertising his services as an insolvency practitioner, in any manner whatsoever, whether directly or indirectly, except as may be permitted in the rules made under this Act;
- (c) contravening a provision of this Act or the rules;
- (d) in any way, assisting, allowing or enabling an unregistered person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the work of an insolvency practitioner, or in any way conniving at any arrangement or understanding whatsoever whereby any such fee or remuneration is charged, recovered or received by any such unregistered person;
- (e) opening or maintaining any office or branch at which the work of an insolvency practitioner is conducted but

which is not under the continuous personal supervision of a registered insolvency practitioner;

- (f) keeping the accounts of his practice as an insolvency practitioner in the books of accounts utilised in connection with any other business in which he may be interested jointly with an unregistered person;
- (g) assisting an unregistered person to recover charges for services rendered by him including such charges in any bill of costs or memorandum of charges rendered by him as an insolvency practitioner, without disclosing the fact in such bill or memorandum.

(2) Subsection (1)(b) shall not apply to advertising by a person who is a registered legal practitioner, public accountant or public auditor or a member of the Lesotho Institute of Accountants, where the advertisement is permitted in terms of the enabling legislation.

(3) Subsection (1)(f) shall not prevent a registered legal practitioner, public accountant or public auditor or a member of the Lesotho Institute of Accountants from keeping the accounts of his practice as an insolvency practitioner in the same books as the accounts of his practice as a legal practitioner, public accountant, public auditor or chartered accountant.

(4) Any breach of the Code Governing the Performance and Conduct of Insolvency Practitioners may be construed as improper or disgraceful conduct of its own accord, or may be taken into account in assessing the conduct of an insolvency practitioner under subsection (1).

Court to notify Regulator of certain convictions or conduct

58. (1) Whenever, after the termination of proceedings before a court in Lesotho, it appears to the court that there is evidence of improper or disgraceful conduct on the part of a registered person, the court shall direct that a copy of the record of the proceedings or a copy of such portion of the proceedings as is material to be transmitted to the Regulator.

- (2) Where a court in Lesotho -

- (a) removes a registered person from his position as liquidator or corporate rescue practitioner of a company or other entity under liquidation or corporate rescue, the court shall cause the Regulator to be notified of the removal and of the reasons for such removal; or
- (b) appoints or elects such a liquidator or corporate rescue practitioner, the court shall cause the Regulator to be notified of the removal or appointment or election and of the reasons for such removal or appointment or election; or
- (c) declares a registered person disqualified or incapable of being reappointed,

the court shall cause the record or part of such record to be transmitted to the Regulator.

PART 9 - APPOINTMENT AND ELECTION OF LIQUIDATOR

Appointment of liquidator

59. (1) The Master or Registrar of Companies shall appoint a person as liquidator no longer than seventy-two hours after -

- (a) receipt of the first liquidation order;
- (b) receipt of a duly adopted special resolution in terms of section 15 or 16; or
- (c) the time when a liquidator ceases to function as a liquidator.

(2) A person may be appointed as a liquidator under this section if he -

- (a) is registered as an insolvency practitioner;
- (b) has given such security as may be determined by the Master or Registrar of Companies for the proper exercise

of his powers and performance of his duties as liquidator;

- (c) has lodged an affidavit stating that he is not disqualified in terms of section 61,
- (3) The Master or Registrar of Companies shall, in determining -
- (a) the amount of security payable, comply with the prescribed regulations; or
 - (b) who should be appointed as a liquidator, have regard to the wishes of the creditors of the estate.

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

(5) When a final liquidation order has been made and a person elected as liquidator has given security to the satisfaction of the Master or Registrar of Companies for the proper performance of his duties and lodged an affidavit stating that he is not disqualified in terms of section 61, the Master or Registrar of Companies shall, subject to section 62, appoint him as liquidator and issue him with letter of appointment.

(6) A person elected as a liquidator shall not be appointed as a liquidator, unless he has accepted and consented in writing to act as a liquidator.

Election of liquidator

60. (1) At the first meeting of creditors convened to elect a liquidator -
- (a) a creditor of an insolvent estate who has proved claims against the estate may vote for one liquidator;
 - (b) a registered union which has lodged an affidavit in the prescribed form, may vote in number for employees represented by the union; and
 - (c) an employee who has not voted as a creditor and who

has not been voted for by a registered union and who has lodged a declaration that he was employed by the debtor at the date of liquidation may vote in number.

(2) A director or former director of a company, shall have no voting right in respect of the election of a liquidator on the ground of his loan account with the company or claims for arrears, salary, travelling expenses or allowances due by the company or claims paid by such director or former director on behalf of the company.

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

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

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

(6) If no liquidator is elected at a meeting of creditors, the liquidator appointed by the Master or Registrar of Companies shall be the liquidator of the estate.

(7) If it is necessary for the proper administration of an insolvent estate, the Master or Registrar of Companies may, at any time, appoint one additional liquidator after forty-eight hours direct notice to each liquidator appointed or to be appointed in terms of subsections (2), (3), (4) and (5) and shall furnish reasons to proved creditors for the additional appointment.

Disqualification of liquidator

61. (1) A person is disqualified from being elected or appointed as a liquidator if he -

- (a) is a member of a professional body and is removed as such from membership of the professional body;

-
- (b) is an insolvent;
 - (c) does not reside or have a place of business in Lesotho;
 - (d) is the associate of the debtor in question;
 - (e) is a minor or any other person under legal disability;
 - (f) is declared under section 68 to be disqualified, while such disqualification lasts, or is removed by the Court from an office of trust on account of misconduct;
 - (g) is not a natural person;
 - (h) has been convicted, in the Lesotho or elsewhere, of an offence in terms of this Act or an offence of which dishonesty is an element and who was sentenced to imprisonment without the option of a fine or to a fine of not less than One Thousand Maloti;
 - (i) was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he undertook that he would, when performing the functions of a liquidator, grant or attempt to grant to, or obtain or attempt to obtain for any debtor or creditor any benefit not provided for by law;
 - (j) has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to nominate him as liquidator, to vote for him as liquidator or to effect or assist in effecting his election as liquidator of any insolvent estate;
 - (k) at any time during a period of twelve months immediately preceding the date of liquidation acted as the bookkeeper, accountant or auditor of the debtor;
 - (l) has a proven interest that is opposed to the general interest of the creditors of the insolvent estate.

(2) The Regulator may, by notice in the Gazette, publish a name of a professional body if its members qualify to be appointed as liquidators in terms of section 63 and the professional body regulates the practice of the profession, maintains and enforces rules of ensuring that a member of such a body -

- (a) is a fit and proper person to be appointed as liquidator;
- (b) is subjected to appropriate disciplinary measures where the conduct of a member justifies it; and
- (c) meets acceptable requirements for education and practical experience and training.

Refusal to appoint elected liquidator

62. (1) The Master or Registrar of Companies the following grounds refuse to appoint as liquidator a person elected in terms of section 60 who -

- (a) is not qualified in accordance with the standards set out by the Regulator;
- (b) was not properly elected;
- (c) is, in terms of section 61, disqualified from being appointed as liquidator or as liquidator of the insolvent estate in question; or
- (d) has failed to give security, within seven days after his election or within such longer period as the Master or Registrar of Companies may allow, to the satisfaction of the Master or Registrar of Companies for the proper performance of his duties as liquidator.

(2) The Master or Registrar of Companies shall notify the Regulator and a person whom he refuses to appoint as liquidator by direct notice, stating the reason for his refusal.

(3) Any person aggrieved by the appointment of a liquidator or the refusal of the Master or Registrar of Companies to appoint a person elected as liquidator, may within ten days from the date of such appointment or refusal

apply to Court for a review of the decision of the Master or Registrar of Companies.

(4) Whenever the Master or Registrar of Companies refuses to appoint as liquidator a person elected as such, or the Court has set aside an appointment of a liquidator by the Master or Registrar of Companies, the Master or Registrar of Companies shall direct the liquidator appointed in terms of section 63 to convene a meeting of creditors of the insolvent estate for the purpose of electing another person as a liquidator in the place of the person or liquidator.

(5) A notice of the meeting referred to in subsection (4) shall -

- (a) state that the purpose of the meeting is to elect a liquidator;
- (b) set out the reason why the Master or Registrar of Companies has refused to appoint the person elected as liquidator, or state that the appointment of the liquidator has been set aside by the Court, as the case may be;
- (c) be published in the notice on the newspaper for three consecutive weeks and on a radio station with national coverage for three consecutive days;
- (d) be sent by liquidator's notice to every creditor who has proved a claim against the estate.

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

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

(8) All the provisions of this Act relating to a liquidator apply to a liquidator appointed by the Master or Registrar of Companies under this section.

Appointment of liquidator and security

63. (1) When a final liquidation order has been made and a person elected as a liquidator has given security to the satisfaction of the Master or Registrar of Companies for the proper performance of his duties and lodged an affidavit stating that he is not disqualified in terms of section 61, the Master or Registrar of Companies shall, subject to section 62, appoint him as liquidator and issue him with a letter of appointment.

(2) After the receipt of his letter of appointment, the liquidator shall make his appointment and address known to the public by notice published in the Gazette and a newspaper with wide circulation for two consecutive weeks or any other media.

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

(4) The acceptable forms for security shall be as prescribed.

Joint liquidators to act jointly

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

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

Vacation of office by liquidator

65. (1) A liquidator shall vacate his office if -
- (a) his estate is liquidated;
 - (b) he is disqualified to be appointed as liquidator under section 61;
 - (c) he is diagnosed, received, or detained in an institution in terms of the Mental Health Act, 1964⁷ or if he is declared by a competent Court to be incapable of managing his own affairs;
 - (d) he is convicted in Lesotho or elsewhere of an offence of which dishonesty is an element and is sentenced to imprisonment without the option of a fine or to a fine of at least One Thousand Maloti;
 - (e) his registration as a registered insolvency practitioner is cancelled under section 48;
 - (f) his practicing license is withdrawn under section 55; or
 - (g) if the liquidator dies.

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

(3) If a final liquidator vacates his office in terms of subsections (1) and (2), the Master or Registrar of Companies on will convene a meeting to elect a liquidator by creditors and if no liquidator is appointed, the Master or Registrar of Companies on will appoint a liquidator.

Removal of liquidator

66. (1) The Master or Registrar of Companies on shall remove a liquidator from office if -

- (a) he was not qualified for appointment as liquidator or if his appointment was unlawful in accordance with the standards set out by the Regulator;
- (b) the majority in value and the majority in number of the creditors who have proved claims against the estate have -
 - (i) requested the Master or Registrar of Companies on in writing to do so; or
 - (ii) at a meeting of creditors of the estate, after notice of the intended resolution was given, resolved that the liquidator shall be removed from office;
- (c) he resigns from the office of liquidator;
- (d) he is temporarily absent from Lesotho for a period longer than 60 days without the permission of the Master or Registrar of Companies, or contravenes any conditions set by the Master or Registrar of Companies when he gave permission;
- (e) after his appointment he becomes disqualified from being a liquidator in terms of sections 61 and 68; or
- (f) he has failed to perform satisfactorily any duty imposed upon him by this Act or has failed to comply with a lawful demand of the Master or Registrar of Companies.

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

(3) If a final liquidator vacates his office in terms of this section, the Master or Registrar of Companies will convene a meeting to elect a liquidator by creditors and if no liquidator is appointed, the Master or Registrar of Com-

panies will appoint a liquidator.

Suspension of liquidator

67. (1) The Master or Registrar of Companies may suspend a liquidator from office and appoint an interim liquidator, if necessary, for the preservation of the estate pending the outcome of an investigation if -

- (a) the liquidator has been charged with committing an offence;
- (b) the Master or Registrar of Companies has received a complaint on affidavit; or
- (c) evidence given at an examination in terms of section 85, 86 or 88, or written answers in terms of section 87 justifies a suspension.

(2) The Master or Registrar of Companies shall on the basis of a complaint, evidence or written answers under subsection (1) without delay carry out an investigation.

(3) The Master or Registrar of Companies shall set aside the suspension if the result of the investigation or prosecution exonerates the liquidator and may remove the liquidator from office if the result of the investigation or prosecution justifies the removal.

(4) No person may be appointed as interim liquidator unless he has given security to the satisfaction of the Master or Registrar of Companies for the proper exercise of his powers and performance of his duties as interim liquidator and has lodged an affidavit stating that he is not disqualified in terms of section 61.

(5) The interim liquidator shall, after his appointment, proceed to recover and take into possession all the assets of the insolvent estate and all books of account, invoices, vouchers, business correspondence and any other records relating to the affairs of the debtor and may apply for a search warrant in terms of section 72 in such a manner as may be prescribed.

(6) The interim liquidator shall give effect to any directions by the

Master or Registrar of Companies and may without the authorisation of the Master or Registrar of Companies under section 77 perform any act which is necessary for the preservation of the estate until the suspension of the liquidator is set aside or another liquidator is appointed.

(7) The interim liquidator is entitled to remuneration taxed by the Master or Registrar of Companies in accordance with Tariff B in Schedule 2.

(8) The interim liquidator vacates his office when the suspension of the liquidator is set aside or a new liquidator is appointed in the place of the removed liquidator and shall deliver the assets, property, books, documents or records to, and give account to, the liquidator or the new liquidator.

Removal of liquidator by Court

68. If it is in the interests of the proper administration of an insolvent estate, the Court may, on the application of the Regulator declare -

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

Election of new liquidator

69. (1) When it is necessary to fill a vacancy in the office of liquidator of an insolvent estate or when a majority of proved creditors, in value, of an insolvent estate, request the appointment of a further liquidator, the Master or Registrar of Companies shall direct any remaining liquidator, or failing such liquidator, the liquidator appointed in terms of section 59, to convene a meeting for the election of one or more liquidators.

(2) Section 78(2) applies with the necessary modifications to any meeting under subsection (1).

PART10 - POWERS AND DUTIES OF LIQUIDATOR

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

70. (1) A liquidator shall, in the case of a liquidation by the Court and immediately after his appointment, serve a copy of the first liquidation order on -

- (a) a debtor and in the case of a debtor who is a natural person, if the name of the spouse or associate of the insolvent, appears on the order, he shall also serve a copy of the order on the spouse;
- (b) any trade union referred to in subsection (3)(c); and
- (c) the debtor's employees, by affixing a copy of the order to any notice board to which the employees have access inside the premises of the debtor, or if there is no access to the premises by the employees, by affixing a copy of the application to the front gate of the premises, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application.

(2) The copy of the liquidation order shall be served on the debtor in duplicate.

(3) When serving the first liquidation order, the liquidator shall, in so far as it is possible, obtain the following particulars in respect of the debtor and his spouse, if applicable, namely -

- (a) the full name, date of birth and identity number or registration number;
- (b) where applicable, the marital status of the debtor and, if he is married in community of property, the full name, date of birth and identity number of his spouse.
- (c) where the employees are represented by a registered

trade union and where there is a notice board inside the premises of the employer for notice to the employees.

(4) If the name, date of birth, identity number or registration number of the debtor or his spouse which appears on the first liquidation order is incorrect or if any of these particulars are not stated the liquidator shall note the correct particulars on the copy of the first liquidation order and he shall send a copy of the liquidation order by notice to the National Identity Card Registry in together with a copy of his letter of appointment and he shall also send a copy of the order on which the particulars have been noted by notice, to the applicant, the Master or Registrar of Companies or and the Regulator.

(5) Service of a copy of a liquidation order may be effected by the clerk of the liquidator or by the sheriff, and if requested by the liquidator the provisions of subsections (2) and (3) relating to the particulars which shall be endorsed on the copy of the order shall apply to the Clerk or Sheriff.

(6) Service of a copy of a liquidation order shall be carried out in accordance with the rules of the Court, but if the debtor is absent from his usual place of residence or business or registered office in Lesotho during a period of twenty-one days, the liquidator may use other mode of service.

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

(8) The liquidator shall -

- (a) take into his personal custody all books of account, invoices, vouchers, business correspondence and any other records relating to the affairs of the debtor and make a specified list of all such books, documents and other records;
- (b) if the debtor or a director, member, shareholder officer or trustee of the debtor is present, inquire from him whether the list referred to in paragraph (a) is a complete list of all books and records relating to his affairs and

note the reply on the list;

- (c) note on the list any explanation which the debtor or management of a debtor gives with regard to the books, documents and other records relating to his affairs or in respect of any books, documents or other records which he is unable to supply;
- (d) take into his personal custody and compile a specified list of all cash, share certificates, bonds, bills of exchange, promissory notes and other securities;
- (e) without delay deposit in a banking account all cash which he has taken into his custody;
- (f) in so far as is possible leave all other movable property which he has attached, other than animals, in a properly locked storage place or appoint a suitable person to keep the said property in his custody, and shall hand to the person a copy of an inventory of the property left in his custody and he shall make that person aware of the offence in respect of the unauthorised disposal of property under attachment.

(9) The liquidator may perform the attachment himself or he may cause the attachment to be performed in whole or in part by the Sheriff who is entitled to fees taxed by the Master or Registrar of Companies under Tariff A in Schedule 2 and the rules for the construction of that tariff.

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

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

(12) The liquidator shall send a copy of the inventory to the Master or Registrar of Companies by notice.

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

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

- (a) the Court may at any time after making a liquidation order, or after a special resolution for the voluntary liquidation of a debtor under section 15 or 16 has been adopted, order any director, member, trustee, banker, agent or officer of the debtor in question to pay, deliver, convey, surrender, or transfer to the liquidator of the debtor immediately, or within such time as the Court may direct, any money, property or books and papers in his hands to which the debtor is on the face of it entitled;
- (b) the Court may order any director, member, trustee, purchaser or other person by whom money is due to any such debtor which is being liquidated, to pay the same into a banking institution registered under the Financial Institutions Act, 2012⁸ to be named by the Court for the account of the liquidator instead of to the liquidator, and such order may be enforced in the same manner as if it had ordered payment to the liquidator.

(15) All moneys paid into a banking institution under subsection 14 (b) are, in the event of liquidation by the Court, subject in all respects to the orders of the Court.

Debtor to hand over books to liquidator and submit statement of affairs to Master or Registrar of Companies and liquidator

71. (1) When a liquidation order is served upon a debtor under section 70, the debtor shall -

- (a) immediately hand over to the liquidator and obtain from

him a specified receipt in respect all books of account, invoices, vouchers, business correspondence and any other records relating to his;

- (b) in the case of a debtor who is a natural person or partnership within seven days after the service of the order send to the Master and the liquidator by notice one copy each of a statement of affairs as on the date of liquidation, compiled in a form set out in Form A of Schedule 1 and which shall contain the particulars provided for in that Form, which particulars shall be confirmed by affidavit;
- (c) in the case of a debtor who is not a natural person or partnership, the management of a debtor, and if required by the Registrar of Companies, persons who participated in its formation at any time within three years before the first liquidation order or adoption of the special resolution shall, within seven days after the service of the order or adoption of the resolution, send to the Registrar of Companies by notice, two copies of a statement of affairs as from the date of liquidation, which -
 - (i) shall be as set out in Form A of Schedule 1; and
 - (ii) contain the particulars provided for in that Form, and the particulars shall be confirmed by affidavit,

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

(2) All stock in trade enumerated in a statement of affairs under subsection (1) shall be valued at its cost price or at the market value of the stock at the time of the making of the affidavit, whichever value is the smallest.

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

Liquidator may obtain search warrant

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

(2) If it appears to a magistrate to whom such application is made on the ground of an affidavit, or evidence given at a questioning or answers to questions contemplated in section 87 that there is substantial reason to suspect that a book, document or other record relating to the affairs of the debtor or property belonging to the insolvent estate is being concealed in possession of a person or at a place or on a vehicle or vessel or in a container of whatever nature or is otherwise unlawfully withheld from the liquidator, within the area of jurisdiction of the said magistrate, may issue a warrant authorising the liquidator or a police officer to search a person, or place or vehicle, vessel or container mentioned in the warrant and to take possession of such book, document, record or property.

(3) The provisions of the Criminal Procedure and Evidence Act, 1981⁹ are applicable with the necessary modifications with regard to the execution of a warrant referred to in subsection (2).

Registration of name and address with liquidator

73. (1) A person who claims to be a creditor of an estate under liquidation may register his name and address in Lesotho with the liquidator of the estate and may indicate the property which he claims to hold as security for a claim.

(2) The liquidator shall send, to an address of a person registered under subsection (1), -

(a) a notice of every meeting of creditors of the estate;

-
- (b) a copy of every report contemplated in section 74 (1);
 - (c) copy of every notice in terms of section 117;
 - (d) notice of the sale of property to a person who indicated that he holds the property as security under subsection (1); and
 - (e) copy of an account which has been advertised to lie open for inspection to a person registered under subsection (1) upon request and payment of the reasonable costs of making a copy of the account.

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

Liquidator's report

74. (1) The liquidator shall investigate the affairs of the debtor and the business transactions entered into by him before the liquidation of his estate and shall at the first meeting of creditors of the insolvent estate, or if that is not possible, at a special meeting of creditors submit a full written report on those affairs and transactions and on any matter of importance relating to the debtor or the insolvent estate and the report shall be submitted to the Master in the case of a natural person and Registrar of Companies in the case of any other entity which is not a natural person.

(2) The liquidator in a report referred to in subsection (1) shall in particular report on -

- (a) the assets and liabilities of the insolvent estate;
- (b) whether there is a risk of a contribution by creditors in terms of section 123, or indicate why he is unable to express an opinion on the matter;
- (c) the cause of the debtor's insolvency;
- (d) in the case of a debtor other than a company or a

co-operative, the bookkeeping relating to the debtor's affairs, the question whether proper bookkeeping in respect of his business transactions was carried out and if not, in what respect it is defective, insufficient or incorrect;

- (e) in the case of a debtor which is a company or a co-operative, whether or not the debtor has kept the accounting records required by the Companies Act, 2011 or a law relating to any other entity and, if not, in what respects the requirements of those sections have not been complied with;
- (f) whether the debtor appears to have contravened any provision of this Act or to have committed any other offence, in particular whether the debtor has -
 - (i) failed to send a statement of affairs and, in the case of a natural person, of his income and expenses as required by this Act;
 - (ii) contravened the Income Tax Act, 1993¹⁰; or
 - (iii) committed an offence under this Act;
- (g) where applicable, the monthly income and expenses of the insolvent, any allowance made by the liquidator to the insolvent by way of maintenance for himself and his family, and the assistance given to the liquidator during the period for which the allowance was paid;
- (h) any business carried on by or on behalf of the insolvent estate and the result thereof;
- (i) any legal proceedings instituted by or against the debtor which were suspended by the liquidation of the estate and any other legal proceedings which are pending or may be instituted against the insolvent estate;
- (j) any transaction entered into by the debtor before the

liquidation of his estate in respect of the acquisition of immovable property which was not transferred to him or any transaction entered into by the debtor as lessee;

- (k) the names of secured creditors with the amounts of the secured claims and steps taken or envisaged to investigate the validity of the security;
- (l) any other matter relating to the administration or the realisation of the assets of the insolvent estate requiring the direction of the creditors;
- (m) in the case of a debtor other than a natural person or partnership, whether or not any trustee, director, officer or member or former trustee, director, officer or member appears to be personally liable for damages or compensation to the debtor or for any debts or liabilities of the debtor as provided for in this or any other Act;
- (n) whether or not further enquiry is desirable in regard to any matter relating to the promotion, formation or failure of the debtor or the conduct of its business.

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

- (a) corporate rescue proceedings in terms of Part 22;
- (b) compromise in terms of sections 144 to 149 of the Companies Act, 2011;
- (c) post-liquidation composition.

(4) The liquidator shall supply the Commissioner of Police with an affidavit containing a report relating to any offence which the debtor committed and shall send a copy of the report by notice to the Master or Registrar of Companies and, on request of the Commissioner, supply further particulars.

Recovery of debts due to estate

75. (1) The liquidator shall, in the notice of his appointment call on all persons indebted to the estate of which he is liquidator to pay their debts within the specified period and at the place stated in the notice.

(2) If any person fails to pay debt due to the estate within the period specified in the notice the liquidator shall recover payment from the person, if necessary, by legal process.

Remuneration of the liquidator

76. (1) A liquidator is entitled to a reasonable remuneration for his services and for expenses incurred by him in the administration of an insolvent estate as may be set out by the Regulator.

(2) The remuneration and expenses referred to in subsection (1) shall be taxed by the Master or Registrar of Companies in accordance with Tariff B in Schedule 2.

(3) The liquidator may apply to the Master or Registrar of Companies for increase in remuneration after giving at least fourteen days notice to creditors who have proved their claims and who will be affected by the increase.

(4) The Master or Registrar of Companies may, with approval of the Regulator, may increase the remuneration of the liquidator if there is surplus, or disallow his remuneration either wholly or in part, by reason of any failure of or delay in the discharge of his duties or on account of any improper performance of his duties.

(5) The Regulator may, by notice published in the Gazette, amend a tariff in Schedule 2.

(6) A person who employs the liquidator or who is a fellow employee of or who is ordinarily in the employment of the liquidator is not entitled to any remuneration out of the insolvent estate for services rendered to the estate, and a liquidator or his partner is not entitled to remuneration out of the estate for services rendered to the estate.

(7) A liquidator is not entitled to receive any remuneration before

the liquidation account making provision for the remuneration has been approved in terms of section 119.

General duties and powers of liquidator

77. (1) The liquidator of an insolvent estate shall -

- (a) recover and take into his possession all the assets and property of the insolvent estate;
- (b) apply the assets and property, in satisfaction of the costs of the administration of the estate and the claims of creditors of the estate; and
- (c) if any cash balance remains, deal with it in accordance with section 122.

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

(3) The liquidator may, in particular -

- (a) execute in the name of and on behalf of the estate all deeds, receipts and other documents;
- (b) prove a claim in the estate of any debtor of the insolvent estate and receive payment or a dividend in respect thereof;
- (c) draw, accept, make or endorse any bill of exchange or promissory note in the name of or on behalf of the estate: Provided that any such act by which the estate is burdened with additional liabilities requires the authorisation of the Master or Registrar of Companies or the creditors of the estate;
- (d) carry on the business of the debtor or any part thereof but, until authorised otherwise by the Master or Registrar

of Companies or the creditors, only in so far as it is necessary to enable expenses of the estate to be paid or that necessary expenses be incurred in order to avoid loss to the estate;

- (e) obtain credit for the payment of necessary expenses which he is obliged to incur before funds for the payment thereof are available;
- (f) convene a meeting of creditors of the estate;
- (g) take any other necessary measures for the protection and the administration of the estate.

(4) The liquidator may, if authorised by the Master or Registrar of Companies or by resolution of a meeting of creditors of the estate -

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

creditor the secured creditor shall give his consent in writing, and the liquidator shall attempt to sell assets as a going concern if at all appropriate;

- (h) engage the services of a Legal Practitioner or any other professional person or employ any other person to render services on behalf of the insolvent estate;
- (i) dispose of a debt owing to the estate or accept payment of a reasonable part of a debt in full settlement of the debt or give a reasonable extension of time for payment of a debt or part of payment;
- (j) draw, accept, make or endorse any bill of exchange or promissory note by which the estate is burdened with liabilities;
- (k) in the case of a debtor who is a natural person make available to the debtor or his dependants a sum of money or assets for his maintenance or that of his dependants;
- (l) make available to a debtor who is a natural person assets of the insolvent estate in excess of the values referred to in subsection (7);
- (m) if the liquidator determines that preservation of the business as a going concern value by continued operation of the business will benefit creditors, obtain finance for the continuation of the business -
 - (i) payable as costs of liquidation; or
 - (ii) payable with security over the assets of the estate without priority ahead of any existing security interest over the same assets unless the liquidator obtains the agreement of the existing secured creditor.

(5) The Master or Registrar of Companies shall authorise the liquidator only if the authority is required so urgently that the liquidator cannot ob-

tain a resolution at a first meeting.

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

(7) A liquidator or a debtor who disagrees with the assets made available in terms of subsection (4)(1) by resolution of a meeting of creditors may refer the matter to the Master or Registrar of Companies for his decision.

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

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

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

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

(11) A notice referred to in subsection (10) shall be accompanied by

the written consent of the Master and shall identify sufficiently the person in respect of whom and the property or bond in respect of which the caveat is to be entered.

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

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

(14) No provision in any contract, including the Articles of Incorporation of a Company, which purports to regulate the manner in which property belonging to a person may be disposed of on or after his insolvency or which on his insolvency limits the power of a person to dispose of his rights to property as he wishes, binds the liquidator of an insolvent estate of the person.

PART 11 - MEETINGS OF CREDITORS AND EXAMINATION OF DEBTOR AND OTHER PERSONS

First meeting of creditors

78. (1) The liquidator shall convene a first meeting of creditors to be held within sixty days from the date of his appointment, and not less than fourteen days before the date fixed for the first meeting of creditors, by notice published in the Gazette and in a local newspapers with wide circulation for two consecutive weeks, or any other form of media.

(2) The notice shall state the time and place of the meeting and the matters to be dealt with.

(3) The meeting may deal with -

(a) proof of claims against the estate;

(b) election of a liquidator ;

(c) examination of a liquidator or any other person in terms

of the Act;

- (d) consideration of the report of the liquidator;
- (e) nomination and appointment of one or more co-liquidators;
- (f) consideration of a composition;
- (g) giving of directives to the liquidator with regard to any matter affecting the liquidation of the estate; or
- (h) the rights and obligations of the creditors.

(4) The liquidator shall, at least fourteen days before the date announced in the radio and newspaper, for the holding of the first meetings of creditors of the estate -

- (a) give notice to the employees -
 - (i) by affixing a copy of the notice to any notice board to which the employees have access inside the debtor's premises; or
 - (ii) if there is no access to the premises by the employees, by affixing a copy of the notice to the front gate of the premises, where applicable, failing which to the front door of the premises from which the debtor conducted any business immediately prior to the date of the application; and
- (b) send, to every creditor whose name and address are known to him which he can reasonably obtain and to the head office of every registered trade union which has notified the liquidator that it represents employees of the debtor a copy of -
 - (i) notice of the meeting;

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- (ii) report of the liquidator;
 - (iii) an inventory;
 - (iv) report of the valuation;
 - (v) written draft of any resolution or direction which in his or her opinion, should be taken or given at that meeting;
 - (vi) notice contemplated in subsection (2); or
 - (vii) any composition which is to be considered.

(5) The liquidator shall lodge documents mentioned in subsection (4) with the Master, Registrar of Companies or with a person who is to preside at the meeting on or before the second working day before the date determined for the meeting of creditors.

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

(7) If the liquidator is unable to convene a meeting in the manner contemplated in subsections (1) and (2), he shall obtain the Master's or Registrar of Companies permission to convene the meeting within the time determined by the Master or Registrar of Companies.

(8) If the liquidator fails to convene a meeting as contemplated in subsections (1), (2) or (4), the Master or Registrar of Companies may take any steps he considers necessary to force the liquidator to convene a meeting of creditors of the insolvent estate.

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

or Registrar of Companies considers appropriate.

Special meeting of creditors

79. (1) The liquidator of an insolvent estate shall convene a special meeting of creditors of the estate -

- (a) if requested to do so by not less than one quarter in value of creditors who have proved claims against the estate or at the request of the Master or Registrar of Companies or whenever a composition has to be considered; or
- (b) for the proof of claims, if requested to do so by a creditor who tenders payment of the costs occasioned by the meeting.

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

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

(3) The liquidator shall, within three days before the day advertised for the meeting, lodge with a person who is to preside at the meeting, copies of the documents sent to creditors in terms of subsection (4) together with a list of the names and addresses of the persons to whom they were sent.

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

(5) A notice referred to in subsection (4) shall be published in a newspaper with wide circulation in Lesotho in two consecutive weeks and for two consecutive days on a radio station with national coverage.

(6) The liquidator shall not less than fourteen days before the day of the meeting -

- (a) give notice to an employee -
 - (i) by affixing a copy of the notice inside the debtor's premises on a notice board to which the employee have access; or
 - (ii) if there is no access to the premises by the employee, by affixing a copy to the front gate of the premises, where applicable, failing which to the front door of the premises which the debtor conducted any business immediately prior to the date of the application;
- (b) send a liquidator's notice to every creditor whose name and address are known to him or which he can reasonably obtain and to the head office of every registered trade union which has notified the liquidator that it represents employees of the debtor -
 - (i) a copy of any composition which is to be considered;
 - (ii) a copy of any report contemplated in section 74 to be considered at the meeting;
 - (iii) a written draft of any resolution or direction which in his opinion should be taken or given at the meeting; and
 - (iv) a copy of the notice contemplated in subsection (3).

(7) The notice contemplated in subsection (3) shall be published not

less than four weeks before the date so fixed, and before publication, a copy shall be sent by liquidator's notice to each unproved creditor whose name and address are known to the liquidator or which he can reasonably obtain.

Committee of creditors

80. (1) If ten or more unsecured creditors who have proved claims against the estate are present at the first meeting or a subsequent meeting, they shall vote on the question whether or not a committee of creditors consisting of proved unsecured creditors, should be appointed.

(2) At the meeting -

- (a) three members of the committee shall be nominated by proved unsecured creditors;
- (b) two members of the committee shall be nominated by creditors who have a majority in number; and
- (c) one member of the committee shall be nominated by creditors who have a majority in value.

(3) The nominated creditors shall elect a chairperson who shall convene meetings of the committee at a place most convenient for the members after giving a notice of ten days to the members.

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

(5) The quorum for a meeting is three persons.

(6) The members are entitled to costs to attend a meeting regarded as reasonable by the liquidator and payable by the liquidator as costs of liquidation.

(7) The members are not entitled to remuneration or fees for work done or attendance of meetings unless they are employed and paid by the liquidator as costs of the liquidation.

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- (8) The functions of the committee are to -
- (a) hold consultations with the liquidator on non-routine matters;
 - (b) make presentations on key decisions and proceedings of the meeting;
 - (c) make available information to creditors and the liquidator.

(9) The committee members shall treat information obtained in the course of their duties as members of the committee as confidential.

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

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

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

General provisions relating to meeting of creditors

81. (1) A meeting shall, subject to subsection (8), be convened by the liquidator -

- (a) in the district where the debtor had his main place of business at the time of liquidation;
- (b) in the district where the debtor had his ordinary residence or registered office at the date of liquidation if the debtor did not carry on a business or if it is unclear where the debtor's main business was situated; or

- (c) in the district of the court which issued the liquidation order if the debtor did not have his ordinary residence or registered office in Lesotho or it is unclear where the ordinary residence or registered office of the debtor was.
- (2) The Master or Registrar of Companies shall, preside at a first meeting of creditors.
- (3) A liquidator shall preside at a special meeting but no examination may take place at that meeting and if the examination is held, the meeting shall be continued before the Master or Registrar of Companies as contemplated in subsection (1).
- (4) In the circumstance contemplated in subsection (3), the liquidator shall announce at the meeting when and where the meeting will be continued.
- (5) The presiding officer at a meeting of creditors shall keep a record of the proceedings which he shall certify at the conclusion of the meeting and if, he is not the Master or Registrar of Companies, he shall send the record to the Master or Registrar of Companies.
- (6) A meeting of creditors may, if necessary, be adjourned from time to time.
- (7) A meeting may, after an adjournment be presided over by a different presiding officer.
- (8) A meeting may, with the consent of the Master or Registrar of Companies -
 - (a) be convened in an area other than the district contemplated in subsection (1); and
 - (b) after an adjournment, take place at a different place.
- (9) The place where a meeting of creditors is held shall, subject to section 85(4), be accessible to the public.
- (10) The publication of a statement made by a person or evidence

given at a meeting of creditors is privileged to the same extent as the publication of evidence given in a court of law.

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

Voting at meeting of creditors

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

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

(3) A creditor may not vote -

- (a) in respect of a claim which is ceded to him after the commencement of the proceedings for liquidation of the debtor's estate or after the adoption of a liquidation resolution in terms of subsection (8); or
- (b) on the question of steps that need to be taken to consent to his claim or preference.

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

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

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

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

(8) On a matter other than those mentioned in subsection (7) -

(a) a secured creditor may vote only if he has placed monetary value on his security when proving his claim or the liquidator has obtained a valuation of the security or the security has been realised;

(b) if security of a secured creditor has been realised, the creditor may vote on the amount by which his claim exceeds the proceeds of the realisation of the security; or

(c) if the security has not been realised, the secured creditor may vote on the amount by which his claim exceeds -

(i) the value placed by him on the security; or

(ii) the valuation of the security obtained by the liquidator whichever is greater.

(9) A creditor may vote personally or through an agent appointed by him by a special power of attorney.

(10) No person may vote as an agent of a creditor unless he submits proof of his mandate.

(11) A resolution taken at a meeting of creditors and the result of voting on any matter shall be recorded in the minutes of the meeting and in so far as a resolution contains a directive to a liquidator, it is binding on the liquidator.

(12) A directive of creditors that infringes the rights of any creditor may be set aside by the court on application by the creditor or by the liquidator with the consent of the Master or Registrar of Companies within ninety days or such further period as the court may allow for good cause shown.

(13) No resolution of creditors that a specific attorney, auctioneer or any other person be employed in connection with the administration of an in-

solvent estate is binding on the liquidator but creditors may, by resolution recommend the employment of any such person and if the liquidator does not accept the recommendation the Master's or Registrar of Companies decision in respect of such employment is final.

Debtor and other persons to attend meetings of creditors

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

Summons to attend meeting of creditors and notice to produce documents

84. (1) If the officer who presides or is to preside at a meeting of creditors, the Master or the Registrar of Companies, has reasonable ground for believing that a person -

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

he may summon the said person to appear at a meeting of creditors of the insolvent estate at a time stated in the summons, in order to be questioned under section 85 and, where applicable, to produce the books, documents, or records specified in the summons.

(2) A summons referred to in subsection (1) shall be in the form set out in Form F2 of Schedule 1.

Examination of debtor and other persons

85. (1) The presiding officer at a meeting of creditors of an insolvent estate may call upon -

- (a) a debtor or any person summoned for questioning or the production of any book, document or record under section 84; or
- (b) any other person who is present and who possesses relevant information, to appear before the presiding office to -
 - (i) give evidence and to be questioned on all matters relating to the debtor or his business or affairs, whether before or after the liquidation of the estate, and concerning the property which at any time belonged to the insolvent estate; or
 - (ii) to produce a book, document or record and the presiding officer shall administer the oath to the person or take from him an affirmation to speak the truth.

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

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

(4) The place where proceedings under this section take place shall

be accessible to the public, but if it is necessary -

- (a) for the effective questioning of a person;
- (b) for the maintenance of good order; or
- (c) the protection of the public interest,

the presiding officer may order that -

- (i) the proceedings or any part of the proceedings take place behind closed doors;
- (ii) any particular person or persons may not be present during particular stage of the proceedings; or
- (iii) the evidence given at proceedings or any part of the proceedings may not be published.

(5) If a banker is summoned in terms of section 84 or ordered in terms of section 87 to produce documents, books or statements or give information, the banker is, notwithstanding the law relating to privilege, obliged to produce the documents, books or statements or give such information.

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

(7) The evidence given by a person under this section is not admissible against him in criminal or disciplinary proceedings, except in criminal proceedings where the person is charged in connection with evidence given during the examination with perjury, or the giving of false evidence under oath or affirmation, or a contravention of section 89(3) for refusal or failure to answer lawful questions put to him fully and satisfactorily.

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

(9) The presiding officer at proceedings under this section shall -

- (a) disallow all questions that are irrelevant and may disallow questions that would prolong the proceedings unnecessarily; and
- (b) record the proceedings or cause them to be recorded.

(10) A person who in answer to a summons issued under section 84 attends a meeting of creditors, or a person called upon under this section to testify at the meeting or to produce books, documents, or records, including the debtor, is entitled to the witness fees to which he would have been entitled if he were a witness in civil proceedings before a Court of law.

(11) Subject to subsection (7), any evidence given under this section is admissible in any proceedings instituted against the person who gave such evidence and any record of an examination introduced in such proceedings forms part of the record of the proceedings.

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

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

Examination by commissioner

86. (1) The liquidator or any creditor of an insolvent estate may, at any time after the liquidation of the estate of debtor, apply to the Master or Registrar of Companies for a directive -

- (a) that a person known or suspected to have in his possession any property belonging to the insolvent

estate, or to be indebted to the insolvent estate, or to be able to give material information regarding the affairs of the debtor or of his property, be summoned to appear before a commissioner for examination; and

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

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

(3) If the Master or the Registrar of Companies grants an application referred to in subsection (1) the Master or the Registrar of Companies -

- (a) shall appoint any other person considered suitable, as commissioner to carry out the examination in terms of this section; and
- (b) may summon a person referred to in subsection (1)(a) to appear before the said commissioner and to produce any books, documents or records in his custody or under his control relating to the debtor, on a date and at a place stated in the summons in order to be questioned with regard to the affairs of the debtor.

(4) A summon referred to in subsection (3) shall be in the form of set out in Form F4 of Schedule 1.

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

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

(7) If a commissioner has been appointed by the Master, the Commissioner shall, in such manner as the Master or Registrar of Companies may direct, report to the Master or the Registrar of Companies.

(8) Section 85(2), (3), (5), (6), (7), (8) and (9) apply with the necessary changes in regard to the giving of evidence and the production of documents in terms of this section.

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

(10) A creditor at whose request an examination is carried out in terms of this section is liable for all costs and expenses incurred in connection with the examination and the Master or the Registrar of Companies may direct that the whole or any part of such costs or expenses be regarded as costs of liquidation.

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

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

87. (1) The liquidator of an insolvent estate may obtain information concerning the affairs of the debtor by means of written questions and answers instead of oral evidence given at a meeting of creditors of the estate contemplated in section 84, or an examination in terms of section 85 or section 86, and the liquidator may send such written questions, by notice to the debtor, or the persons responsible for the management of such debtor, or a creditor or to any other person, to be answered by him in such a manner as may be prescribed.

(2) The liquidator of an insolvent estate may, by notice, order any person with whom the debtor or his associate had an account or transaction, to furnish the liquidator with a statement reflecting the state of the account or the debts, credits and balance due in respect of the transactions, within seven days or such longer period as the liquidator may allow.

(3) The liquidator may, by notice, order a person whom he has reason to believe to be in possession or control of -

- (a) a book, document, record or material information relating to the affairs of the debtor or his associate; or

- (b) property belonging or which belonged to the debtor or his associate,

to make the book, document, record or material information or property specified in the notice, available to the liquidator within seven days of the date of the said notice or within such longer time as the liquidator may allow and such person shall allow the liquidator or someone on behalf of the liquidator, to make copies of or extracts from any such book, document, record or material information.

Examination by or on behalf of the Master or Registrar of Companies

88. (1) If at any time after the liquidation of an estate of debtor and before his rehabilitation or dissolution, the Master or Registrar of Companies is of the opinion that the debtor or the liquidator of the insolvent estate or any other person, is able to give information or is in possession of books, documents or records which the Master or Registrar of Companies considers desirable to obtain, concerning -

- (a) the debtor or his insolvent estate or the administration of the estate; or
- (b) any demand made against the estate,

the Master or Registrar of Companies may by notice delivered to the debtor or the liquidator or such other person, summon him to appear before the Master or Registrar of Companies at a place and on a date and time stated in the notice, to furnish all the information within his knowledge concerning the debtor or his estate or the administration of the estate and produce the books, documents or records specified in the notice.

(2) The notice referred to in subsection (1) shall be in the form set out in Form F5 of Schedule 1.

(3) The Master or Registrar of Companies may at any time appoint a person to investigate the books, documents, records and vouchers of the liquidator and direct the liquidator to deliver to the person so appointed or to the Master or Registrar of Companies, any book, document, or record relating to or

property belonging to the insolvent estate of which he is the liquidator.

(4) The reasonable costs incurred in performing an investigation under subsection (3) shall be regarded as part of the costs of liquidation, but if the liquidator is removed from office consequent upon such an investigation, the costs shall be recovered from the liquidator's security or out of his own funds, unless the Master or Registrar of Companies directs otherwise.

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

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

(7) Section 85(3),(5),(6), (7), (8) and (9) shall apply with the necessary modifications to examination under this section, but the liquidator of the insolvent estate is not entitled to witness fees.

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

Enforcing summons and giving of evidence

89. (1) If a -

- (a) person summoned under section 84, 86 or 88 fails to appear at a meeting of creditors or examination in answer to a summons; or

-
- (b) debtor or management of such debtor fails to -
- (i) attend a hearing in terms of section 19 or a meeting of creditors in terms of section 83; or
 - (ii) remain in attendance at that hearing or meeting,

a magistrate may, on the written application of the Master or Registrar of Companies, issue a warrant, authorising any member of the police force to apprehend the person summoned or the debtor, and to bring him before the magistrate.

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

- (3) If a person -
- (a) summoned, appears in answer to the summons but fails to produce any book, document or record which he was summoned to produce; or
 - (b) who may be examined at a meeting of creditors under section 84, or during an examination under section 86, 88 or a hearing under section 19 -
 - (i) refuses to be administered the oath or make an affirmation to speak the truth at a meeting of creditors, examination or hearing at which he is called upon to give evidence; or
 - (ii) refuses to answer any question lawfully put to him or does not answer the question fully and satisfactorily,

the magistrate may on application by the Master or Register or Companies and subject to subsection (5), issue a warrant committing the person to prison, where he shall be detained until he has undertaken to do what is required of him.

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

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

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

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

Suspected commission of offence shall be reported to Commissioner of Police

90. (1) If it appears from an answer or statement given by a person who is examined under section 84, 86, 87 or 88 that there are reasonable grounds for believing that any person has committed an offence, the presiding officer at the proceedings, or the liquidator in the case of proceedings under section 87, shall submit the answer or statement or a certified copy of the proceedings with supporting documents, if any, and report such suspicion to the Commissioner of Police and set out the grounds on which the suspicion rests and if the presiding officer is not the Master, a copy of the report, answer or statement and supporting documents, if any, and the report to the Commissioner of Police, shall be sent to

the Master or Registrar of Companies by notice.

(2) The Commissioner of Police shall, with due consideration of the provisions of section 84(6), investigate whether criminal proceedings should be instituted in the matter.

Proof of record of proceedings of meetings of creditors

91. (1) A record purporting to -

- (a) be a record of the proceedings at a meeting of the creditors of an insolvent estate or an examination held under this Act; and
- (b) have been signed by a person describing himself as the Master or Registrar of Companies or any other presiding officer or the commissioner,

shall, upon its mere production in judicial proceedings, unless the contrary is proved, be proof of the recorded proceedings.

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

PART 12 - CLAIMS

Claim by partnership creditor against estate of insolvent partner

92. When the estate of a partner is liquidated without the partnership being placed in liquidation -

- (a) the partnership is dissolved; and
- (b) until the debts of the partnership have been settled in terms of the dissolution of the partnership, any claim by a creditor of the partnership against that estate of the partner shall be paid out of the partnership estate after all debts of the partnership are paid in full.

Claims against partnerships

93. When the estate of a partnership and the estates of the partners are under liquidation -

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

Proof of claims

94. (1) A person who has a liquidated claim against an insolvent estate, the cause of which arose on or before the date of liquidation of the estate, or the authorised agent of that person, may at any time before the final distribution of the estate, but subject to section 96, prove the claim against the estate.

(2) A claim shall be proved by an affidavit in a form set out in Form C or D of Schedule 1 and, subject to subsections (11) and (12), no oral evidence may be received in support of any claim.

(3) The affidavit contemplated in subsection (2) and all documents submitted in support of the claim or a copy of the affidavit, shall be lodged with the person who is to preside at the meeting of creditors twenty four hours before the time of day advertised for the commencement of the meeting on or before the second working day before the date of the meeting, failing which the claim may not be admitted at that meeting unless the presiding officer is of the opinion that the creditor had a reasonable excuse for his failure to lodge the claim timeously.

(4) A claim against an insolvent estate shall be admitted at a meeting of creditors of the estate if it has been proved to the satisfaction of the presiding

officer on the face of the claim form and documents submitted in connection with the claim by the creditor or another person, if any, and on the evidence, if any, by the creditor.

(5) If the claim has not been proved in the manner set out in subsection (2), the presiding officer shall reject it.

(6) The rejection of a claim does not, subject to section 18, debar the claimant from proving the claim at a later meeting of creditors or by an action at law.

(7) If a person who wishes to prove a claim is called upon to be questioned in terms of subsection (16) and fails without reasonable excuse to appear or refuses to take the oath or make a solemn declaration or to submit to questioning or to answer fully and satisfactorily any lawful question put to him, his claim may be rejected.

(8) The liquidator shall, within fourteen days after his report has been accepted by creditors, Master or Registrar or Companies fix a date after which creditors who have not proved their claims against the estate shall be excluded from participation in any distribution in terms of an account lodged with the Master or Registrar of Companies.

(9) The date fixed shall be published in three consecutive editions of a newspaper widely circulating in Lesotho and announced in radio stations with wide coverage.

(10) A creditor who holds security for his claims shall place a monetary value on his security, or have his voting rights limited under section 82 (8).

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

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

(13) The documents referred to in subsection (3) may be perused free of charge by the liquidator, the debtor and any creditor of the insolvent estate or

the representative of any of them during office hours at the office of the person who is to preside at the meeting and the liquidator, debtor, or creditor may submit motivated objections to the proof of a claim at the meeting where the claim is lodged for proof or to the presiding officer before the meeting.

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

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

(16) The presiding officer at the meeting of creditors may, on his own motion or at the request of the liquidator or his representative or any creditor who has proved a claim at a meeting of creditors or the representative of such creditor, call upon any person present at the meeting who wishes to prove a claim or who has proved a claim against the estate, to submit a proved claim to examination by the presiding officer, the liquidator or his representative or any such creditor or his representative in regard to such claim, and for purposes of such examination the presiding officer shall administer to the person the oath or take from him a solemn declaration to speak the truth, but a creditor who has proved a claim at a meeting may not question a creditor who wishes to prove a claim at the same meeting before the claim of such creditor has been admitted or rejected.

(17) A person who wishes to prove or who has at any time proved a claim against an insolvent estate and who is absent from a meeting of creditors may be summoned, in writing, by the presiding officer in a summons in the form set out in Form F2 of Schedule 1 to appear before him at a place and time stated in the summons for the purpose of being questioned by the presiding officer, the liquidator or a creditor who has proved a claim against the estate, or the representative of the liquidator or such creditor in regard to such claim, and subsection (15) with regard to the administering of the oath or the taking of a solemn declaration applies with the necessary changes with regard to the giving of evidence by the person.

Liquidator shall examine claims

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

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

(3) If the liquidator disputes a claim after it has been proved at a meeting of creditors, he may, with the authority of the Master or Registrar of Companies or creditors in terms of section 77(4) and after having afforded the claimant the opportunity of substantiating his claim or any part of the claim, reduce or disallow the claim, and he shall, within forty-eight hours, notify the claimant and the Master by notice of such reduction or disallowance of the claim.

(4) The reduction or disallowance of a claim in terms of subsection (3) does not, subject to section 18(5), debar a claimant from establishing his claim by means of an action at law.

Late proof of claims

96. (1) Subject to subsection (2), a creditor of an insolvent estate who has not proved his claim against the estate before a date fixed in terms of section 94(9) is not entitled to share in the distribution of the assets reflected in an account lodged with the Master or Registrar of Companies within two weeks after the fixed date.

(2) If the Master or Registrar of Companies is satisfied that a creditor referred to in subsection (1) has a reasonable excuse for the delay in proving his claim, the Master or Registrar of Companies may permit him to prove the claim before the confirmation of the account contemplated in subsection (1) and the Master or Registrar of Companies may order the liquidator to draw up a new account in which provision is made for the claim so proved, if the creditor ten-

ders all costs in connection with the drawing-up of the new account, including wasted advertisement costs, if any.

(3) A creditor of an insolvent estate who has proved a claim against the estate and who was not in terms of subsection (1) permitted to share in the assets reflected in an account is, in so far as available funds allow, entitled to be awarded out of any subsequent distribution account referred to in section 116, the amount to which he would have been entitled under the earlier distribution account if he had proved his claim in time.

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

Conditional claims

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

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

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

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

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

(6) If the condition is fulfilled after provision has already been made in a distribution account for the claim under subsection (4), the balance of the

claim may be proved in terms of the provisions relating to the late proof of claims.

(7) A claim for severance or retrenchment pay which is subject to a condition that the contract of service has been terminated, may be proved for the full amount of the claim, but until the contract of service has been terminated -

- (a) no award is paid on the claim; and
- (b) the creditor has no vote on the claim.

Arrear interest and debt due after liquidation

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

(2) No claim may be proved for interest which accrues after the date of liquidation, but such interest is payable in the circumstances set out in sections 103(2) and 108(11).

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

Withdrawal of claim

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

(2) A liquidator who receives a notice of withdrawal of a claim shall give notice of the withdrawal to the Master or Registrar of Companies.

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

(4) A creditor who has withdrawn his claim may by notice to the liquidator cancel the withdrawal, but if he does so he is not entitled to payment

of his claim out of the estate until all other creditors who have proved claims have been paid in full.

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

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

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

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

PART 13 - RIGHTS AND DUTIES OF CREDITORS

Realisation of security

101. (1) A secured creditor of an insolvent estate shall -

- (a) notify the liquidator by notice of the nature and extent of his security and the amount of his claim as soon as he becomes aware of the liquidation of the estate; and
- (b) on or before the first meeting of creditors, place the liquidator in possession of the security.

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

(3) A creditor who has placed the liquidator in possession of property held by him as security does not lose the security to which he is entitled in

respect of the property.

(4) Subject to subsection (5) and section 77(4), the liquidator shall realise the property made available to him pursuant to subsection (3) for the benefit of a creditor whose claim is secured by the property.

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

(6) After proof of his claim and the realisation of the security, a secured creditor is entitled to payment of his secured claim.

Attachment of property upon failure to deliver to liquidator

102. (1) If a creditor has failed to place the liquidator in possession of the property constituting his security as contemplated in section 101(4), the liquidator shall send to him a demand by direct notice to place the liquidator in possession within seven days after the demand.

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

(3) The creditor in question is liable for all costs resulting from his failure to place the liquidator in possession of the property, and if such costs cannot be recovered from the creditor they form part of the costs of realising the security in terms of section 103(4).

Application of proceeds of security

103. (1) A secured creditor is entitled to payment from the proceeds of his security only if he has proved a claim against the insolvent estate.

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

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

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

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

- (a) fees of any person engaged in realising the security; and
- (b) if the property is immovable, any assessment rates as defined in subsection (7) which are or will become due in respect of any period not exceeding two years immediately preceding the date of the liquidation and in respect of the period from that date to the date of the transfer of that property by the liquidator of that estate, including any interest or penalty which may be due on the assessment rates in respect of any such period.

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

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

(8) After payment of the costs referred to in subsection (4), the balance of the proceeds of the security shall be paid in the order of preference of

secured creditors, first payment of liquidation costs attributed to the secured creditor, second, the capital sums of claims secured by that security, and thereafter, simple interest on the capital sums at a prescribed rate, or a higher rate of interest by virtue of a lawful stipulation in writing, from date of liquidation to the date of payment.

(9) Any balance of the proceeds of the security remaining under subsection (8) shall be added to the free residue of the insolvent estate.

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

(11) A liquidator shall, where a creditor whose claim is secured by a special mortgage has not proved his claim, deposit proceeds of the sale of the security of the mortgagee in the Liquidation Fund with the Master or Registrar of Companies, for payment not exceeding the capital mortgage and arrears of interest for which the mortgagee would have been a secured creditor after deduction of an amount equal to the costs which the secured creditor would have had to pay if he had proved a claim and has stated in the affidavit lodged in support of his claim, that he relied for the satisfaction of his claim, solely on the proceeds of the sale of the said property.

(12) The amount or the part of the amount deposited under subsection (10) to which the former mortgagee is entitled, shall be paid to him if, within a period of one year after confirmation of the relevant distribution account, he applies to the Master or Registrar of Companies and the Master or Registrar of Companies is satisfied that he is entitled to the amount or part of the amount.

(13) Any amount deposited with the Master or Registrar of Companies under subsection (11) which has not been paid out to the former mortgagee in terms of that subsection shall, after the expiry of the year mentioned in the subsection, be distributed among the creditors who have proved claims against

the insolvent estate prior to the confirmation of the said distribution account, as if the amount had, at the time of that confirmation, been available for distribution among the creditors.

(14) A creditor who claims to be entitled to share in the distribution account shall apply, in writing, to the Master or Registrar of Companies for payment of his share, and the Master or Registrar of Companies may pay out to such creditor or may hand the money to the liquidator, if any, for distribution among the creditors entitled to the money, or, if there is no liquidator, the Master or Registrar of Companies may appoint a liquidator on such conditions as the Master or Registrar of Companies may think fit for the purpose of making such distribution.

(15) Any liquidator charged with the duty of making such a distribution shall lodge with the Master or Registrar of Companies a supplementary account in respect the money and the provisions of this Act relating to an account apply in respect of such supplementary account.

Security in respect of reserved ownership or financial lease

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

(2) Subject to section 40, if property referred to in subsection (1) was returned by the debtor to the creditor within three months before the date of liquidation of the estate of debtor, the liquidator may demand from the creditor that he deliver to the liquidator the property or its value at the date when it was returned to him subject to payment to the creditor by the liquidator or to deduction from the value of the difference between the total amount payable under the transaction and the total amount actually paid.

Security in respect of landlord's hypothec

105. (1) A landlord's hypothec confers a preference with regard to the property which is subject to the hypothec for rent due in respect of the period

immediately prior to the date of liquidation, but not exceeding rent for a period of -

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

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

(3) A landlord shall as a concurrent creditor, claim the balance of the unpaid rent.

Certain mortgages afford no security or preference

106. (1) Where an application for the liquidation of the estate of the debtor is lodged with the Registrar within nine months after the lodging of special or a general bond over movables and a general clause in a special bond for the purpose of -

- (a) securing the payment of an existing unsecured debt;
- (b) obtaining a preference for an existing concurrent debt which was incurred more than two months prior to the lodging of the bond with the registrar of security interests in question for registration;
- (c) securing the payment of debt; or
- (d) obtaining a preference for a debt incurred innovation of or substitution for any such first mentioned debt

does not confer any security or preference.

(2) The bond referred to in subsection (1) shall be deemed not to have been lodged if it was withdrawn from registration.

PART 14 - COSTS OF LIQUIDATION AND APPLICATION OF FREE RESIDUE

Costs of liquidation

107. (1) The costs of liquidation include -
- (a) the sheriff's charges incurred since the date of liquidation;
 - (b) fees payable to the Master and Registrar of Companies in connection with the liquidation;
 - (c) the costs, as taxed by the Registrar of the High Court, incurred in connection with the application by a debtor for the liquidation of his estate or of a creditor for the liquidation of an estate of a debtor, excluding the costs of opposition to such application, unless the court has ordered that such costs be included in the costs of liquidation;
 - (d) the amount determined by the Master and Registrar of Companies for the preparation of a statement of his affairs by the debtor as required by section 71;
 - (e) the remuneration of the liquidator, including the costs incurred by the liquidator;
 - (f) the fees of any person who was engaged or appointed by the liquidator in connection with the administration of the estate as may be allowed by the Master or Registrar of Companies;
 - (g) such costs incurred in the administration of a deceased estate before the liquidation of the estate as the Master

may allow; and

- (h) all other costs of the administration and the liquidation of the estate of the debtor as may be allowed by the Master or Registrar of Companies.

(2) The taxed fees of the sheriff in connection with proceedings stayed in terms of section 17, shall be regarded as costs of liquidation of the estate.

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

Application of free residue

108. (1) For the purposes of this section “salary and wages” includes all cash earnings which the employee is entitled to receive from the employer, but excludes other benefits;

(2) The free residue of an insolvent estate shall initially be applied to defray the costs of liquidation contemplated in section 107, but excluding the costs referred to in section 103(4).

(3) In the second place, the balance of the free residue from payment made in terms of subsection (1), shall be applied to pay claims of an employee as may be prescribed -

- (a) to an employee who was employed by the debtor -
 - (i) any salary or wages, for a period not exceeding three months, due to the employee;
 - (ii) any payment in respect of any period of leave or holiday due to the employee which has accrued as a result of his employment by the debtor in the year in which liquidation occurred and the previous year, whether or not the payment is due at the date of liquidation;
 - (iii) any payment due in respect of any other form of

paid absence for a period not exceeding three months immediately prior to the date of liquidation of the estate;

- (iv) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract, wage-regulating measure or as a result of termination in terms of section 43; and
- (b) any contributions which were payable by the debtor, including contributions which were payable in respect of any of his employees and which were, immediately prior to the liquidation of the estate, owing by the debtor, in his capacity as employer, to any pension, provident, medical aid, sick pay, holiday, unemployment or training scheme or fund, or any similar scheme or fund under any law or to such a fund administered by a bargaining or statutory council recognised in terms of the Labour Code Order, 1992 and which does not exceed Twelve Thousand Maloti in respect of any individual employee.

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

(5) A director of a liquidated company employed by the company is not entitled to payment in terms of this section.

(6) In the third place any balance of the free residue from payment made in terms of subsection (3) shall be applied to pay maintenance due by a natural person debtor in terms of a court order and which is in arrear at the date of liquidation of the estate, for a period not exceeding three months.

(7) In the fourth place any balance of the free residue from payment made in terms of subsection (9) may be applied to pay any amount which in terms of the Workman's Compensation Act, 1977¹¹, was, immediately prior to the date of liquidation due to the Workman's Compensation Trust Fund Administrator by the insolvent in his capacity as an employer, in respect of any as-

assessment, penalty or fine, or the compensation then due in respect of any workman, including in the case of a continuing liability, also the capitalised value, as determined by the Workman's Compensation Trust Fund Administrator, of the pension, irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension, periodical payment or allowance which constitutes the liability.

(8) In the fifth place any balance of free residue shall be applied to pay all taxes due to LRA and amounts due to other government agencies.

(9) In the sixth place any balance of the free residue from payment made in terms of subsection (8) shall, subject to any maximum amount in terms of a bond, be applied to pay the proved claims of creditors who are holders of a general bond over movables or a special bond over movables with a general clause, registered with collateral Registry, in their order of preference.

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

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

Costs incurred in respect of legal services

109. (1) Subject to subsection (2), costs incurred to engage the services of attorneys or counsel or both to perform legal work on behalf of the estate except costs awarded against the estate in legal proceedings, are not subject to taxation by the court.

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

(3) If it appears to the Court that a legal representative or legal ad-

viser has, with intent to benefit himself improperly given legal advice or acted with intent to benefit himself, whether for or against an insolvent estate, or has caused any unnecessary expense in that regard, the court may order that such expense or any part the expense be borne by that legal representative or legal adviser personally.

PART 15 - SPECIAL PROVISIONS RELATING TO SALE OF PROPERTY BELONGING TO INSOLVENT ESTATE

Non-compliance with provisions of the Act in sale of property of insolvent estate

110. (1) If property of an insolvent estate is sold contrary to this Act, the sale is void unless the purchaser proves that he acquired the property in good faith and for value.

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

Bona fide sale of property in possession of debtor

111. (1) The owner of movable property which was in the possession or custody of a debtor immediately before the date of liquidation of the estate of the debtor, subject to section 103, not entitled to recover that property if it has, in good faith, been sold as part of the debtor's insolvent estate, unless the owner has, by standard notice in writing given before the sale to the liquidator or the Master, demanded the return of that property.

(2) If property contemplated in subsection (1) has been sold as part of the insolvent estate, the former owner of the property may recover from the estate before the confirmation of the liquidator's account under section 119 the net proceeds of the sale of that property, unless he has recovered the property itself from the purchaser, and thereupon he shall lose any right to reclaim the property as contemplated in subsection (1).

(3) If a liquidator sold the property for an amount less than its value without reasonable cause determined by the Master or the Registrar of Companies, the balance of the amount shall be recovered from the liquidators security, and where the sale was reasonably made, the balance shall be recovered from

the estate.

Persons prohibited to acquire property from insolvent estate

112. The liquidator or an auctioneer employed to sell property of the insolvent estate in question or an employer, employee or associate of such liquidator or auctioneer or director, may not acquire any property of the insolvent estate.

PART 16 - BANKING ACCOUNTS, INVESTMENTS AND MONEYS BELONGING TO INSOLVENT ESTATE

Banking accounts and investments

113. (1) The liquidator of an insolvent estate -
- (a) shall open a cheque account in the name of the estate with a bank within Lesotho and deposit all moneys received by him on behalf of the estate;
 - (b) may open a savings account in the name of the estate with a bank within Lesotho and may transfer from the account referred to in paragraph (a) moneys not immediately required for the payment of any claim against the estate;
 - (c) may place moneys deposited in an account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a bank within Lesotho.

(2) Whenever required by the Master or Registrar of Companies to do so, the liquidator shall notify the Master or Registrar of Companies by notice of the bank and the office, branch office or agency thereof with which he has opened an account or placed a deposit referred to in subsection (1) and furnish the Master or Registrar of Companies with a bank statement or other sufficient evidence of the state of the account.

(3) All funds in the estate accounts shall be used solely for the benefit of the insolvent estate and all cheques or orders drawn upon an account referred to in subsection (1) shall contain the name of the payee and the cause of

payment and shall be drawn to order and be signed by every liquidator or his authorised agent.

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

(5) The Master or Registrar of Companies may, after the suspension or removal of the liquidator, direct by standard notice the manager of a financial institution at which an account referred to in sub-section (1) has been opened by standard notice to -

- (a) disallow withdrawal of any monies from the estate account; or
- (b) pay into the Insolvency Surplus Account money standing to the credit of that account at the time of the receipt of the directive under this section;
- (c) pay to the surplus account all monies which may thereafter be paid into that account,

as the manager shall carryout that directive.

(6) Where the Master or Registrar of Company so directs, the manager of a financial institution shall provide information requested by the Master or Registrar of Companies relating to the details of the estate account.

Recording of receipts by liquidator

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

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

liquidator, may inspect the record at all reasonable times.

- (3) The record referred to in sub-section (1) shall be kept in -
 - (a) shall be kept in a prescribed form and in an official language; and
 - (b) may be kept and maintained manually or electronically.

Unlawful retention of moneys or use of property by liquidator

115. (1) A liquidator who without lawful cause retains any money exceeding One Hundred Maloti belonging to the insolvent estate of which he is liquidator, or knowingly permits his co-liquidator to retain such a sum of money longer than the seventy-two hours after its receipt on which it was possible for him or his co-liquidator to pay that money into a bank, or who uses or knowingly permits his co-liquidator to use any property of the insolvent estate, except for the benefit of the estate, may be ordered, in addition to any other penalty to which he may be liable, to pay into the estate an amount equal to double the amount so retained or double the value of the property so used, as the case may be.

(2) The amount which a liquidator is liable to pay in terms of sub-section (1) may be deducted from the liquidators security.

PART 17 - ESTATE ACCOUNTS, DISTRIBUTION AND CONTRIBUTION

Estate Accounts

116. (1) Subject to subsections (6), (8) and (9), a liquidator shall within six months from the date of his appointment as final liquidator, lodge a liquidation and a distribution account with the Master or Registrar of Companies, of the proceeds of the property in the insolvent estate available for payment to creditors, or if any surplus is not required, for the payment of claims, costs and charges or interest.

- (2) A liquidator shall, when lodging a liquidation and distribution account -
 - (a) specify all unrealised property and any outstanding debt which is due to the estate; and

- (b) state reasons why the property is not realised and why the debt is not collected.
- (3) Where a liquidator carries on business on behalf of the estate, he shall lodge a trading account.
- (4) The liquidator shall if -
 - (a) there is an indication from the liquidation and distribution account, the liquidator shall lodge a surplus account;
 - (b) all realisable property in the insolvent estate has been realised and brought into the account and the proceeds are insufficient to cover the costs and charges referred to in section 107 lodge a contribution account apportioning the liability for the deficiency among creditors who are liable to contribute; or
 - (c) some realisable property in the insolvent estate has not been realised and brought into the account, the liquidator shall lodge a subsequent liquidation and distribution account when such property has been realised.
- (5) The estate accounts referred to in subsection (1) shall be in the form set out in Form E of Schedule 1, and the Master or Registrar of Companies may insist on strict compliance with any item set out in the Form.
- (6) If a liquidation account is not a final account, the liquidator shall, at six monthly intervals as the Master or Registrar of Companies may direct, lodge with the Master or Registrar of Companies periodical accounts in the form and similar manner to the estate accounts mentioned in subsection (2).
- (7) If the estate of a partnership is under liquidation, separate accounts shall be lodged in respect of the partnership and the estate of each partner, whose estate is under liquidation.
- (8) If a liquidator is unable to lodge an account to the Master or Registrar of Companies within the period of six months as required by subsection (1) or (4), he shall, before the expiration of such period or within a further period

that the Master or Registrar of Companies may allow, lodge to the Master or Registrar of Companies by standard notice an affidavit in which he sets out -

- (a) the reasons for his inability to lodge the account in question;
- (b) an explanation of the affairs, transactions or matters relating to the debtor or the insolvent estate as the Master or Registrar of Companies may require; and
- (c) the amount of money available for payment to creditors or, if there is no free residue or if the free residue is insufficient to meet all costs referred to in section 107, the deficiency the creditors are liable to make good.

(9) The Master or Registrar of Companies may, after considering the affidavit, extend such period to a date determined by him.

(10) If the Master or Registrar of Companies extends the period in terms of subsection (7) the liquidator shall inform proved creditors, of the extension by liquidator's notice and enclose a copy of the affidavit in terms of the subsection.

(11) If a liquidator fails to lodge an account within the period required by subsection (1) or before the date determined by the Master or Registrar of Companies in terms of subsection (7), the Master or Registrar of Companies may, subject to subsection (11), send a standard notice to the liquidator in which he is required to lodge the account in question to the Master or Registrar of Companies or if he is unable to lodge account, to send an affidavit contemplated in subsection (6) to the Master or Registrar of Companies, within a period of fourteen days from the date of the notice.

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

(13) If the Master or Registrar of Companies refuses to extend the period as contemplated in subsection (10), the liquidator may apply to the Regulator, after having given the Master or Registrar of Companies direct notice of his intention to make the application, for an order extending the period and the

court may thereupon make such order as it considers appropriate.

(14) If, before the expiration of the period contemplated in subsection (1) or (4), a liquidator has funds in his possession which, in the opinion of the Master or Registrar of Companies, are to be distributed and the liquidator has not lodged with the Master or Registrar of Companies a plan for the distribution of those funds, the Master or Registrar of Companies may direct the liquidator in writing to lodge such a plan.

(15) If a liquidator fails to -

- (a) lodge an account with the Master or Registrar of Companies as provided for under this Act;
- (b) lodge any voucher in support of account upon the request of the Master or Registrar of Companies;
- (c) to perform any other duty imposed upon him by this Act;
or
- (d) comply with any reasonable demand of the Master or Registrar of Companies for information or proof required in connection with the liquidation or distribution of an estate,

the Master or Registrar of Companies at his instance or at the request of any person interested in the liquidation and distribution of the estate, may institute investigations against the liquidator under section 88.

Copies of liquidator's accounts to be open for inspection

117. (1) A liquidator shall, within seventy-two hours after he has lodged an account with the Master or Registrar of Companies as contemplated in section 116 give notice by publication in a newspaper with wide circulation for two consecutive weeks and an announcement in a radio station with national coverage for three consecutive days, that the liquidator's account will lie open for inspection by any person having an interest in the estate at the place and for a period stated in the notice and shall give liquidator's notice to -

-
- (a) each creditor who has proved a claim against the estate;
 - (b) employees who are entitled to payment in terms of section 108(3); and
 - (c) any registered trade union which has notified the liquidator that it represents employees of the debtor.

(2) An account lodged with the Master or Registrar of Companies shall be open for inspection by any person having an interest in the estate in question at the office of the Master or Registrar of Companies for a period of fourteen days from the date of the last publication of a newspaper referred to in subsection (1).

(3) After the expiration of the stipulated period in terms of subsection (2), the Master or Registrar of Companies shall endorse on the account, a certificate that the account was open for inspection at his office as provided for in subsection (1).

Objections to liquidator's account

118. (1) A debtor or any person having an interest in the estate may at any time after the commencement of the period contemplated in section 115 and until the liquidator's account is confirmed in terms of section 119 lodge with the Master or Registrar of Companies in writing, any objection to that account, stating the reasons for such objection.

- (2) If the Master or Registrar of Companies is of the opinion that-
- (a) an objection is valid;
 - (b) the account is in any respect incorrect;
 - (c) the account contains any improper charge; or
 - (d) the liquidator acted in bad faith, negligently or unreasonably in incurring any costs included in the account and that the account should be amended,

he may direct the liquidator to amend the account or may give such other direction in connection therewith as he may think fit.

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

(4) If the direction by the Master or Registrar of Companies affects the interests of a person who has not lodged an objection, the account so amended shall lie open for inspection by creditors in the manner and with the notice prescribed by section 118, unless the person affected consents in writing to the immediate confirmation of the account.

Confirmation of liquidator's accounts

119. (1) When a liquidator's account is open to inspection as prescribed by this Act and -

- (a) no objection has been lodged;
- (b) an objection has been lodged and the account has been amended in accordance with the direction of the Master or Registrar of Companies and is open for inspection and no application for relief has been made to the Registrar of Companies in terms of section 116; or
- (c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to the Master or Registrar of Companies for relief,

the Master or Registrar of Companies shall confirm the account and his confirmation, notwithstanding any errors in the account, is final, save as against a person who may have been permitted by the Master or Registrar of Companies before any dividend has been paid under the account, to reopen it.

(2) Where a creditor wishes to re-open an account, he shall submit

a request to the Master or Registrar of Companies who may, on good cause shown, direct that the account be re-opened.

Distribution of estate and collection of contributions

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

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

(3) The liquidator shall within two months after confirmation of a liquidator's account, distribute the estate or collect from each creditor who is liable to contribute, the amount for which he is liable.

(4) The period of liquidation shall be determined by the Master or Registrar of Companies in consideration of the value of the estate.

Liquidator to produce records for dividends or pay over unpaid dividends to Master or Registrar of Companies

121. (1) The liquidator shall, within three months after the confirmation of the account, lodge with the Master or Registrar of Companies the receipts for dividends paid to creditors and if there is a contribution account, the vouchers necessary to complete the account, if a cheque purporting to be drawn payable to a creditor in respect of a dividend due to him and paid by the banker on whom it is drawn, or a statement by a bank that the bank of the creditor has credited or has been instructed to credit the account of the creditor with the amount of the dividend shall be accepted by the Master or Registrar of Companies instead of any such receipt.

(2) If any such dividend has at the expiration of a period of two

months from the confirmation of the account under which it was payable, not been paid to the creditor or other person who is entitled to it, the liquidator shall within three months after confirmation of the account pay the dividend over to the Master or Registrar of Companies who shall deposit it in the Insolvency Surplus Account of the creditor or other person.

Surplus to be paid into Insolvency Surplus Account

122. (1) If after the confirmation of a final account there is a surplus in an insolvent estate which is not required for the payment of claims, costs, charges or interest, the liquidator shall after the confirmation of that account deal with the surplus in the manner provided for in this section.

(2) In the case of a debtor who is a natural person, the liquidator shall pay the surplus over to the Master or Registrar of Companies who shall deposit it in the Insolvency Surplus Account and after the rehabilitation of the insolvent pay it out to the debtor at his request.

(3) In the case of a debtor which is a trust, the liquidator shall pay the surplus over to the trustees of the trust or, if there are no trustees, to the Master or Registrar of Companies who shall deposit it in the Insolvency Surplus Account and upon application by the capital beneficiaries as determined by the trust deed, pay it out to them, but if the conditions for the capitalisation of the trust as determined by the trust deed have not yet been satisfied the Master or Registrar of Companies may, after having appointed new trustees in the trust in question, pay such funds to the new trustees so appointed.

(4) In the case of a debtor which is a company, the liquidator shall distribute such surplus among the shareholders according to their rights and interests in the company and the distribution is subject to any contrary provisions contained in articles of incorporation of such company.

(5) In the case of debtor which is an association of persons, the liquidator shall distribute such surplus among the members according to their rights and interests in the association and the distribution is subject to any contrary provisions contained in the founding statement, constitution, memorandum or articles of association of such association.

(6) In the case of a debtor which is a partnership, section 92 applies.

Contribution by creditors towards costs of liquidation

123. (1) Where there is no free residue in an insolvent estate, or where the free residue is insufficient to meet all the costs mentioned in section 108 the creditors shall be liable to contribute towards the costs of liquidation.

(2) The creditor upon whose application the liquidation order was made, whether or not he has proved a claim against the estate, is liable to contribute not less than the amount he would have had to contribute if he had proved a claim for the amount stated in his application for liquidation and where he is a secured creditor, without reliance on his security.

(3) Each concurrent creditor is liable to pay a contribution in proportion to his concurrent claim.

(4) If a creditor has withdrawn his claim, he is liable to pay a contribution only so far as is provided in section 99, and if a creditor withdraws his claim within five days after the date of any resolution of creditors he shall be regarded as having withdrawn the claim before anything was done in pursuance of that resolution.

(5) If a claim has been reduced or disallowed by a liquidator in terms of section 95(4) the creditor is, unless the claim is subsequently admitted by means of compromise or proved in action at law, liable to pay a contribution, in respect of costs incurred before the date of notice referred to in the said subsection on the amount of the claim before the claim was reduced or disallowed and in the case of a reduced claim in respect of costs incurred after the date of the said notice, on the amount to which the claim was reduced by the liquidator.

Enforcing payment of contribution

124. If a creditor who is liable to contribute in terms of an account has failed to pay the amount of his liability within a period of thirty days after the date of the sending or delivery to him of a notice referred to in section 118 the liquidator may take out a writ of execution for the amount of the liability of the creditor in the magistrate's court in which the creditor could have been sued for the contribution in question.

PART 18 - REHABILITATION OF NATURAL PERSONS

Rehabilitation

125. (1) A debtor who is a natural person may, subject to subsection (2), apply to the Court for an order for his rehabilitation- -

- (a) at any time after the confirmation by the Master of a distribution account providing for the full payment with interest of all claims proved against the estate from the date of liquidation, calculated in terms of section 108 and all costs of liquidation; or
- (b) at any time after the Master has issued a certificate of acceptance of a composition under section 138; or
- (c) in any other case after the expiration of two years from the date of the confirmation by the Master of the first liquidation account in the estate.

(2) In the case where a debtor has been convicted, in respect of the existing or any prior insolvency, of an offence referred to in section 221 or of any other fraudulent act, the debtor may not apply to the Court for an order for his rehabilitation before a period of five years has elapsed from the date of the conviction in question.

(3) The Master may on the request of the debtor recommend to the Court that an application referred to in subsection (1)(c) may be made before the expiration of the period of two years but no such application may be made within a period of twelve months from the said date or, in the case where the estate of debtor was liquidated prior to the liquidation in respect of which he applies for rehabilitation, within a period of three years from that date.

(4) A debtor who wishes to apply for a rehabilitation order shall -

- (a) send a standard notice of his intended application -
 - (i) in the case of an application contemplated in subsection (1)(a), to the Master and the liquidator, not less than four weeks before the

date of the intended application; or

(ii) in the case of an application contemplated in subsection (1)(b) or (c) to the Master and the liquidator, not less than six weeks before the date of the intended application, and by way of the publication of a notice in the Gazette and in three newspapers with wide circulation for two consecutive weeks, and he shall send a copy of the notice by notice to every creditor of the estate whose name and address are known to him or which he can readily obtain; and

(b) furnish security to the registrar of the Court in the amount of or to the value of Five Thousand Maloti in respect of the costs of any person who may oppose the application for rehabilitation and who may be awarded costs by the Court.

(5) The Minister may amend the amount mentioned in subsection (4)(b) by notice published in the Gazette so as to take account of subsequent fluctuations in the value of money.

(6) The notice referred to in subsection (4)(a)(i) or (ii) shall state the estimated value and reflect full details of the assets of the debtor at the time of the application.

(7) A debtor shall in support of his application for rehabilitation submit an affidavit stating that he has made a complete surrender of his estate and that he has not granted or promised any benefit to any person or entered into any secret agreement with intent to induce the liquidator of the estate or any creditor not to oppose the application for rehabilitation.

(8) The affidavit shall contain a statement of his assets and liabilities and of his earnings and his own as well as the contribution of his spouse to his household on the date of the application.

(9) The Court shall be apprised of the dividend, if any, paid to his creditors, what further assets in the insolvent estate are available for realisation and the estimated value, the total amount of all claims proved against the estate,

and the total amount of his liabilities at the date of liquidation of his estate.

(10) If application is made for rehabilitation pursuant to subsection (1)(b), the debtor shall set out the particulars of the composition and state whether there are or are not creditors whose claims against the estate have not been proved, and if there are such creditors, state their names and addresses and particulars of their claims.

(11) A liquidator who has received a notice contemplated in subsection (4)(a) shall report to the Master any facts which would justify the Court in refusing, postponing or qualifying, the rehabilitation of the debtor.

(12) A partnership whose estate has been liquidated may not be rehabilitated.

Opposition to rehabilitation or refusal of rehabilitation by Court

126. (1) The Master shall report to the Court on the merits of the application and furnish a copy of the report to the applicant or the attorney of the applicant.

(2) The Master, the liquidator or any other person having an interest in the estate may appear in person or through a legal representative to oppose the application.

(3) If the Court is satisfied on the strength of a report by the Master or on any other evidence that the debtor has intentionally impeded, obstructed or delayed the administration of the insolvent estate by -

- (a) failing to submit a statement of affairs in accordance with the requirements of the Act; or
- (b) failing to make available to the liquidator of the estate, in accordance with written directives by the liquidator or the Master, property belonging to the insolvent estate which was in his possession or custody or under his control or any book, document or record relating to his affairs which was in his possession or custody or under his control; or

-
- (c) failing to notify the liquidator of the estate of the existence of any book, document, or record relating to his affairs which was not in his possession or custody or under his control, and as to where such book, document, or record could be found, or of any property belonging to his insolvent estate which was not mentioned in his statement of affairs, and as to where such property could be found; or
 - (d) failing to keep the liquidator of the estate informed of any change of his address during the period of three years after the liquidation of his estate; or
 - (e) failing to comply with any provision of this Part; or
 - (f) means of any other act or omission,

the Court shall refuse to grant a rehabilitation order until the expiry of a period of two years after the date of liquidation of the estate of debtor.

(4) The Court may refuse the application or postpone the hearing of the application or grant the application for rehabilitation subject to any condition it may think fit.

(5) The Court may order the debtor to consent to judgment against him or her for the unpaid portion of a debt proved against the estate or which could have been proved against the estate or for such lesser amount as the Court may determine.

(6) If the Court makes an order in terms of subsection (5) no execution may take place in terms of the judgment save with permission of the Court and after proof that the debtor has since the date of liquidation of the estate acquired property or income which is available for the payment of his debts.

(7) Apart from such judgment, the Court may impose any other condition with regard to any property or income which may in future accrue to the debtor.

(8) The Court may order the debtor to pay the costs of any opposi-

tion to the application for rehabilitation, unless the Court is satisfied that the opposition is vexatious.

(9) When granting an order for rehabilitation in respect of an application made in terms of section 125(1)(b), the Court may order that any obligation incurred by the applicant on or before the date of liquidation of his estate and which but for the order would be discharged as a result of the rehabilitation, remains of full force and effect notwithstanding the rehabilitation.

Rehabilitation by expiration of time

127. Any natural person not rehabilitated by the Court within a period of two years from the date of liquidation of his estate, is regarded as having been rehabilitated after the expiry of the period of five years.

Effect of rehabilitation

128. (1) Subject to subsection (2) and any conditions which the Court may have imposed when granting an order for rehabilitation, the rehabilitation of a debtor has the effect -

- (a) of putting an end to the liquidation; and
 - (b) of relieving the debtor of every disability resulting from the liquidation.
- (2) The rehabilitation of a debtor does not affect -
- (a) the rights of a liquidator or of creditors under a composition;
 - (b) the powers or duties of the Master or the duties of the liquidator in connection with a composition;
 - (c) the right of the liquidator or of creditors to any part of the estate of debtor which is vested in the liquidator but as yet not distributed by him;
 - (d) the liability of a surety for the debtor;

-
- (e) the liability of any person to pay any penalty or suffer any punishment under any provision of this Act.

(3) Evidence of a conviction on any offence contemplated is admissible in subsequent civil proceedings as sufficient evidence that the debtor committed the offence in question.

Penalties for unlawful inducement to accept composition or in connection with rehabilitation

129. (1) It is unlawful for any person to offer or promise to any other person a benefit in order to induce him to accept an offer of composition or to agree to or to refrain from opposing an application for the rehabilitation of a debtor, or as a consideration for his acceptance of an offer of composition or for supporting or refraining from opposing an application for the rehabilitation of a debtor.

(2) A person who has accepted or agreed to accept any such benefit, whether for himself or for any other person, is liable to pay, by way of penalty, for the benefit of the other creditors of the insolvent estate -

- (a) a sum equal to the amount of any claim proved by him against the estate;
- (b) the amount or value of the benefit promised or given; and
- (c) in the case of a composition, the amount paid or to be paid to him under the composition.

(3) The liquidator is competent to enforce the penalty referred to in subsection (2) and if he fails to do so any creditor of the estate may enforce the penalty in the name of the liquidator, if he indemnifies the liquidator against all costs in connection with such action.

PART 19 - SPECIAL PROVISIONS RELATING TO TRUSTS, COMPANIES
AND OTHER DEBTORS IN LIQUIDATION OTHER THAN NATURAL
PERSONS OR PARTNERSHIPS

Provisions relating to contributories in case of a non-profit company

130. (1) In the case of a liquidation by the Court or of a creditors' voluntary liquidation by resolution of a non-profit company incorporated in terms of the Companies Act, 2011, the liquidator shall, if necessary, compile a list of contributories.

(2) A past member of a non-profit company is not liable to contribute to its assets unless -

- (a) at the commencement of the liquidation there is unsatisfied debt or liability of the company contracted before he ceased to be a member or shareholder; and
- (b) it appears to the liquidator that the present members or shareholders are unable to satisfy the contributions required to be made by them in terms of this Act.

(3) As soon as the liquidator has settled the list of contributories, he shall send a liquidator's notice to every person included in the list, stating that fact and the extent of the liability of that person.

(4) Any person who objects to his inclusion in the list, is entitled within fourteen days from the date of the notice to lodge an objection with the liquidator in the form of an affidavit giving full reasons why he should not be included in the list.

(5) The liquidator may accept the objection and amend the list of contributories or may reject such objection and, if the objection is rejected, shall notify the person in question accordingly by notice.

(6) A person whose objection has been rejected, may within fourteen days from the date of the notice provided for in subsection (3), apply to the Master or Registrar of Companies for a ruling as to whether his name should be included in the list, and the Master or Registrar of Companies shall direct the liquidator to include his name or to exclude it from the list.

(7) A liquidator shall recover from the contributories such proportion of their liability as may be required from time to time, taking into consideration the probability that some of the contributories may partly or wholly fail to pay the amount demanded from them.

(8) Where a contributory dies after he has been placed on the list of contributories, the liquidator may recover the contribution from the deceased estate.

(9) The liability for the payment of any amount by a contributory to the company is a debt due by him to the company as from the date on which the amount was demanded by the liquidator.

(10) A contributory may not set off against his liability any amount due by the company in respect of dividends, profits or directors' remuneration.

(11) The liquidator shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

(12) A letter of demand by the liquidator to a contributory for the payment of a contribution is sufficient evidence of the amount due.

(13) All books and papers of the company and of the liquidator are, as between the contributories and the company, sufficient evidence of the truth of all matters recorded therein.

Restoration of property and payment of compensation

131. Where in the course of the liquidation of a company of a company, it appears to the Registrar or Companies that a person who has taken part in the formation or promotion of the company, or any past or present director or an officer of the company has misapplied, retained, become liable, accountable for any money or property of the company, or found guilty of any breach of faith or trust in relation to the company, the Court may -

- (a) on the application of the Registrar of Companies, liquidator, any creditor, shareholder, member or contributory of the company, enquire into the conduct of the promoter, director or officer; and

- (b) order him to -
 - (i) repay or restore the money, property, any part of the money or property, with interest at a rate determined by the Court;
 - (ii) contribute such sum of money to the company by way of compensation in respect of the misapplication, retention, breach of faith or trust as the Court considers appropriate.

Private prosecution of directors and others

132. (1) If it appears in the course of the liquidation of a trust, company, or another debtor other than a natural person or partnership that any past or present trustee, director, shareholder, member or officer of the debtor committed an offence, the liquidator shall cause all the facts known to him which appear to constitute the offence, to be laid before the Director of Public Prosecutions.

(2) The Court may, on application by the liquidator, order the whole or any portion of the costs and expenses incidental to such private prosecution to be paid out of the assets of the debtor in priority to all other liabilities.

PART 20 - PERSONAL LIABILITY FOR FRAUDULENT, RECKLESS OR INSOLVENT TRADING

Liability for fraudulent or reckless conduct of business

133. When a debtor is liquidated and it appears that any business of the debtor was or is being carried on recklessly or with intent to defraud creditors of the debtor or creditors of any other person or for any fraudulent purpose, the Court may, on the application of the Master or Registrar of Companies, the liquidator, any creditor, shareholder, member or contributory of the debtor, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, is responsible, without any limitation of liability, for such of the debts or other liabilities of the debtor as the Court may direct irrespective of whether the debtor can pay the debts or other liabilities.

Insolvent trading

134. (1) If a debtor is liquidated the Court may, upon application by a creditor, liquidator, Master or Registrar of Companies, shareholder, director of a company or a member of debtor declare that any person responsible for the management of the debtor who caused or allowed the debtor to incur a debt at a time when he knew or had reasonable grounds to suspect that the debtor would not be able to pay such debt as well as its other debts as they fell due, is liable for such of the debts or other liabilities of the debtor as the Court may direct.

(2) The Court shall determine the amount payable with reference to the loss that was or will be suffered by the creditors on account of the insolvent trading.

(3) The amount so determined shall be paid to the applicant for distribution among the creditors represented in the application, or for distribution in such other way as the Court considers appropriate in the circumstances.

(4) In determining the amount and its fair distribution among the creditors, the Court shall have regard to the extent to which a particular creditor negligently or intentionally contributed to his own loss.

(5) The facts which a person referred to in subsection (1) ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained or reached or taken by a reasonable diligent person having both -

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out similar functions as are entrusted to and carried out by the person in relation to the debtor; and
- (b) the general knowledge, skill and experience that the person has.

(6) Proof that -

- (a) the liabilities (including prospective and contingent liabilities) of the debtor exceeded its assets, fairly valued, when the debt was incurred;

- (c) that the particular person committed an offence in respect of the accounting records of the debtor in respect of the period during which the debt was incurred; or
- (d) that the particular person failed to take all reasonable steps to ensure that the accounting records in respect of the period during which the debt was incurred are surrendered or transferred to the liquidator,

is proof until the contrary is proved that the particular person, at the time the debt was incurred, had reasonable grounds to believe that the debtor would not be able to pay its debts as they fell due.

(7) Without prejudice to the defences which may be raised against an application under this section, a person, if he establishes one or more of the following defences, will not be held liable in terms of subsection (1) where, at the time the debt was incurred he -

- (a) had no knowledge of the transaction and could not reasonably be expected to have had knowledge of such a transaction;
 - (b) believed that the debtor would be able to repay the debt because a competent and reliable person was responsible for monitoring the solvency of the debtor and for reporting to him and was fulfilling that responsibility satisfactorily;
 - (c) he did not take part in the management of the debtor on account of illness or for some other good reason;
 - (d) took all reasonable steps to prevent the debtor from incurring such debt; or
 - (e) took all reasonable steps to ensure that the creditor is informed that the debtor had reasonable grounds to believe that it would not be able to repay that debt when it fell due.
- (8) This section shall apply notwithstanding that a person in

question may be criminally liable in respect of the matters on which the declaration by the Court is based.

PART 21 - COMPOSITIONS

Appointment of Administrator

135. (1) A debtor with debts less than Two Hundred Thousand Maloti, other than a debtor who is a company, who cannot pay his debts and who wants to offer his creditors a composition, shall apply to Master for appointment of an administrator.

(2) A person shall qualify to be appointed as an Administrator if he -

- (a) is not disqualified from being a liquidator in terms of section 61;
- (b) has agreed to act in the matter; and
- (c) has furnished security to Master in the amount determined by the Master.

(3) After appointment of an administrator, a debtor may lodge a signed copy of the composition and a complete affidavit in the form set out in Schedule 3 with the administrator.

(4) An Administrator shall publicise his appointment and issue a public notice of hearing for proof of debts.

Pre-liquidation composition with creditors

136. (1) A debtor with debts less than Two Hundred Thousand Maloti, other than a debtor who is a company, who cannot pay his debts and who wants to offer his creditors a composition, may lodge a signed copy of the composition and a complete affidavit in the form set out in Schedule 3 with an administrator who is appointed as such under section 135.

(2) If the composition provides for the immediate payment of a cash amount for distribution among creditors, the debtor shall, pending the outcome of the offer of composition, pay the cash to the administrator to invest the amount

in an interest-bearing savings account.

(3) A debtor may not during the period between the lodging of the composition and date on which the creditors vote on the composition, seek or obtain credit, alienate, encumber or voluntarily dispose of any property which is made available to creditors in terms of the composition or do anything which can impede compliance with the composition.

(4) From the date within which a debtor applies for appointment of an Administrator in accordance with section 135, no creditor with a claim may institute an action against the debtor or apply for the liquidation of the estate of the debtor.

Consideration of the composition and questioning of the debtor

137. (1) On receipt of the composition and statement, the administrator shall determine a date for the questioning of the debtor and the consideration of the composition by the creditors.

(2) The administrator shall -

- (a) convene a hearing at a place which is accessible and convenient to creditors; and
- (b) at least fourteen days before the hearing send creditors and the Master a notice with the time date and place of the hearing, and a copy of the composition and of the statement.

(3) At the hearing -

- (a) a creditor may, whether he has received notice or not, prove a debt or object to a debt listed in the statement by the debtor;
- (b) every debt listed by the debtor in the statement is, subject to any amendments to it by the administrator, deemed to be proved, unless a creditor objects to it or the administrator rejects it or requires that it be corroborated by evidence;

-
- (c) a creditor whose debt is being objected to by the debtor or another creditor or who is required by the administrator to corroborate his debt with evidence, shall prove the debt;
 - (d) the administrator may defer the proving of a debt and the consideration of the composition or allow the other creditors to vote on the composition, and if a composition is accepted, the debt may be added to the listed debts at a later stage when it is proved;
 - (e) the debtor or management of such debtor may be questioned by the administrator and by any creditor whose debt has been acknowledged or proved, or by any other interested party with the permission of the administrator, about -
 - (i) his assets and liabilities;
 - (ii) where applicable, his present and future income and that of his spouse living with him;
 - (iii) where applicable, his standard of living and the possibility of living more frugally; and
 - (iv) any other matter which the administrator considers to be relevant.

(4) If it appears to the administrator at the hearing that a debt, other than a debt which is based upon or derives from a judgment debt, is disputed between the debtor and the creditor or between the creditor and another creditor of the debtor, the administrator may, after investigation of the objection, admit or disallow the debt or part of the debt.

(5) Any person whose debt has been disallowed in terms of subsection (4) may institute an action or continue with an action which has already been instituted in respect of such debt.

(6) If a person contemplated in subsection (5) obtains judgment in respect of a debt contemplated in that subsection, the amount of the judgment

shall be added to the list of proved debts.

(7) A creditor may by written power of attorney authorise any person to appear at a hearing on his behalf and to do everything at such hearing which the creditor would have been entitled to do.

(8) The hearing may be deferred by the administrator and the proposed composition may be amended or revoked with the permission of the debtor.

Acceptance of the offer of composition

138. (1) A composition may not be accepted if a creditor demonstrates to the satisfaction of the administrator that it accords a benefit to one creditor over another creditor to which he would not have been entitled on liquidation of the estate of debtor.

(2) If the composition is accepted by the majority in number and two-thirds in value of the concurrent creditors who vote on the composition, the administrator shall send a certificate that the composition has been accepted as such by notice to the Master and creditors and the composition is binding on all creditors who received notice of the hearing or who appeared at the hearing, but the right of a secured or otherwise preferent creditor is not prejudiced by the composition, unless he consents to the composition in writing.

(3) If the composition provides for payments by the debtor in determined instalments or otherwise, the acceptance of the composition has the effect of an order of Court in respect of the payments.

(4) If a composition is not accepted by the required majority, and the debtor is unable to make available to creditors substantially more than that which he offered in the proposed composition, the administrator shall declare that the proceedings in terms of this clause have ceased and that the debtor is once again in the position he was prior to the commencement thereof and lodge a copy of the declaration with the Master and known creditors by standard notice.

Powers and obligations of the administrator

139. (1) An Administrator shall within two months after the acceptance of the composition and every two months thereafter until the composition has

been implemented sent an account receipts, expenses and payments by standard notice to creditors and Master.

(2) An administrator shall implement and complete distribution under the composition within six months, which period may be extended for a further period of one month upon application to the Master, and the implementation of the composition shall not take more than twelve months.

(3) If the Master is of the opinion that the account is in any respect incorrect or that it contains any improper charge or that the Administrator acted in bad faith negligently or unreasonably in incurring any costs included in the account and that the account should be amended, the Master may direct the administrator to amend the account or may give such other direction in connection with the account as he may think fit.

(4) The provisions of sections 112, 113, 114 and 115 apply with the necessary changes to an administrator.

(5) The administrator may -

- (a) at any time on application by the debtor or an interested person direct the debtor to appear for such further questioning as the Master may consider necessary, after standard notice to creditors of at least fourteen days by the debtor or the interested person, as the case may be; or
- (b) authorise a debtor who on reasonable grounds is not able to comply with his obligations in terms of the composition to lodge an amended composition to creditors in the manner and with the consequences contemplated in subsection (1).

Revocation of the composition

140. (1) An Administrator may revoke the composition for reasons contemplated in subsection (2);

(2) Reasons for which a composition may be revoked include -

- (a) failure by the debtor to comply with his obligations in terms of the composition;
- (b) if the debtor renders false information that resulted in creditors to accept the composition offer; or
- (c) if the debtor gives a benefit in respect of a claim which falls under the composition to a creditor on whom the composition is binding and who is not entitled to the benefit in terms of the composition; and
- (d) if debtor contravenes subsection (4) or any provision of this section.

(3) A creditor who is entitled to a benefit in terms of the composition may, notwithstanding section 137(3), after fourteen days' notice to the debtor apply to the administrator to revoke the composition if the debtor does not comply with his obligations in terms of the composition and the creditor shall lodge an affidavit in support of his application.

(4) A person who in terms of the composition receives the payments on behalf of creditors, or if there is no such person, any creditor who is in terms of the composition entitled to a benefit out of the payments, has the rights which a judgment creditor would have in terms of that section.

(5) The administrator is entitled to the remuneration which is payable in terms of the composition.

Discharge of debts

141. (1) The Master may, upon an application by the debtor, grant a discharge of debts of the debtor other than secured or preferred debts if -

- (a) the debtor satisfies the Master that the Administration and all known creditors were given notice of application for the discharge with a copy of the debtor's application at least twenty-eight days before the application to the Master; and
- (b) a period of six months has expired from the date of

acceptance of the composition.

(2) An Administrator shall complete the implementation of a composition within six months of his appointment.

Post-liquidation composition with creditors

142. (1) The debtor may require the Master to review the decision of the liquidator and the Master may, after having considered the offer and the report of the liquidator, direct the liquidator to submit the offer to the creditors of the estate in the manner provided for in subsection (2).

(2) If the composition provides for the giving of security, the nature of the security shall be specified fully and if it consists of a surety bond or guarantee, every surety shall be named.

(3) The liquidator may apply to the Master for cancellation of the composition if the offer of composition contained incorrect information which caused a majority of creditors to vote in favour of its acceptance or if the debtor or another person has failed to give effect to any term of the composition or to comply with this section, the liquidator may, despite the absence of a resolution of creditors authorising him to do so, approach the Court for the cancellation of a composition, the setting aside of an order providing for the discharge of a first liquidation order or an order setting aside a final liquidation order, or for other relief.

(4) The said notice shall be accompanied by a copy of the composition.

Lodging of estate account under composition

143. (1) A debtor other than a company may at any time after the first meeting of creditors but after he has sent his statement of affairs by standard notice, lodge with the liquidator of his estate a written offer of composition.

(2) The liquidator shall lodge a liquidation and distribution account under the composition as prescribed.

(3) Where necessary changes are effected to an Administrator, the provisions of sections 112, 113, 114 and 115 shall apply for purposes of sub-

sections (1) and (2).

Assessment of offer of composition

144. (1) If the liquidator is of the opinion that there is a likelihood that the creditors of the estate will accept the offer of composition, he shall as soon as possible after the receipt of the offer send a copy of the offer, together with his report and notice of the time and the place of the meeting at which the composition will be considered, by notice to every creditor whose name and address are known to the liquidator or which he can reasonably obtain.

(2) If the liquidator is of the opinion that there is no likelihood that creditors will accept the offer of composition, he shall inform the debtor by standard notice that the offer is unacceptable and that he does not propose to send a copy thereof to the creditors.

(3) An offer of composition is invalid if it contains any condition under which any creditor would obtain as against another creditor a benefit to which he would not have been entitled if the estate had been distributed in the ordinary manner.

(4) Subject to section 142(1), a condition providing for the discharge or the setting aside of a final liquidation order upon the acceptance of an offer of composition is not invalid.

Consideration of the offer

145. (1) If a special meeting is convened to consider a composition, the liquidator shall, publish a notice in a newspaper with wide circulation for three consecutive weeks and on a radio station for three consecutive days, but not less than fourteen days and not more than twenty-one days before the date fixed for the meeting.

(2) If the offer is accepted by a majority in number and two-thirds in value of the concurrent creditors who have voted on the offer and payment under the composition has been made or funds for the implementation of the composition have been availed as specified in the composition, the Master shall issue a certificate to the debtor to the effect that the composition offer has been accepted.

Cancellation

146. The liquidator may apply to the Master for cancellation of the composition if the offer of composition contained incorrect information which caused a majority of creditors to vote in favour of its acceptance or if the debtor or another person has failed to give effect to any term of the composition or to comply with this section, the liquidator may, despite the absence of a resolution of creditors authorising him to do so, approach the Master for the cancellation of a composition, the setting aside of an order providing for the discharge of a first liquidation order or an order setting aside a final liquidation order, or for other relief.

Effect of the composition

147. (1) An offer of composition which has been accepted is binding upon the debtor and upon all creditors of the insolvent estate in so far as their claims are not secured or preferent but the right of any secured or preferent creditor is not prejudiced thereby, except in so far as he has expressly and in writing waived his preference.

(2) If the composition is subject to the condition that any property in the insolvent estate shall be restored to the debtor, the acceptance of the composition shall divests the liquidator of such property and vests it in the debtor as from the date on which such property is in terms of the composition to be restored to the debtor.

(3) A composition does not affect the liability of a surety for the debtor or any liability regarding transactions that are invalid or liable to be set aside.

(4) When the estate of a partnership and the estate of a partner in that partnership are simultaneously under liquidation, the acceptance of an offer of composition by the separate creditors of the partner does not take effect until the expiration of a period of 6 weeks as from the date of a notice of that acceptance given by the liquidator of the separate estate of the partner to the liquidator of the partnership estate or, if the liquidator of the estate of the partner is also the liquidator of the partnership estate, as from the date of the acceptance of the composition.

(5) At any time during the period of six weeks referred to in subsection (4) the liquidator of the partnership estate may take over the assets of

the estate of the insolvent partner if he fulfils the obligations of the insolvent partner in terms of the composition, other than obligations to render any service or obligations which only the insolvent partner can fulfil, but if the composition provides for the giving of any specific security, the Master shall determine what other security the liquidator of the partnership estate may give in lieu of the security.

Duties of the liquidator under composition

148. (1) Any moneys to be paid and anything to be done for the benefit of creditors in pursuance of a composition shall be paid and done, as far as practicable, through the liquidator.

(2) Any creditor who has failed to prove his claim before the liquidator has made a final distribution among those creditors who have proved their claims, may recover direct from the debtor within six months from the confirmation by the Master of the account under which the distribution was made, any payments to which he may be entitled under the composition and the liquidator has no duty in regard to the distribution.

(3) After the said distribution the creditor has no claim against the insolvent estate.

(4) When a composition has been entered into between a debtor and the creditors of his estate and the liquidation order has not been discharged or set aside, the liquidator of that estate shall frame a liquidation account and distribution account of the assets which are or will become available for distribution among the creditors under the composition.

(5) A liquidator shall complete the implementation of a composition within a period of six months.

PART 22 - CORPORATE RESCUE

Chapter 1 – Corporate Rescue Proceedings

Definitions

149. (1) In this Part -

“affected person”, in relation to a company, means -

- (a) a shareholder or creditor of the company;
- (b) any registered trade union representing employees of the company; and
- (c) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;

“corporate rescue” means proceedings provided for to facilitate the revival of a company that is financially distressed;

“corporate rescue plan” means a plan provided for in section 182;

“corporate rescue practitioner” means a person appointed, or two or more persons appointed jointly, in terms of this Part to oversee a company during business rescue proceedings and ‘practitioner’ has a corresponding meaning;

“Court” means the High Court of Lesotho;

“financially distressed”, in reference to a particular company at any particular time, means that -

- (a) it appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or
- (b) it appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months;

“independent creditor” means a person who -

- (a) is a creditor of the company, including an employee of the company who is a creditor in terms of section 176(2); and

- (b) is not an associate of the company, a director, or the practitioner;

“rescuing the company” means achieving the goals set out in the process of “corporate rescue” or in section;

“supervision” means the oversight imposed on a company during its business rescue proceedings; and

“voting interest” means an interest as recognised, appraised and valued in terms of section 177(4).

(2) For the purpose of the definition of “independent creditor”, an employee of a company is not an associate of that company solely as a result of being a member of a trade union that holds securities of that company.

Revival of a company

150. (1) Corporate rescue proceedings shall facilitate the revival of a company that is financially distressed by providing for -

- (a) the temporary supervision of the company, and of the management of its affairs, business and property;
- (b) a temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
- (c) the development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximises the likelihood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company’s creditors or shareholders than would result from the immediate liquidation of the company.

(2) The Board shall call a shareholders’ meeting for approval of the resolution and appointment of the rescue practitioner.

Company resolution to commence corporate rescue proceedings

151. (1) Subject to subsection (2)(a), the Board of a company may resolve that the company voluntarily begin corporate rescue proceedings and place the company under supervision, if the Board has reasonable grounds to believe that -

- (a) the company is financially distressed; and
- (b) there appears to be a reasonable prospect of rescuing the company.

(2) A resolution contemplated in subsection (1), shall -

- (a) not be adopted if liquidation proceedings have been initiated;
- (b) not be filed with the Registrar of Companies unless it is approved by shareholders; and
- (c) be effective upon filing with the Registrar of Companies.

(3) The Board shall, call a shareholder's meeting for approval of a resolution to commence corporate rescue proceedings and nomination of a corporate rescue practitioner.

(4) The Registrar of Companies shall -

- (a) within five days after -
 - (i) the shareholders meeting of the approval of the adopted resolution under subsection (3);
 - (ii) a resolution is filed in accordance with subsection (1); and
- (b) appoint a Corporate Rescues Practitioner if the person -
 - (i) satisfies the requirements of section 160;

- (ii) consents, in writing, to accept the appointment; and
 - (iii) provides security; and
 - (c) issue the person appointed with a letter of appointment as a Corporate Rescue Practitioner.
- (5) After appointment of the rescue practitioner as required by subsection (4), a company shall -
 - (a) file a direct notice of the appointment of a practitioner within two business days after the appointment; and
 - (b) publish a copy of the direct notice of appointment to each affected person within five business days after the notice was filed.
- (6) If a company fails to comply with any provision of subsections (4) or (5) -
 - (a) the Registrar of Companies shall charge the company an administrative penalty;
 - (b) its resolution to begin corporate rescue proceedings and place the company under corporate rescue lapses and is a nullity; and
 - (c) the Board may not file a further resolution contemplated in subsection (1) for a period of three months after the date on which the lapsed resolution was adopted, unless a Registrar of Companies on good cause shown on an *ex parte* application, approves the company filing a further resolution.
- (7) The Board that has adopted a resolution contemplated in this section may not adopt a resolution to begin liquidation proceedings, unless the resolution has lapsed in terms of subsection (5), or until the corporate rescue proceedings have ended as determined in accordance with section 154.

(8) If the Board has reasonable grounds to believe that the company is financially distressed, but the Board has not adopted a resolution contemplated in this section, the Board shall deliver a written notice to each affected person, setting out the criteria used for a company that is financially distressed that are applicable to the company and its reasons for not adopting a resolution contemplated in this section.

Objections to company resolution

152. (1) Subject to subsection (2), at any time after the adoption of a resolution in terms of section 151 and until the adoption of a corporate rescue plan in terms of section 185, an affected person may apply to the Registrar of Companies to set aside the resolution -

- (a) setting aside the resolution, on the grounds that -
 - (i) there is no reasonable basis for believing that the company is financially distressed;
 - (ii) there is no reasonable prospect for rescuing the company; or
 - (iii) the company has failed to satisfy the procedural requirements set out in section 151;
- (b) setting aside the appointment of the practitioner, on the grounds that the practitioner-
 - (i) does not satisfy the requirements of section 160; or
 - (ii) is not independent of the company or its management;

(2) An affected person who, as a director of a company, voted in favour of a resolution contemplated in section 151 may not apply to a Registrar of Companies in terms of -

- (a) subsection (1)(a) to set aside that resolution; or

- (b) subsection (1)(b) to set aside the appointment of the practitioner appointed by the company,

unless that person satisfies the Registrar of Companies that the person, in supporting the resolution, acted in good faith on the basis of information that has subsequently been found to be false or misleading.

- (3) An applicant in terms of subsection (1) shall -

- (a) serve a copy of the application on the company and the Registrar of Companies; and
- (b) notify each affected person of the application in the prescribed manner.

(4) Each affected person has a right to participate in the hearing of an application in terms of this section.

(5) When considering an application in terms of subsection (1)(a) to set aside the company's resolution, the Registrar of Companies may -

- (a) set aside the resolution -
 - (i) on any grounds set out in subsection (1); or
 - (ii) if, having regard to all of the evidence, the Registrar of Companies considers that it is otherwise just and equitable to do so;
- (b) afford the practitioner sufficient time to form an opinion whether or not -
 - (i) the company appears to be financially distressed; or
 - (ii) there is a reasonable prospect of rescuing the company,

and after receiving a report from the practitioner, may

set aside the company's resolution if the Registrar of Companies concludes that the company is not financially distressed, or there is no reasonable prospect of rescuing the company; and

- (c) if it makes an order under paragraph (a) or (b) setting aside the company's resolution, may make any further necessary and appropriate order, including -
 - (i) an order placing the company under liquidation; or
 - (ii) if the Registrar of Companies has found that there were no reasonable grounds for believing that the company would be unlikely to pay all of its debts as they became due and payable, an order of costs against any director who voted in favour of the resolution to commence corporate rescue proceedings, unless the Registrar of Companies is satisfied that the director acted in good faith and on the basis of information that the director was entitled to rely upon.

(6) If, after considering an application in terms of subsection (1)(b), the Registrar of Companies makes an order setting aside the appointment of a practitioner -

- (a) the Registrar of Companies shall appoint an alternate practitioner who satisfies the requirements of section 160, recommended by, or acceptable to, the holders of a majority of the voting interests of independent creditors who were represented in the hearing before the Registrar of Companies and
- (b) the provisions of subsection (5)(b), if relevant, apply to the practitioner appointed in terms of paragraph (a).

Court order to commence corporate rescue proceedings

153. (1) Unless a company has adopted a resolution contemplated in section 151, an affected person may apply to a Court at any time for an order placing

the company under supervision and commencing corporate rescue proceedings.

(2) An applicant in terms of subsection (1) shall -

- (a) serve a copy of the application on the company, the Regulator and the Registrar of Companies; and
- (b) notify each affected person of the application in the prescribed manner.

(3) Each affected person has a right to participate in the hearing of an application in terms of this section.

(4) After considering an application in terms of subsection (1), the Court may -

- (a) make an order placing the company under supervision and commencing corporate rescue proceedings, if the Court is satisfied that -
 - (i) the company is financially distressed;
 - (ii) the company has failed to pay over any amount in terms of an obligation under or in terms of a public regulation or contract, with respect to employment-related matters; or
 - (iii) it is otherwise just and equitable to do so for financial reasons and there is a reasonable prospect for rescuing the company; or
- (b) dismiss the application, together with any further necessary and appropriate order, including an order placing the company under liquidation.

(5) If the Court makes an order in terms of subsection (4)(a), the Court may make a further order to the Registrar of Companies to appoint an interim practitioner, who -

- (a) satisfies the requirements of section 160; and

-
- (b) has been nominated by the affected person who applied in terms of subsection (1),

subject to ratification by the holders of a majority of the independent creditors' voting interests at the first meeting of creditors, as contemplated in section 179.

Duration of corporate rescue proceedings

154. (1) Corporate rescue proceedings begin when -

- (a) the company files a resolution to place itself under supervision in terms of section 151(3); or
- (b) an affected person applies to the Court for an order placing the company under supervision in terms of section 153(1).

(2) Corporate rescue proceedings end when -

- (a) the Court -
 - (i) sets aside the resolution or order that began those proceedings; or
 - (ii) has converted the proceedings to liquidation proceedings;
- (b) the practitioner has filed with the Registrar of Companies a notice of the termination of corporate rescue proceedings; or
- (c) a corporate rescue plan has been -
 - (i) proposed and or failure to adopt in terms of sections 184 and 185 and no affected person has acted to extend the proceedings in any manner contemplated in section 181; or
 - (ii) adopted in terms of section 184, and the

practitioner has subsequently filed a notice of substantial implementation of that plan.

(3) If corporate rescue proceedings of a company have not ended within six months after the start of those proceedings, or such longer time as the Court, on application by the practitioner, may allow, the practitioner shall -

- (a) prepare a report on the progress of the corporate rescue proceedings, and update it at the end of each subsequent month until the end of those proceedings; and
- (b) deliver the report and each update in the prescribed manner to each affected person, and to the -
 - (i) Court, if the proceedings have been the subject of a Court order; or
 - (ii) Registrar of Companies, in any other case determine whether the rescue proceedings continue under the prescribed conditions or is terminated.

Effects of corporate Rescue on legal proceedings against company

155. (1) During corporate rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except -

- (a) with the written consent of the practitioner;
- (b) with the approval of the Registrar of Companies and in accordance with any terms the Court considers suitable;
- (c) where a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the corporate rescue proceedings began;

- (d) where there are criminal proceedings against the company or any of its directors or officers;
- (e) where there are proceedings concerning any property or right over which the company exercises the powers of a trustee; or
- (f) where there are proceedings by a regulatory authority in the execution of its duties after written notification to the corporate rescue practitioner.

(2) During corporate rescue proceedings, a guarantee or surety by a company in favour of any other person may not be enforced by any person against the company except with approval of the Registrar of Companies.

(3) If any right to commence proceedings or otherwise assert a claim against a company is subject to a time limit, the measurement of that time shall be suspended during the corporate rescue proceedings of a company.

Protection of property interests

156. (1) Subject to subsections (2) and (3), during a company's corporate rescue proceedings -

- (a) the company may dispose, or agree to dispose, of property only -
 - (i) in the ordinary course of its business;
 - (ii) in a transaction carried in good faith at arm's length for fair value approved in advance and in writing by the practitioner; or
 - (iii) in a transaction contemplated within, and undertaken as part of the implementation of, a corporate rescue plan that has been approved in terms of section 184;
- (b) any person who, as a result of an agreement made in the ordinary course of the company's business before the

corporate rescue proceedings began, is in lawful possession of any property owned by the company may continue to exercise any right in respect of that property as contemplated in that agreement, subject to section 150; and

- (c) despite any provision of an agreement to the contrary, no person may exercise any right in respect of any property in the lawful possession of the company, irrespective of whether the property is owned by the company, except to the extent that the practitioner consents in writing.

(2) The practitioner may not unreasonably withhold consent in terms of subsection (1)(c), having regard to the -

- (a) purposes of this Part;
- (b) circumstances of the company; and
- (c) nature of the property, and the rights claimed in respect of it.

(3) If, during a company's corporate rescue proceedings, the company wishes to dispose of any property over which another person has any security or title interest, the company shall -

- (a) obtain the prior consent of that other person, unless the proceeds of the disposal would be sufficient to fully discharge the indebtedness protected by that person's security or title interest; and
- (b) promptly -
 - (i) pay to that other person the sale proceeds attributable to that property up to the amount of the company's indebtedness to that other person; or
 - (ii) provide security for the amount of those

proceeds, to the reasonable satisfaction of that other person.

Post-commencement finance

157. (1) To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment becomes due and payable by a company to an employee during the company's corporate rescue proceedings, but is not paid to the employee -

- (a) the money is regarded to be post-commencement financing; and
- (b) will be paid in the order of preference set out in subsection (3)(a).

(2) During its corporate rescue proceedings, the company may obtain financing other than as contemplated in subsection (1), and any such financing -

- (a) may be secured to the lender by utilising any asset of the company to the extent that it is not otherwise encumbered; and
- (b) will be paid in the order of preference set out in subsection (3)(b).

(3) After payment of the remuneration of the practitioner and expenses referred to in section 169, and other claims arising out of the costs of the corporate rescue proceedings, all claims contemplated -

- (a) in subsection (1) will be treated equally, but will have preference over -
 - (i) all claims contemplated in subsection (2), irrespective of whether or not they are secured; and
 - (ii) all unsecured claims against the company; or

- (b) in subsection (2) will have preference in the order in which they were incurred over all unsecured claims against the company.

(4) If corporate rescue proceedings are superseded by a liquidation order, the preference conferred in terms of this section will remain in force, except to the extent of any claims arising out of the costs of liquidation.

Effect of corporate rescue on employees and contracts

158. (1) Despite any provision of an agreement to the contrary -

- (a) during a company's corporate rescue proceedings, employees of the company immediately before the beginning of those proceedings continue to be so employed on the same terms and conditions, except to the extent that-
 - (i) changes occur in the ordinary course of attrition; or
 - (ii) the employees and the company, in accordance with applicable labour laws, agree different terms and conditions; and
- (b) any retrenchment of any such employees contemplated in the company's corporate rescue plan is subject to the Labour Code, 1992 and any other applicable employment related legislation.

(2) Subject to subsection (3) and despite any provision of an agreement to the contrary, during corporate rescue proceedings, the practitioner may -

- (a) entirely, partially or conditionally suspend, for the duration of the corporate rescue proceedings, any obligation of the company that -
 - (i) arises under an agreement to which the company was a party at the commencement of the corporate rescue proceedings; and

-
- (ii) would otherwise become due during those proceedings; or
 - (b) apply urgently to a Court to entirely, partially or conditionally cancel, on any terms that are just and reasonable in the circumstances, any obligation of the company contemplated in paragraph (a).
 - (3) When acting in terms of subsection (2), a -
 - (a) corporate rescue practitioner shall not suspend any provision of -
 - (i) an employment contract; or
 - (ii) a financial contract to which the provisions of this Act would have applied had the company been liquidated;
 - (b) Court may not cancel any provision of an -
 - (i) employment contract, except as contemplated in subsection (1);
 - (ii) agreement to which the provisions of this Act would have applied had the company been liquidated; and
 - (c) if a corporate practitioner suspends a provision of an agreement relating to security granted by the company, that provision nevertheless continues to apply for the purpose of section 156, with respect to any proposed disposal of property by the company.
 - (4) A party to an agreement that has been suspended or cancelled, or any provision which has been suspended or cancelled, in terms of subsection (2), may assert a claim against the company only for damages.

Effect of corporate rescue on shareholders and directors

159. (1) When corporate rescue proceedings for a company, begin, the Directors of a company shall cease to have control of the Company.

(2) During corporate rescue proceedings of a company, each director of the company shall attend to the requests of the corporate rescue practitioner at all times, and provide the corporate rescue practitioner with any information about the affairs of the company as may reasonably be required.

(3) If, during corporate rescue proceedings of a company, the Board, or one or more directors of the company, purports to take an action on behalf of the company, that action is void unless approved by the corporate rescue practitioner.

Qualifications and Appointment of corporate rescue practitioners

160. (1) A person shall qualify to apply for registration as a corporate rescue practitioner, if the person -

- (a) is not disqualified to be appointed as a liquidator of the company under section 61;
- (b) is registered and admitted as a legal practitioner in terms of the Legal Practitioners Act, 1983¹²;
- (c) is a member of the Lesotho Institute of Accountants in terms of the Accountants Act, 1977;
- (d) possesses a Bachelors Degree in Business Management or a related field;
- (e) is a member of the Law Society of Lesotho in terms of the Law Society Act, 1983;
- (f) is not disqualified from acting as a director of a company under the Companies Act, 2011;
- (g) possesses such qualification or experience, additionally or alternatively, as the Regulator may prescribe.

(2) A person who is registered as a corporate rescue practitioner under section 1, may be appointed as a rescue practitioner of a company if a person -

- (a) does not have any other relationship with a company which has a conflict of interest which leads a reasonable informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship;
- (b) is not an associate of a person who has a relationship under paragraph (g);
- (c) has provided security in an amount and on terms and conditions that the Registrar of Companies considers necessary to secure the interests of the company and any affected persons;

Disqualification for registration as a corporate rescue practitioner

161. (1) A person shall not be qualified for registration if such person -

- (a) is an insolvent;
- (b) does not reside or have a place of business in Lesotho;
- (c) is a minor or any other person under legal disability;
- (d) is declared under section 73 to be disqualified, while such disqualification lasts, or is removed by the court from an office of trust on account of misconduct;
- (e) is not a natural person;
- (f) has been convicted, in Lesotho or elsewhere, of an offence in terms of this Act or an offence of which dishonesty is an element and who was sentenced to imprisonment without the option of a fine or to a fine of not less than One Thousand Maloti;

- (g) was, at any time, a party to an agreement or arrangement with any debtor or creditor in which he undertook that he would, when performing the functions of a rescue practitioner, grant or attempt to grant to, or obtain or attempt to obtain for any debtor or creditor any benefit not provided for by law.

(2) In addition to the disqualifications listed in subsection (2), a person shall not be qualified for registration as a rescue practitioner if he has behaved in a manner which, in the opinion of the Regulator, is of a disgraceful or dishonourable nature.

(3) When determining whether a person has behaved in a disgraceful or dishonourable manner under subsection (3), the Regulator shall have regard to any breaches by the rescue practitioner of the Code Governing the Performance and Conduct of Liquidators and Corporate Rescue Practitioners as prescribed by regulation.

(4) Before reaching a decision as to whether or not a person does not qualify for registration in terms of subsection (1), or is disqualified for registration in terms of subsection (2) or (3), the Regulator shall -

- (a) inform him, in writing, of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Regulator thinks fit; and
- (b) pay due regard to any representations made by him under paragraph (a).

Application for registration as a rescue practitioner

162. (1) Any person who wishes to be registered as a rescue practitioner and obtain a practicing certificate shall submit, to the Regulator, an application which shall be in the form and manner prescribed by the Regulator, together with the prescribed registration fee, certificates, documents and other information as the Regulator may reasonably require.

(2) The Regulator shall consider every application for registration laid before him under subsection (1), and if the Regulator is -

-
- (a) satisfied that the applicant is qualified for registration, he shall register the applicant;
 - (b) not so satisfied, he shall refuse the application and notify the applicant in writing of his decision.

(3) Whenever the Regulator registers a person under this section, he shall issue that person with a certificate of registration and a practising certificate which shall be in the prescribed form.

Cancellation of registration, withdrawal and surrender of practicing certificate

163. (1) Subject to subsection (2), the Regulator shall cancel the registration of any registered person who is disqualified from being appointed as a liquidator in terms of section 61 and having been qualified for registration in terms of section 160(1)(b) or (c) ceases to be so qualified.

(2) Before reaching a decision as to whether or not a registered person's registration should be cancelled under subsection (1), the Regulator shall -

- (a) inform the person, in writing, of the grounds on which the Regulator might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person, as the Regulator considers it fit; and
- (b) pay due regard to any representations made by him under subsection (1).

(3) The Regulator shall cancel the registration of a registered person in the Register.

(4) Whenever the Regulator cancels the registration of a registered person under subsection (3), he shall -

- (a) notify that person, in writing, of the cancellation; and
- (b) cause a notice of the cancellation to be published in the Gazette; and

- (c) update the Register, and such a person is ineligible for appointment as a rescue practitioner under this Act.

(5) If after due inquiry the Regulator is satisfied that a registered person has not complied with any term or condition of a practising certificate held by him, the Regulator may withdraw the practising certificate and, if it does so, the Regulator shall -

- (a) inform him, in writing, of the grounds on which it might each such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Regulator thinks fit; and
- (b) pay due regard to any representations made by him under paragraph (a).

(6) Where a person has been advised, in writing, by the Regulator that a practising certificate issued to him has been withdrawn or has ceased to be valid, he shall immediately and in any event within thirty days after being so advised, return the practising certificate to the Regulator.

Re-application of registration

164. A person whose registration has been cancelled under section 163 may apply for his registration and section 162 shall apply, with the necessary modifications, as if he were applying for registration.

Prohibition against practice without practising certificate

165. (1) No person shall perform duties and functions or exercise the powers of a corporate rescue practitioner, directly or indirectly, unless he is registered and is issued with a practicing certificate.

(2) Any person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding Two Hundred and Fifty Thousand Maloti or to imprisonment for a period not exceeding Ten years or to both such fine and such imprisonment.

(3) A conviction for an offence under subsection (2) shall not be a bar to a further prosecution or conviction if the offence continues.

Refusal of practising certificate

166. (1) On receipt of an application for a practising certificate under section 162, the Regulator may refuse to issue a practicing certificate to an applicant who does not qualify to be appointed as a corporate rescue practitioner in terms of section 160.

(2) A person who is aggrieved by a refusal of the Regulator to issue him with a practising certificate under subsection (1) may, within a period of thirty days of having been notified, apply to the Court for a review of the Regulator's decision.

(3) In a review under subsection (2), the Court may give such decision in the matter as it considers appropriate.

Period of validity of practising certificate

167. (1) Subject to subsection (2), a practising certificate shall remain valid -

- (a) for the period of twelve months from the 1st January next following the application; or
- (b) if the applicant so requires, from the date of its issue until the 31st December of the year in which it is issued.

(2) A practising certificate issued to a person whose name is deleted from the Register shall cease to be valid from the date of such deletion, and the person whose name is deleted shall immediately after the deletion return the practicing certificate to the Regulator for destruction.

Renewal and refusal to renew practising certificate

168. (1) A corporate rescue practitioner applying for the renewal of a practising certificate shall apply to the Regulator in the prescribed form and manner.

(2) A practising certificate issued to a rescue practitioner under section 162 shall be renewed annually in line with the period of validity referred to in section 167.

(3) Upon receipt of an application for renewal, the Regulator shall, prior to renewing the practising certificate, ensure that the applicant has provided proof that he has completed at least fifteen hours of appropriate continuing professional development during the previous calendar year but, in the case of a rescue practitioner whose registration as a rescue practitioner has not endured for a full calendar year, this requirement may be dispensed with.

(4) A corporate rescue practitioner who does not comply with the provisions of subsection (2) shall not be issued with a renewed practising certificate until such time as he has complied with the requirements of that subparagraph.

Improper or disgraceful conduct

169. (1) Improper or disgraceful conduct on the part of a registered insolvency practitioner shall include the commission of any of the following acts -

- (a) touting;
- (b) except as may be permitted in rules, advertising in any manner whatsoever, whether directly or indirectly, his services as an rescue practitioner, but this subsection shall not apply to advertising by a person who is a registered legal practitioner, public accountant or public auditor or a chartered accountant, where the advertisement is permitted in terms of the enabling legislation;
- (c) contravening a provision of this Act or regulations made under this Act;
- (d) in any way, assisting, allowing or enabling an unregistered person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the work of a rescue practitioner, or in any way conniving at any arrangement or understanding whatsoever where any such fee or remuneration is charged, recovered or received by any such unregistered person;
- (e) opening or maintaining any office or branch at which the

work of a rescue practitioner is conducted but which is not under the continuous personal supervision of a registered rescue practitioner;

- (f) keeping the accounts of his practice as a rescue practitioner in the books of accounts utilised in connection with any other business in which he may be interested jointly with an unregistered person, but this paragraph shall not prevent a registered legal practitioner, public accountant or public auditor or a chartered accountant from keeping the accounts of his practice as an insolvency practitioner in the same books as the accounts of his practice as a legal practitioner, public accountant, public auditor or chartered accountant;
- (g) assisting an unregistered person to recover charges for services rendered by including such charges in any bill of costs or memorandum of charges rendered by him as a rescue practitioner, without disclosing the fact in such bill or memorandum.

(2) Any breach of the Code Governing the Performance and Conduct of Rescue Practitioners may be construed as improper or disgraceful conduct of its own accord, or may be taken into account in assessing the conduct of an insolvency practitioner under subsection (1).

(3) A corporate rescue practitioner shall be subjected to disciplinary proceedings before the Regulator upon application by any person.

Regulator to be joined on all proceedings against the rescue practitioner

170. Where a corporate rescue practitioner is a party in legal proceedings, the Regulator shall be joined as a party to ensure he takes appropriate action against the corporate rescue practitioner for issues affecting him in the proceedings.

Removal and replacement of corporate rescue practitioner

171. (1) Upon request of an affected person, or on his own motion, the Registrar of Companies may remove a corporate rescue practitioner from office

on any of the following grounds -

- (a) incompetence or failure to perform the duties of a corporate rescue practitioner of the particular company;
- (b) failure to exercise the proper degree of care in the performance of the corporate rescue practitioner's functions;
- (c) engaging in illegal acts or conduct;
- (d) if the corporate rescue practitioner no longer satisfies the requirements set out in section 160;
- (e) conflict of interest or lack of independence; or
- (f) the corporate rescue practitioner is incapacitated and unable to perform the functions of that office, and is unlikely to regain that capacity within a reasonable time.

(2) The company, or the creditor who nominated the corporate rescue practitioner shall appoint a new practitioner if a practitioner dies, resigns or is removed from office, subject to the right of an affected person to bring a fresh application in terms of section 152(1)(b) to set aside that new appointment.

General powers and duties of corporate rescue practitioners

172. (1) During corporate rescue proceedings of a company, the corporate rescue practitioner, in addition to any other powers and duties set out in this Part -

- (a) shall subject to section 166, exercise general supervision of a company;
- (b) may -
 - (i) remove from office any person who forms part of the pre-existing management of the company; or
 - (ii) appoint a person as part of the management of a

company, whether to fill a vacancy or not, subject to subsection (2); and

(iii) apply to the Registrar of companies for an order removing a director from office on the grounds that the director has -

(aa) failed to comply with a requirement of this Part;

(bb) by act or omission, has impeded, or is impeding -

(aaa) the corporate rescue practitioner in the performance of the powers and functions of a corporate rescue practitioner;

(bbb) the management of the company by the corporate rescue practitioner; or

(ccc) the development or implementation of a corporate rescue plan in accordance with this Part;

(c) is responsible to -

(i) develop a corporate rescue plan to be considered by affected persons, in accordance with section 184;

(ii) implement any corporate rescue plan that has been adopted in accordance with section 184; and

(iii) investigate the affairs of the company.

(2) The corporate rescue practitioner shall, as soon as practicable

after appointment, inform all relevant regulatory authorities having authority in respect of the activities of the company, of the fact that the company is placed under corporate rescue proceedings and of his appointment.

(3) A corporate rescue practitioner may not appoint a person as part of the management of the company, or an advisor to the company or to the practitioner, if that person -

- (a) has any other relationship with the company which leads a reasonable and informed third party to conclude that the integrity, impartiality or objectivity of that person is compromised by that relationship;
- (b) is related to a person who has a relationship contemplated in paragraph (a); or
- (c) is an associate of the corporate rescue practitioner.

(4) During corporate rescue proceedings of a company, the corporate rescue practitioner shall report to the Registrar of Companies on the progress of his work.

(5) If the corporate rescue process concludes with an order placing the company in liquidation, any person who has acted as corporate rescue practitioner during the corporate rescue process may not be appointed as liquidator of the company.

Investigation of affairs of company

173. (1) Within thirty working days or such period as the Registrar of Companies may allow, a corporate rescue practitioner shall investigate the affairs of the company, business, property, and financial situation, and after having done so, consider whether there is any reasonable prospect of the company being rescued.

(2) If, after the investigation referred to in subsection (1), at any time during corporate rescue proceedings, the practitioner concludes that -

- (a) there is no reasonable prospect for the company to be rescued, the practitioner shall -

-
- (i) inform the Registrar of Companies, the company, and all affected persons in the prescribed manner; and
 - (ii) where the corporate rescue proceedings are initiated under section 153, the practitioner shall apply to the Court for an order to discontinue the corporate rescue proceedings and place the company into liquidation; and
- (b) there are no reasonable grounds to believe that the company is financially distressed, the practitioner shall so inform, where applicable the Court and the Registrar of Companies, the company, and all affected persons in the prescribed manner, and -
- (i) if the corporate rescue process was confirmed by, where applicable the Court or the Registrar of Companies, the order, in terms of section 152, or initiated by an application to the Registrar of Companies in terms of section 153, shall apply to the Registrar of Companies for an order terminating the corporate rescue proceedings; and
 - (ii) otherwise, file a notice of termination of the corporate rescue proceedings; or
- (c) there is evidence, in the dealings of the company before the corporate rescue proceedings began, of -
- (i) voidable transactions, or a failure by the company or any director to perform any material obligation relating to the company, the practitioner shall take any necessary steps to rectify the matter and may direct the management to take appropriate steps;
 - (ii) reckless trading, fraud or other contravention of any law relating to the company, the practitioner

shall -

- (aa) forward the evidence to the appropriate authority for further investigation and possible prosecution; and
- (bb) direct the management to take any necessary steps to rectify the matter, including recovering any misappropriated assets of the company.

(3) A Court to which an application has been made in terms of subsection (2)(a)(ii) may make the order applied for, or any other order that the Court considers appropriate in the circumstances.

Directors of company to co-operate with and assist practitioner

174. (1) As soon as practicable after corporate rescue proceedings begin, each director of a company shall deliver to the practitioner all books and records that relate to the affairs of the company and are in the possession of the director.

(2) A director of a company who knows where other books and records relating to the company are being kept, shall inform the practitioner as to the whereabouts of those books and records.

(3) Within five business days after corporate rescue proceedings begin, or such longer period as the corporate rescue practitioner allows, the directors of a company shall provide the practitioner with a statement of affairs containing, at a minimum, particulars of the following:

- (a) any material transactions involving the company or the assets of the company, and occurring within twelve months immediately before the corporate rescue proceedings began;
- (b) any Court, arbitration or administrative proceedings, including pending enforcement proceedings, involving the company;
- (c) the assets and liabilities of the company, and its income

and disbursements within the immediately preceding twelve months;

- (d) the number of employees, and any collective agreements or other agreements relating to the rights of employees;
- (e) any debtors and their obligations to the company; and
- (f) any creditors and their rights or claims against the company.

(4) No person is entitled, as against the corporate rescue practitioner of a company, to retain possession of any books or records of the company, or to claim or enforce a lien over any such books or records, unless such books or records are in the lawful possession of such person and he has made copies available to the practitioner or has afforded the practitioner a reasonable opportunity to inspect the books or records concerned.

Remuneration of practitioner

175. (1) The corporate rescue practitioner is entitled to charge an amount to the company for the remuneration and expenses of the practitioner in accordance with the tariff prescribed under subsection (3).

(2) To the extent that the corporate rescue practitioner's remuneration and expenses are not fully paid, the practitioner's claim for those amounts will rank in priority before the claims of all other secured and unsecured creditors.

(3) The Minister may on the recommendation of the Regulator make regulations prescribing a tariff of fees and expenses for the purpose of subsection (1).

(4) Where a corporate rescue practitioner, after an investigation is made under section 173, determines that a company can be rescued and subsequently discovers that a company cannot be rescued, the Regulator may, after hearing, make a decision that the corporate rescue practitioner is not entitled to fees and expenses, and shall also lose part of his security as may be determined by the Regulator.

Rights of employees

176. (1) During a corporate rescue proceedings of a company any employees of the company who are -

- (a) represented by a registered trade union may exercise any rights set out in this Part -
 - (i) collectively through their trade union; and
 - (ii) in accordance with applicable labour law; or
- (b) not represented by a registered trade union may elect to exercise any rights set out in this Part either directly, or by proxy through an employee organisation or representative.

(2) To the extent that any remuneration, reimbursement for expenses or other amount of money relating to employment became due and payable by a company to an employee at any time before the beginning of the corporate rescue proceedings of a company, and had not been paid to that employee immediately before the beginning of those proceedings, the employee is a preferent unsecured creditor of the company for the purposes of this Part.

(3) During a corporate rescue process of a company, every registered trade union representing any employees of the company, and any employee who is not so represented, is entitled to -

- (a) notice, which shall be given in the prescribed manner and form to employees at their workplace, and served at the head office of the relevant trade union, of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings;
- (b) participate in any Court proceedings arising during the corporate rescue proceedings;
- (c) form a committee of representatives of employees;
- (d) be consulted by the practitioner during the development

of the corporate rescue plan, and afforded sufficient opportunity to review any such plan and prepare a submission contemplated in section 184(1)(c);

- (e) be present and make a submission to the meeting of the holders of voting interests before a vote is taken on any proposed corporate rescue plan, as contemplated in section 184(1)(c);
- (f) vote with creditors on a motion to approve a proposed corporate plan, to the extent that the employee is a creditor, as contemplated in subsection (2); and
- (g) if the proposed corporate rescue plan is rejected, to -
 - (i) propose the development of an alternative plan, in the manner contemplated in section 185; or
 - (ii) present an offer to acquire the interests of one or more affected persons, in the manner contemplated in section 185.

(4) A medical scheme or a pension scheme including a provident scheme, for the benefit of the past or present employees of a company, is an unsecured creditor of the company for the purposes of this Part to the extent of -

- (a) any amount that was due and payable by the company to the trustees of the scheme at any time before the beginning of the company's corporate rescue proceedings, and that had not been paid immediately before the beginning of those proceedings; and
- (b) in the case of a defined benefit pension scheme, the present value at the commencement of the corporate rescue proceedings of any unfunded liability under that scheme.

(5) The rights set out in this section are in addition to any other rights arising or accruing in terms of any law, contract, collective agreement, shareholding, security or Court order.

Participation by creditors

177. (1) Each creditor is entitled to -
- (a) notice of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings;
 - (b) participate in any Court proceedings arising during the corporate rescue proceedings;
 - (c) formally participate in a company's corporate rescue proceedings to the extent provided for in this Part; and
 - (d) informally participate in those proceedings by making proposals for a corporate rescue plan to the corporate rescue practitioner.
- has -
- (2) In addition to the rights set out in subsection (1), each creditor
- (a) the right to vote to amend, approve or reject a proposed corporate rescue plan, in the manner contemplated in section 184; and
 - (b) if the proposed corporate rescue plan is rejected, a further right to -
 - (i) propose the development of an alternative plan, in the manner contemplated in section 185; or
 - (ii) present an offer to acquire the interests of any or all of the other creditors in the manner contemplated in section 185.
- (3) The creditors of a company are entitled to form a committee of creditors, and through that committee are entitled to be consulted by the corporate rescue practitioner during the development of the corporate rescue plan.
- (4) In respect of any decision contemplated in this Part that requires

the support of the holders of voting interests of creditors a secured or unsecured creditor has a voting interest equal to the value of the amount owed to that creditor by the company.

Participation by holders of company's securities

178. During corporate rescue proceedings of a company, each holder of any issued security of the company is entitled to-

- (a) direct notice of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings;
- (b) participate in any Court proceedings arising during the corporate rescue proceedings;
- (c) formally participate in corporate rescue proceedings of the company to the extent provided for in this Part;
- (d) vote to approve or reject a proposed corporate rescue plan in the manner contemplated in section 184, if the plan would alter the rights associated with the class of securities held by that person; and
- (e) if the corporate rescue plan is rejected, to -
 - (i) propose the development of an alternative plan, in the manner contemplated in section 181.
 - (ii) present an offer to acquire the interests of any or all of the creditors or other holders of the securities of the company in the manner contemplated in section 185.

First meeting of creditors

179. (1) Within fourteen business days after conclusion of the investigation contemplated in section 173, the corporate rescue practitioner shall convene, and preside over, a first meeting of creditors, at which -

- (a) the practitioner -
 - (i) shall inform the creditors whether the practitioner believes that there is a reasonable prospect of rescuing the company;
 - (ii) may receive proof of claims by creditors; and
- (b) the creditors may determine whether or not a committee of creditors should be appointed and, if so, may appoint the members of the committee.

(2) The corporate rescue practitioner shall give notice of the first meeting of creditors to every creditor of the company whose name and address is known to, or can reasonably be obtained by, the practitioner, setting out the -

- (a) date, time and place of the meeting; and
- (b) agenda for the meeting.

(3) At any meeting of creditors, other than the meeting contemplated in section 179, a decision supported by the holders of a simple majority of the voting interests of independent creditors voted on a matter, is the decision of the meeting on that matter.

First meeting of employees' representatives

180. (1) Within fourteen business days after conclusion of the investigation contemplated in section 173, the corporate rescue practitioner shall convene, and preside over, a first meeting of representatives of the employees, at which the -

- (a) practitioner shall inform the representatives of the employees whether the practitioner believes that there is a reasonable prospect of rescuing the company; and
- (b) representatives of the employees may determine whether or not a committee of employees should be appointed and, if so, may appoint the members of the committee.

(2) The corporate rescue practitioner shall give notice of the meeting to every registered trade union representing employees of the company and, if there are any employees who are not represented by such a registered trade union, to those employees, or their representatives, setting out the -

- (a) date, time and place of the meeting; and
- (b) agenda for the meeting.

Functions, duties and membership of committees of creditors and employees

181. (1) A committee of employees, or of creditors, appointed in terms of section 179 or 180 -

- (a) may consult with the corporate rescue practitioner about any matter relating to the corporate rescue proceedings, but may not direct or instruct the practitioner;
- (b) may, on behalf of the general body of creditors or employees, respectively, receive and consider reports relating to the corporate rescue proceedings; and
- (c) shall act independently of the corporate rescue practitioner to ensure fair and unbiased representation of creditors' or employees' interests.

(2) A person may be a member of a committee of creditors or employees, respectively, only if the person is -

- (a) an independent creditor, or an employee, of the company;
- (b) an agent, proxy or attorney of an independent creditor or employee, or other person acting under a general power of attorney; or
- (c) authorised in writing by an independent creditor or employee to be a member.

Proposal of corporate rescue plan

182. (1) The corporate rescue practitioner, after consulting the creditors, other affected persons, and the management of the company, shall prepare a corporate rescue plan for consideration and possible adoption at a meeting held in terms of section 183.

(2) The corporate rescue plan shall contain all the information reasonably required to facilitate affected persons in deciding whether or not to accept or reject the plan, and shall be divided into three Parts, as follows:

- (a) Part A - Background, which shall include at least -
 - (i) a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the corporate rescue proceedings began;
 - (ii) a complete list of the creditors of the company when the corporate rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
 - (iii) the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
 - (iv) a complete list of the holders of the company's issued securities;
 - (v) a copy of the written agreement concerning the corporate rescue practitioner's remuneration; and
 - (vi) a statement whether the corporate rescue plan includes a proposal made informally by a creditor of the company;

-
- (b) Part B - Proposals, which shall include at least the -
- (i) nature and duration of any moratorium for which the corporate rescue plan makes provision;
 - (ii) extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
 - (iii) ongoing role of the company, and the treatment of any existing agreements;
 - (iv) property of the company that is to be available to pay creditors' claims in terms of the corporate rescue plan;
 - (v) order of preference in which the proceeds of property will be applied to pay creditors if the corporate rescue plan is adopted;
 - (vi) benefits of adopting the corporate rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation; and
 - (vii) effect that the corporate rescue plan will have on the holders of each class of the company's issued securities;
- (c) Part C - Assumptions and conditions, which shall include at least-
- (i) a statement of the conditions that shall be satisfied, if any, for the corporate rescue plan to -
 - (aa) come into operation; and
 - (bb) be fully implemented;

- (ii) the effect, if any, that the corporate rescue plan contemplates on the number of employees, and their terms and conditions of employment;
- (iii) the circumstances in which the corporate rescue plan will end; and
- (iv) a projected -
 - (aa) balance sheet for the company; and
 - (bb) statement of income and expenses for the ensuing three years, prepared on the assumption that the proposed corporate plan is adopted.

(3) The projected balance sheet and statement required by subsection (2)(c)(iv) -

- (a) shall include a notice of any material assumptions on which the projections are based; and
- (b) may include alternative projections based on varying assumptions and contingencies.

(4) A proposed corporate rescue plan shall conclude with a certificate by the corporate rescue practitioner stating that any -

- (a) actual information provided appears to be accurate, complete, and up to date; and
- (b) projections provided are estimates made in good faith on the basis of factual information and assumptions as set out in the statement.

(5) The corporate rescue plan shall be published by the company within 25 business days after the date on which the corporate rescue practitioner was appointed, or such longer time as may be allowed by the -

-
- (a) Court, on application by the practitioner; or
 - (b) holders of a majority of the creditors' voting interests.

Meeting to determine future of company

183. (1) Within ten business days after publishing a corporate rescue plan in terms of section 182(1), the corporate rescue practitioner shall, convene and preside over a meeting of creditors and any other holders of a voting interest, called for the purpose of considering the plan.

(2) At least five business days before the meeting contemplated in subsection (1), the practitioner shall deliver a notice of the meeting to all affected person, setting out -

- (a) the date, time and place of the meeting;
- (b) the agenda of the meeting; and
- (c) a summary of the rights of affected persons to participate in and vote at the meeting.

(3) The meeting contemplated in this section may be adjourned from time to time, as necessary or expedient, until a decision regarding the company's future has been taken in accordance with sections 184 and 185.

Consideration of corporate rescue plan

184. (1) At a meeting convened in terms of section 183, the corporate rescue practitioner shall -

- (a) introduce the proposed corporate rescue plan for consideration by the creditors and if applicable, by the share holders;
- (b) inform the parties present in the meeting whether he believes that there is reasonable prospect of the company to be rescued;
- (c) provide an opportunity for the employees' representa-

tives to address the meeting;

- (d) invite discussion entertain and conduct a vote on any motions raised to -
 - (i) amend the proposed plan in a manner moved and seconded by the holders of creditors' voting interests and satisfaction of the corporate rescue practitioner; or
 - (ii) adjourn the meeting in order to revise the plan for further consideration; and
- (e) unless the meeting has been adjourned in terms of paragraph (d)(ii), call for a vote for preliminary approval of the proposed plan as amended.

(2) Where a call for a vote is made in terms of subsection (1)(e), the proposed corporate rescue plan shall be approved on a preliminary basis if a majority in number representing 75% in value of the creditors or class of creditors voting in person, or by proxy, vote in favour of the rescue plan.

(3) If a proposed corporate rescue plan is not approved on a preliminary basis as contemplated in subsection (2), the plan is rejected and may be considered further only in terms of section 185 -

- (a) does not alter the rights of the holders of any class of company's securities, approval of that plan on a preliminary basis in terms of subsection (2) also constitutes the final adoption of that plan, subject to the satisfaction of any conditions on which that plan is contingent; or
- (b) alters the rights of any class of holders of the company's securities-
 - (i) the corporate rescue practitioner shall immediately hold a meeting of holders of the class or classes of securities whose rights would be altered by the plan and for call for a vote by them to approve the adoption of proposed corporate

rescue plan; and

- (ii) if, in a vote contemplated in subparagraph(i), a majority of voting rights that were exercised -
 - (aa) support adoption of the plan, it shall be finally adopted, subject only to the satisfaction; or
 - (bb) oppose adoption of the plan, the plan is rejected and may be considered further only in terms of section 185.

(4) A corporate rescue plan that has been adopted is binding on company and on each of the creditors of the company and every holder of the company's securities, whether or not such a person-

- (a) was present at the meeting;
- (b) voted in favour of adoption of the plan; or;
- (c) in the case of creditors, had proved their claims against the company.

(5) The company, under the direction of the corporate rescue practitioner, shall take all necessary steps to -

- (a) attempt to satisfy any conditions on which the corporate rescue plan is contingent; and
- (b) implement the plan as adopted.

(6) To implement an adopted corporate rescue plan -

- (a) the corporate rescue practitioner may, in accordance may, in accordance with that plan determine the consideration for and issue of, any authorised securities of the company, notwithstanding any other provision of the Companies Act, 2011 to the contrary; and
- (b) if the corporate rescue plan was approved by the share-

holders of the company as contemplated in subsection (3)(c), the corporate rescue practitioner may amend the company's Memorandum of Incorporation to authorise and determine the preferences, rights limitations and other terms of any securities that are not otherwise authorised, but which are contemplated to be issued in terms of the corporate rescue plan, despite any other provision of Companies Act, 2011.

(7) Except to the extent that an approved corporate rescue plan provides otherwise, a pre-emptive right of any shareholder of the company does not apply with respect to an issue of shares by the company in terms of the corporate rescue plan.

(8) When the corporate rescue plan has been substantially implemented, the corporate rescue practitioner shall file a notice the substantial implementation of corporate rescue plan.

Failure to adopt corporate rescue plan

185. (1) If a corporate rescue plan has been rejected in terms of section 184(3) (a) or (c) (ii) (bb), the corporate rescue practitioner may -

- (a) seek a vote of approval from the holders of voting interests to prepare and publish a revised plan; or
- (b) inform the Registrar or Court where the rescue plan was ordered by the court, that the proceedings should be terminated because in his opinion the proposed rescue plan was the best plan which the rescue practitioner could make and the creditors have rejected it and no alternative plan has been developed and agreed upon.

(2) If the corporate rescue practitioner does not take any action contemplated in subsection (1) -

- (a) any affected person at the meeting may-
 - (i) call for a vote of approval from the holders of voting interests requiring the corporate rescue

practitioner to prepare and publish a revised plan; or

(ii) apply to the court to set aside the result of the vote by the holders of voting interests or shareholders as the case may be on the grounds that it was inappropriate; or

(b) any affected person may make a binding offer to purchase the voting interest of one or more persons who opposed adoption of the corporate rescue plan at a value independently and expertly determined on the request of the corporate rescue practitioner to be a fair and reasonable estimate of the return to that person if the company were to be liquidated.

(3) If the corporate rescue practitioner, acting in terms of subsection (1) or an affected person, acting in terms of subsection(2), informs the parties attending the meeting that an application shall be made to the court as provided for in those provisions, the practitioner shall adjourn the meeting-

(a) for five business days unless the application is to the court during that time; or

(b) until the court has disposed of the application.

(4) If, on the request of the corporate rescue practitioner in terms of subsection (1) or a call by an affected person in terms of subsection (2), the meeting directs the practitioner to prepare and publish a revised corporate rescue plan-

(a) the corporate rescue practitioner shall-

(i) adjourn the meeting after that vote; and

(ii) prepare and publish a new or revised corporate rescue plan within ten working days; and

(b) the provisions of this part apply afresh to publishing and consideration of the new or revised plan.

(5) If an affected person makes an offer in terms of subsection (2), the corporate rescue practitioner shall -

- (a) adjourn the meeting for no more than five working days to create an opportunity to make the necessary revisions to the corporate rescue plan to appropriately reflect the results of the offer; and
- (b) set the date for resumption of the meeting, without further notice, at which the provisions of section 158 and this section shall apply afresh.

(6) If no person takes any action contemplated in subsection (1), the corporate rescue practitioner shall file a notice of the termination of the corporate rescue proceedings.

(7) A holder of a voting interest or a person acquiring that interest in terms of a binding offer may apply to court to review, re-appraise and re-value a determination by an expert in terms of subsection (1)(b).

(8) On an application provided for in subsection (1)(b) or (2)(a)(ii) a court may order that the vote on a corporate rescue plan be set aside if the court is satisfied that it is reasonable and just to do so, taking into consideration -

- (a) the interests represented by a person who voted against the proposed rescue plan;
- (b) the provision if any, made in the proposed corporate rescue plan with respect to the interests of that person; and
- (c) a fair and reasonable estimate of the return to that person, if the company were to be liquidated.

Discharge of debts and claims

186. (1) If an approved corporate rescue plan is agreed to by creditors to forfeit their debts or part of the debts, the creditors shall be bound by the agreement and lose their rights to claim the forfeited payment.

(2) If a corporate rescue plan has been approved and implemented

in accordance with this Part, a creditor is not entitled to enforce any debt owed by the company immediately before the beginning of the corporate rescue process, except to the extent provided for in the corporate rescue plan.

Compromise between company and creditors

187. (1) A creditor, director or shareholder of a company in financial distress may propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors for immediate payment of cash amount for distribution among creditors.

(2) The liquidator or creditor of a company being liquidated may, at any time after the first meeting of the creditors, propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors.

(3) A proposal contemplated in subsections (1) and (2) shall be dealt with in accordance with the provisions of sections of 144 to 149 of the Companies Act 2011.

(4) The provisions of the Part 21 shall, with necessary changes, apply to a compromise between the company and its creditors.

Application of this Part to debtors other than companies

188. (1) This Part does not apply to a debtor who is a natural person.

(2) This Part shall, with necessary changes, apply to trust, partnerships, associations, societies, cooperatives and any other debtor who is not a company or natural person.

PART 23 - CROSS-BORDER INSOLVENCIES

Interpretation

189. (1) For the purposes of this Part -

“curator of an institution” means a curator appointed in terms of the Financial Institutions;

“cross-border insolvency” arises or occurs in a situation where -

- (a) an insolvent estate debtor has assets or liabilities (creditors) located in more than one State;
- (b) some creditors of the debtor are not from the State where the insolvency proceeding is taking place; and
- (c) insolvency proceedings concerning the same debtor have commenced in more than one State;

“establishment” means any place of operations where the debtor carries out a nontransitory economic activity with human means and goods or services;

“foreign court” means a judicial or other authority competent to control or supervise foreign proceedings;

“foreign main proceedings” means foreign proceedings taking place in the State where the debtor has the centre of its main interests;

“foreign non-main proceedings” means foreign proceedings, other than foreign main proceedings, taking place in a State where the debtor has an establishment;

“foreign proceedings” means collective judicial or administrative proceedings in a foreign State, including interim proceedings, pursuant to a law relating to insolvency in which proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

“foreign representative” means a person or body, including one appointed on an interim basis, authorised in foreign proceedings to administer the reorganisation or the liquidation of the assets of the debtor or affairs or to act as a representative of the foreign proceedings;

“foreign State” means a State not designated under section 191(2);and

“receiver” means a receiver or other person appointed to administer a compromise or arrangement sanctioned by the court.

(2) In the interpretation of this Part, regard shall be had to its international origin, to the need to promote uniformity in its application and the observance of good faith.

Purpose of this Part

190. The purpose of this Part is to provide effective mechanisms for dealing with cases of crossborder insolvency so as to promote -

- (a) co-operation between the Court and other competent authorities of Lesotho and those of foreign States involved in cases of crossborder insolvency;
- (b) greater legal certainty for trade and investment;
- (c) fair and efficient administration of crossborder insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) protection and maximisation of the value of the assets of the debtor; and
- (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Scope of application

191. (1) This Part applies where -

- (a) assistance is sought in Lesotho by a foreign court or a foreign representative in connection with foreign proceedings; or
- (b) assistance is sought in a foreign State in connection with proceedings under the laws of Lesotho relating to insolvency; or
- (c) foreign proceedings and proceedings under the laws of Lesotho relating to insolvency in respect of the same

debtor are taking place concurrently; or

- (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, proceedings under the laws of Lesotho relating to insolvency.

(2) The Minister may designate a State if he is satisfied that the recognition accorded by the law of such a State to proceedings under the laws of Lesotho relating to insolvency does not justify the application of this Part to foreign proceedings in that State.

(3) Subject to subsection (2), this Part applies in respect of a State not designated by the Minister by notice in the Gazette.

(4) The Minister may by notice published in the Gazette withdraw a notice under subsection (2) and a State referred to in the notice is a foreign State for the purposes of this Part.

(5) Where the Minister withdraws a notice in terms of subsection (4), such withdrawal does not affect any pending legal proceedings and the proceedings shall continue as if the notice had not been withdrawn.

International obligations of Lesotho

192. To the extent that this Part conflicts with an obligation of Lesotho arising out of any treaty or other form of agreement to which Lesotho is a party with one or more other States and which treaty or agreement has been enacted into law, the requirements of the treaty or agreement prevail.

Competent Court

193. The functions referred to in this Part relating to recognition of foreign proceedings and cooperation with foreign Courts shall be performed by the Court.

Authorisation of trustee, liquidator, corporate rescue practitioner, curator, or receiver to act in foreign State

194. A trustee, liquidator, corporate rescue practitioner, curator of an institu-

tion, or receiver is authorised to act in a foreign State in respect of proceedings under the laws of Lesotho relating to insolvency, to the extent and in the manner permitted by the applicable foreign law.

Public policy exception

195. This Part shall not be construed as obliging a Court to take any action which would be manifestly contrary to the public policy of the Lesotho.

Additional assistance under other laws

196. Nothing in this Part limits the power of a court or a trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver to provide additional assistance to a foreign representative under other laws of Lesotho.

Right of direct access

197. A foreign representative may apply directly to the court for relief.

Limited jurisdiction

198. An application made to the court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the court for any purpose other than the application.

Application by foreign representative to commence proceedings under laws of Lesotho relating to insolvency

199. A foreign representative may apply to commence proceedings under the laws of Lesotho relating to insolvency if the conditions for commencing the proceedings are otherwise met.

Participation of foreign representative in proceedings under laws of Lesotho relating to insolvency

200. Upon recognition of foreign proceedings, the foreign representative may participate in proceedings regarding the debtor under the laws of Lesotho relating to insolvency.

Access of foreign creditors to proceedings under laws of Lesotho relating to insolvency

201. (1) Subject to subsection (2), foreign creditors have the same rights regarding the commencement of, and participation in, proceedings under the laws of Lesotho relating to insolvency as creditors in Lesotho.

(2) Subsection (1) does not affect the ranking of claims in proceedings under the laws of Lesotho relating to insolvency, except that the claims of foreign creditors may not be ranked lower than non-preferent claims.

(3) The ranking of claims in respect of assets in Lesotho is regulated by the law and practice of Lesotho on the ranking of claims.

Notification to foreign creditors of proceedings under laws of Lesotho relating to insolvency

202. (1) Where under the laws of Lesotho relating to insolvency notification is to be given to creditors in Lesotho and known creditors that do not have addresses in Lesotho.

(2) The court may order that appropriate steps be taken to notify any creditor whose address is not yet known.

(3) Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate.

(4) In giving notice to foreign creditors no letters or other similar formality is necessary.

(5) When a notification of commencement of proceedings is to be given to foreign creditors, the notification shall -

- (a) indicate a reasonable time period for filing claims and specify the place for their filing;
- (b) indicate whether secured creditors shall file their secured claims; and

-
- (c) contain any other information required to be included in such a notification to creditors in terms of the laws of Lesotho and the orders of the court.

Application for recognition of foreign proceedings

203. (1) A foreign representative may apply to the court for recognition of the foreign proceedings in which the foreign representative has been appointed.

(2) An application for recognition of foreign proceedings shall be accompanied by -

- (a) a certified copy of the decision commencing the foreign proceedings and appointing the foreign representative;
or
- (b) a certificate from the foreign court affirming the existence of the foreign proceedings and of the appointment of the foreign representative;
- (c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceedings and of the appointment of the foreign representative; or
- (d) a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(3) The court may require a translation of documents supplied in support of the application for recognition into an official language of Lesotho.

Presumptions concerning recognition

204. (1) If the decision or certificate referred to in section 203(2) indicates that the foreign proceedings are proceedings defined under section 189 and that the foreign representative is a person or body defined under section 189, the court may, in the absence of evidence to the contrary the court, presume that documents submitted in support of the application for recognition are authentic,

whether or not they have been authenticated.

(2) In the absence of evidence to the contrary, the registered office of the debtor, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Decision to recognise foreign proceedings

205. (1) Subject to section 195, the court shall recognise foreign proceedings if -

- (a) the foreign proceedings are proceedings contemplated in section 1869;
- (b) the foreign representative applying for recognition is a person or body contemplated in section 189; and
- (c) the application meets the requirements of section 203(2).

(2) The court shall recognise the foreign proceedings -

- (a) as foreign main proceedings if they are taking place in the State where the debtor has the centre of his or its main interests; or
- (b) as foreign nonmain proceedings if the debtor has an establishment in the foreign State.

(3) An application for recognition of foreign proceedings shall be decided upon at the earliest possible time.

(4) This section and sections 203, 204 and 206 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Subsequent information

206. From the time of filing the application for recognition of the foreign proceedings, the foreign representative shall inform the court promptly of -

-
- (a) any change in the status of the recognised foreign proceedings or the status of the foreign representative's appointment; and
 - (b) any other foreign proceedings regarding the same debtor that become known to the foreign representative.

Relief that may be granted upon application for recognition of foreign proceedings

207. (1) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including-

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realisation of all or part of the debtor's assets located in Lesotho to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- (c) a relief mentioned in section 209(1)(c),(d) and (g).

(2) An order issued under subsection (1) shall be dealt with in the manner set out in section 12.

(3) Unless extended under section 209(1)(f), the relief granted under this section terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this section if the relief will interfere with the administration of foreign main proceedings.

Effects of recognition of foreign main proceedings

208. (1) Upon recognition of foreign proceedings that are foreign main proceedings -

- (a) commencement or continuation of individual legal actions or individual legal proceedings concerning the assets of the debtor, rights, obligations or liabilities is stayed;
- (b) execution against the assets of the debtor is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in subsection (1) are subject to section 18, and the Court may, at the request of the foreign representative or a person affected by subsection (1), modify or terminate the scope of the stay and suspension.

(3) Subsection (1) (a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Subsection (1) does not affect the right to request the commencement of proceedings under the laws of Lesotho relating to insolvency or the right to file claims in such proceedings.

Relief that may be granted upon recognition of foreign proceedings

209. (1) Upon recognition of foreign proceedings, whether main or nonmain, where it is necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including -

- (a) staying the commencement or continuation of individual legal proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent that they have not been stayed under section 208(1)(a);
- (b) staying execution against the debtor's assets to the extent it has not been stayed under section 208(1)(b);
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent that this

right has not been suspended under section 208(1)(c);

- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realisation of all or part of the debtor's assets located in Lesotho to the foreign representative or another person designated by the Court;
- (f) extending relief granted under section 207(1);
- (g) granting any additional relief that may be available to a trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver under the laws of Lesotho.

(2) Upon recognition of foreign proceedings, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the assets of the debtor located in Lesotho to the foreign representative or another person designated by the court, if the court is satisfied that the interests of creditors in Lesotho are adequately protected.

(3) In granting relief under this section to a representative of foreign nonmain proceedings, the court shall be satisfied that the relief relates to assets that, under the laws of Lesotho, should be administered in the foreign nonmain proceedings or concerns information required in those proceedings.

(4) Without derogating from the application of laws of Lesotho generally, in granting relief under this section the court shall indicate the laws of Lesotho relating to the administration, realisation or distribution of an estate of a debtor in Lesotho that will apply.

Protection of creditors and other interested persons

210. (1) In granting or denying relief under section 207 or 209, or in modifying or terminating relief under subsection (3), the Court shall be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under section 207 or 209, to the conditions it considers appropriate.

(3) The Court may modify or terminate the relief at the request of a foreign representative or a person affected by a relief granted under section 207 or 209 or of its own motion.

Actions to avoid acts detrimental to creditors

211. (1) Upon recognition of foreign proceedings, the foreign representative has standing to initiate any legal action to set aside a disposition that is available to a trustee or liquidator under the laws of Lesotho relating to insolvency.

(2) When the foreign proceedings are foreign nonmain proceedings, the court shall be satisfied that the legal action relates to assets that, under the laws of Lesotho, should be administered in the foreign nonmain proceedings.

Intervention by foreign representative in proceedings in Lesotho

212. Upon recognition of foreign proceedings, the foreign representative may intervene in any proceedings in which the debtor is a party provided the requirements of the laws of Lesotho are met.

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

213. (1) In matters referred to in section 191(1), the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a trustee, liquidator, corporate rescue practitioner, curator, or receiver.

(2) The Court may communicate directly with, or request information or assistance directly from, foreign courts or foreign representatives.

Cooperation and direct communication between the trustee, liquidator, corporate rescue practitioner, curator or receiver and foreign Courts or foreign representatives

214. (1) In matters referred to in section 191(1), a trustee, liquidator, corporate rescue practitioner, curator, or receiver shall, subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The trustee, liquidator, corporate rescue practitioner, curator of an institution, or receiver may, in the exercise of his or its functions and subject to the supervision of the Court, communicate directly with foreign courts or foreign representatives.

Forms of cooperation

215. Cooperation referred to in sections 213 and 214 may be implemented by any appropriate means, including -

- (a) appointment of a person to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the assets of a debtor and affairs;
- (d) approval or implementation by Courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

Commencement of proceedings under laws of Lesotho relating to insolvency after recognition of foreign main proceedings

216. (1) After recognition of foreign main proceedings, proceedings under the laws of Lesotho relating to insolvency may be commenced only if the debtor has assets in Lesotho.

(2) The effects of such proceedings are restricted to the assets of the debtor that are located in Lesotho and, to the extent necessary to implement cooperation and coordination under sections 213, 214 and 215 to other assets of the debtor that, under the laws of Lesotho, should be administered in those proceedings.

Coordination of proceedings under laws of Lesotho relating to insolvency and foreign proceedings

217. Where foreign proceedings and proceedings under the laws of Lesotho relating to insolvency are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under sections 213, 214 and 215, and -

- (a) when the proceedings in Lesotho are taking place at the time that the application for recognition of the foreign proceedings is filed -
 - (i) any relief granted under section 207 or 209 shall be consistent with the proceedings in Lesotho; and
 - (ii) the foreign proceedings are recognised in Lesotho as foreign main proceedings, section 208 does not apply;
- (b) when the proceedings in Lesotho commence after recognition, or after the filing of the application for recognition, of the foreign proceedings -
 - (i) any relief in effect under section 207 or 209 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the proceedings in Lesotho; and
 - (ii) if the foreign proceedings are foreign main proceedings, the stay and suspension referred to in section 208(1) shall be modified or terminated in terms of section 208(2) if inconsistent with the proceedings in Lesotho; or

(c) in granting relief or in extending or modifying relief granted to a representative of foreign nonmain proceedings, the Court shall be satisfied that the relief relates to assets that, under the laws of Lesotho, should be administered in the foreign nonmain proceedings or concerns information required in those proceedings.

Coordination of foreign proceedings

218. In matters referred to in section 191(1), in respect of more than one set of foreign proceedings regarding the same debtor, the Court shall seek cooperation and coordination under sections 213, 214 and 215, and -

- (a) any relief granted under section 207 or 209 to a representative of foreign nonmain proceedings after recognition of foreign main proceedings shall be consistent with the foreign main proceedings;
- (b) if foreign main proceedings are recognised after recognition, or after the filing of an application for recognition of foreign nonmain proceedings, any relief in effect under section 207 or 209 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceedings;
- (c) if, after recognition of foreign nonmain proceedings, other foreign nonmain proceedings are recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Presumption of insolvency based on recognition of foreign main proceedings

219. In the absence of sufficient evidence to the contrary, recognition of foreign main proceedings are proof that the debtor is insolvent for the purpose of commencing proceedings under the laws of Lesotho relating to insolvency.

Rule of payment in concurrent proceedings

220. Without prejudice to secured claims or rights in property, a creditor who has received part payment in respect of his claim in proceedings in terms of a

law relating to insolvency in a foreign State may not receive a payment for the same claim in proceedings under the laws of Lesotho relating to insolvency regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment that the creditor has already received.

PART 24 - OFFENCES

Offences

221. (1) A debtor or the management of a debtor commits an offence if he or it -
- (a) conceals or parts with or intentionally destroys a book or accounting record relating to the affairs of the debtor or intentionally erases the information contained in the book or record or makes it illegible or permits another person to perform the act with regard to the book or accounting record;
 - (b) alienates property, obtained by him or the estate on credit and not paid for, otherwise than in the ordinary course of business;
 - (c) despite having been expressly asked about his or the financial standing and credit worthiness of the debtor, falsely conceals his or the insolvent status of the debtor and as a result of the concealment he obtains credit for more than Five hundred Maloti;
 - (d) offers or promises to any person a reward in order to procure the acceptance by a creditor of an offer of compromise or to give up any investigation with regard to the estate or to conceal any information in connection with the investigation or, in the case of a debtor who is a natural person, to induce a creditor not to oppose an application for rehabilitation;
 - (e) at any time within two years before the date of liquidation of his estate or the estate of the debtor, with intent

to obtain credit or the extension of credit, gave false information or concealed any material fact in connection with his assets or the assets and liabilities of the debtor to anyone who became his creditor or the creditor of the debtor;

- (f) in the case of a debtor who is a natural person who carried on a business or practised a profession or occupation, failed to keep proper accounting records of all business transactions, income, expenditure, assets and liabilities and to retain the accounting records for a period of at least three years;
- (g) in the case of a debtor who is a natural person debtor, if at any time when his liabilities exceeded his assets or at any time within six months immediately prior to the date of liquidation of his estate he reduced his assets through gambling, betting or risky speculation or contracted debts which were not reasonably necessary in connection with business or occupation or for his own maintenance or that of his dependants;
- (h) contracted any debt of Five Hundred Maloti or more or debts to the aggregate of One Thousand Hundred Maloti or more, without any reasonable expectation of being able to discharge such debt or debts;
- (i) without good cause fails to submit a statement of his affairs or the affairs of the debtor as required by section 71(1)(b);
- (j) without lawful cause fails to attend any meeting or continuation of a meeting of creditors of his estate or the estate of the debtor of which he has been notified;
- (k) knows that any person has proved a false claim against his estate or the estate of the debtor and fails to inform the Master and the liquidator in writing of that fact within fourteen days as from the date upon which he acquired that knowledge.

- (2) A person commits an offence if he -
- (a) without lawful cause, fails to attend a meeting at the time and place determined in summons or notice as contemplated in section 22(1) or having appeared fails, without lawful cause, to remain in attendance until he is excused from further attendance by the presiding officer of the meeting; or
 - (b) has been called up for questioning in terms of section 84, 86, or 88 and refuses to be sworn as a witness or to take an affirmation or without lawful cause refuses or fails to answer any question lawfully put to him or without lawful cause refuses or fails to produce any book, document, or record which is in his possession or custody and which he is obliged to produce in terms of the summons or a direction of the presiding officer of the meeting; or
 - (c) without lawful cause, fails to comply with a written order contemplated in section 88(7) or (8); or
 - (d) without lawful cause, fails to answer fully and correctly any written questions put to him in terms of section 89 or to send the answers within the time and in the manner contemplated in section 87(3);
 - (e) receives any benefit or accepts any promise of a benefit as a reward for keeping or undertaking to keep in abeyance or stopping or undertaking to stop any action for the liquidation or inquiry connected with the liquidation of the estate of the debtor or for agreeing or undertaking to agree to a composition or rehabilitation or for not opposing or agreeing not to oppose for concealing or undertaking to conceal particulars of a debtor or an insolvent estate;
 - (f) conceals, parts with, damages, destroys, alienates or otherwise disposes of property attached in terms of section 33 or property belonging to the debtor or his insolvent

estate with intent to frustrate the attachment of such property by virtue of a liquidation order, in terms of section 33, or with intent to prejudice creditors of the insolvent estate; or

- (g) has in his possession or custody or under his control property belonging to an insolvent estate and intentionally fails to notify the liquidator of the insolvent estate, as soon as possible, of the existence and whereabouts of such property and to make it available to the liquidator; or
- (h) intentionally impedes or hinders a liquidator or any person acting under the command of the liquidator, in the execution of his duties; or
- (i) makes or causes or allows to be made a false nomination in terms of section 59 or signs such a nomination without reasonable grounds for believing it to be correct or who knowingly submits a false nomination to the Master.

(3) A liquidator of an insolvent estate who fails to submit to the Master an account or to pay over a sum of money within thirty days from the date on which he became obliged to submit such account or pay over such sum of money, or fails to comply with the duties listed in section 70 within thirty days from the date of liquidation shall be liable to pay an administrative fine not exceeding One Hundred Thousand Maloti which shall be deducted and recovered from his security.

(4) A person who is convicted of an offence under subsection (1)(a) or (b) or subsection (2)(f), (g) or (h) is liable to a fine not exceeding One Hundred Thousand Maloti or to imprisonment for a period not exceeding three years or both.

(5) A person who is convicted of an offence under subsection (1)(c) (d), (e), (f), (g), (h), (i), (j), (k) or (l) or subsection (2)(e) is liable to a fine not exceeding Fifty Thousand Maloti, or to imprisonment for a period not exceeding twelve months or both.

(6) A person who is convicted of an offence contemplated in subsection (2) (a), (b), (c) or (d) is liable to a fine not exceeding Fifty Thousand Maloti, or to imprisonment for a period not exceeding twelve months or both.

(7) A liquidator who fails to comply with section 112, commits an offence and is liable to be subjected to legal proceedings by the Regulators or on conviction, to a fine not exceeding Five Thousand Maloti.

(8) In addition to a decision by the court under section 10, a person who abuses court procedures or files a malicious or vexatious application for liquidation commits an offence and is liable on conviction to a fine not exceeding Ten Thousand Maloti.

(9) A person who fails to comply with section 136 commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding six months or both.

(10) A person who, in relation to the affairs or property of a debtor, estate, employer or principal, does or omits to do anything that, had it been done or omitted commits an offence under this Act.

Criminal liability of partners, administrators, servants or agents

222. (1) A person commits an offence if, in relation to the affairs or property of a debtor, estate, employer or principal, he does or omits to do anything that, had it been done or omitted in respect of the affairs or property, of the person would have constituted an offence under this Act.

(2) The liability under subsection (1) of a partner, person responsible for the management of a debtor, servant or agent shall not affect the liability under that subsection or under any other provision of this Act, of another partner or person responsible for the management of a debtor or of a servant or agent of the same partnership, or of the employer or principal of the employee or agent who is so liable.

PART 25 - GENERAL PROVISIONS

Inspection of records of debtor being liquidated

223. (1) A person having an interest in a debtor which is being liquidated

in terms of this Act may apply to the Master or Registrar of Companies for an order authorising him or her to inspect any or all of the books and papers of that debtor and the Court may impose any condition which it thinks fit in granting that authority.

(2) Subsection (1) shall not be construed as affecting any powers or rights conferred by any law upon any department of State or any person acting under its authority at all times to inspect or cause to be inspected, the books and papers of any company being liquidated.

Giving of evidence after conviction for failure to testify

224. (1) A person who is serving a term of imprisonment for an offence under section 221(2)(c) and who declares himself willing to give the required evidence or to produce the required books, documents, or records may, on the written application of the Master or another person who is to preside at a meeting or to chair a commission, made to the head of the institution where the person is being held in custody, be brought before the Master or other person for the hearing of such evidence or the production of the required books, documents, or records.

(2) A person referred to in subsection (1) who has given the required evidence or produced the required books, documents, or records may on his own application be brought before the Court which imposed the sentence and that Court may, irrespective of whether or not it is composed as it was when the sentence was imposed, suspend the remaining portion of the sentence or any portion of the sentence on the conditions that it considers appropriate.

(3) In order to satisfy itself on the facts contemplated in subsection (2), the Court may accept as conclusive proof of those facts a certificate given by the presiding officer to the effect that the person appeared before him and answered fully and correctly all questions put to him and produced all books, documents, or records required of him.

Regulator's powers to review

225. (1) A person aggrieved by any decision, order of taxation of the Master, Registrar of Companies or by a decision of the liquidator or by a decision or order of an officer presiding at a meeting of creditors of an insolvent estate, including the liquidator, may, within ninety days or such further period as the

Regulator may allow for good cause shown, bring such a decision, order of taxation under review by the Regulator on a notice to the Master, Registrar of Companies liquidator or the presiding officer and to any other person whose interests are affected.

(2) If all or most of the creditors are affected by an application referred to in subsection (1), it is sufficient if notice is given to the liquidator on behalf of the creditors.

(3) The Registrar of Companies reviewing any decision, order or taxation may consider the merits of any such matter hear evidence and make any order it considers appropriate, but it may not re-open any confirmed account of the liquidator otherwise than in terms of section 20.

(4) If the Registrar of Companies on review confirms any decision, order or taxation of the Master or officer referred to in subsection (1) the costs of the applicant costs may not be paid out of the estate in question unless the Registrar of Companies so directs.

Master's and Registrar of Companies fees

226. The Master and Registrar of Companies shall, in respect of matters and fees mentioned in Tariff C of Schedule 2, ensure that the fees are recovered in the manner prescribed in the Schedule.

Custody and destruction of documents

227. (1) The Master and Registrar of Companies have custody of all documents relating to an insolvent estate.

(2) The liquidator of an insolvent estate may after five years has elapsed from the date of confirmation by the Master or Registrar of Companies of the final liquidation account, destroy all books, documents and records in his possession relating to the insolvent estate, unless the Master or Registrar of Companies consents to the earlier destruction of such books, documents or records or directs that they be retained for a longer period as determined by him.

(3) The Master or Registrar of Companies may sent to achieves all records in his office relating to an insolvent estate after five years have elapsed from the date of the rehabilitation of a debtor who is a natural person or the dis-

solution of debtor which is a company or co-operative, or confirmation of the final account in the estate of any other debtor.

Insurer's liability in respect of indemnification of debtor

228. Whenever a person in this section referred to as “the insurer” is obliged to indemnify another person in this section referred to as “the insured” in respect of any liability incurred by the insured towards a third party, the third party is, on the liquidation of the estate of the insured, entitled to recover from the insurer the amount of the liability of the insured towards the third party, but not exceeding the maximum amount for which the insurer is bound in terms of the indemnity.

Non-compliance with directives

229. (1) Nothing done under this Act is invalid merely by reason of the non-compliance with any directive prescribed by or in terms of this Act, unless a substantial injustice has been caused which cannot be remedied by an appropriate order of the Court, the Master or the presiding officer.

(2) No defect or irregularity in the election or appointment of a liquidator invalidates anything done by him or her in good faith.

Transitional Provisions

230. (1) The provisions of this Act shall not apply to a -

- (a) liquidation of a natural person, company and entity other than a natural person, if the liquidation process;
- (b) winding up or dissolution of a company, if the winding up process,

has commenced and the liquidation and distribution account has been approved before the commencement of this Act;

(2) Where the company is under judicial management and -

- (a) the judicial manager has advised the Court, in accordance with section 160 (1)(e) of the Companies Act

2011, that the company can be revived, the provisions of this Act shall apply and the report shall be deemed to constitute a rescue plan;

- (b) the judicial manager has advised the court, in accordance with section 160 (1)(e) of the Companies Act 2011, that the company cannot be revived and has applied to court to cancel the judicial management order and granting a liquidation order, the provisions of this Act on liquidation, shall apply;
- (c) the judicial management has commenced and the period of six months has not expired and paragraphs (a) and (b) are not applicable, the judicial management order shall be deemed to be an order for corporate rescue and shall be implemented as such.

(3) A liquidator appointed in accordance with the provisions of the Insolvency Proclamation, 1957 shall be deemed to have been appointed under this Act.

(4) Master or Registrar of Companies shall require each liquidator of any pending liquidation or judicial management process, to submit a progress report from which the Master or Registrar of Companies may make any direction regarding the winding up of the insolvent estate.

Regulations, policy and other powers of the Minister

231. (1) The Minister -

- (a) responsible for justice, may, make regulations which give effect to provisions that, relate to natural persons; and
- (b) responsible for trade and industry may make regulations which give effect to provisions that relate to other entities.

(2) The Minister may, by regulations -

- (a) set limits for maximum amounts to be paid to employees based on the size of an insolvent estate;
- (b) amend fees, penalties and schedules.

(3) The Minister may by notice published in the Gazette amend Schedule 2.

(4) Where this Act provides that an amount shall be determined from time to time so as to reflect subsequent fluctuation in the value of money, the Minister shall, before 31 March of each year, adjust the amount by notice published in the Gazette in accordance with fluctuation of the weighted average of the consumer price index for the preceding period from January to December, rounded to the nearest Hundred Maloti.

Repeal

232. (1) The Insolvency Proclamation, 1957 is repealed.

(2) Anything done under a provision of the repealed or amended law which may be done under a corresponding provision of this Act is deemed to have been done under that corresponding provision.

SCHEDULE 1**FORM A****STATEMENT OF DEBTOR'S AFFAIRS**

(section 5 (4)(a))

FAILURE TO SUBMIT THIS FORM TO THE MASTER AND THE LIQUIDATOR WITHIN 7 DAYS IS A CRIMINAL OFFENCE AND MAY DELAY REHABILITATION, WHERE APPLICABLE

**PART 1
BALANCE SHEET**

OF.....*

* Here insert the name in full of the debtor

Liabilities	M	1	Assets	M	1
Debts due as per Part 5.....			Immovable property as per part 2		
			Movable property as per Part 2.....		
			Outstanding claims, etc, as per Part 3.....		
			Deficiency/surplus.....		
			Total	Total	

**PART 2
IMMOVABLE PROPERTY**

Description of property	Situation and extent	Mortgages and other secured claims	Estimated values
Property situate in the Kingdom of Lesotho	Property situate		M 1

elsewhere.....

Total

PART 3
ANY MOVABLE PROPERTY WHATSOEVER WHICH IS NOT
INCLUDED IN PART 4 OR PART 5

Description of property	Estimated value
Property situate in the Kingdom of Lesotho	M 1
Property situate elsewhere.....	
Total	

Note: Movable property includes assets such as insurance policies and credit balances in accounts with banks or other institutions or persons. Any merchandise mentioned in this part shall be valued at its cost price or at its market value at the time of the making of this statement, whichever is the lower, and the statement shall be supported by detailed stock sheets relating to such merchandise.

PART 4
OUTSTANDING CLAIMS, BILLS, BONDS AND OTHER SECURITIES

Names and residential and postal address of the debtor	Particulars of claim	Estimated amount good	Estimated amount bad or doubtful
In the Kingdom of Lesotho.....		M 1	M 1
Elsewhere.....			
Total			

**PART 5
LIST OF CREDITORS**

Name and address of creditor	Nature and value of security for claim	Nature of claim	Amount of claim
			M l
Total			

**PART 6
MOVABLE ASSETS PLEDGED, HYPOTHECATED, SUBJECT TO A
RIGHT OF RETENTION OR UNDER ATTACHMENT IN
EXECUTION OF A JUDGMENT**

Description of asset	Estimated value of asset	Nature of charge on asset	Amount of debt to which charge relates	Name of creditor in whose favour charge is
-------------------------	-----------------------------	---------------------------------	---	---

The nominal amount of unpaid capital liable to be called up is M*

* This information to be provided by a company debtor

**PART 7
ENUMERATION AND DESCRIPTION OF EVERY BOOK OR
DOCUMENTING RECORD IN USE BY THE DEBTOR AT TIME OF
THE LIQUIDATION OR AT TIME WHEN THE DEBTOR CEASED
CARRYING ON BUSINESS**

.....
.....
.....

PART 8
DETAILED STATEMENT OF CAUSES OF DEBTOR'S INSOLVENCY

.....

.....

.....

.....

PART 9
PERSONAL INFORMATION (TO BE COMPLETED BY NATURAL PERSON DEBTORS)

State whether the debtor is married, widowed or divorced

.....

If the debtor is or was married, state -

- (a) name or names of spouse or spouses (a 'spouse' means not only a wife or husband in the legal sense, but also a person who in terms of any legal system or recognised custom is recognised as such a person's spouse and also any person with whom such person is cohabitating in a marriage relationship, irrespective of whether or not he is lawfully married to any other person).

.....

.....

.....

- (b) whether the debtor is or was married in or without community of property and whether the accrual system applies

.....

.....

- (c) date of marriage

.....

- (d) whether the matrimonial property system has been changed since entering into the marriage and, if so, the nature of the change

.....

.....

- (e) full names and date of birth of the spouse and, if an identity number has

been assigned, the identity number of the spouse

.....
.....

Was the debtor, or a member of management of the debtor, a director of a company which was liquidated within 10 years before the liquidation of the estate of the debtor?

If the preceding answer is in the affirmative, state the name of each liquidated company, the date of liquidation and the office of the Master of the High Court which had jurisdiction.

.....
.....
.....

State the debtor's nationality

.....

State the debtor's place of birth, date of birth and, if an identity number has been assigned, the identity number

.....
.....

Was the estate of debtor or the estate of a partnership in which the debtor is or was a partner previously liquidated or placed in bankruptcy, whether in the Kingdom of Lesotho or elsewhere?

.....

If the preceding answer is in the affirmative, state -

(a) whether debtor's own estate or his partnership's estate was (i) liquidated; or (ii) placed in bankruptcy

.....
.....

(b) the place where and the date when that estate was liquidated or placed in bankruptcy

.....
.....

(c) whether the debtor has been rehabilitated or his estate released; if so, when

.....
.....

PART 10
AFFIDAVIT/SOLEMN DECLARATION

I, declare under oath/solemnly and sincerely declare* that to the best of my knowledge and belief the statements contained in this Schedule are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

Signature of declarant

Sworn/solemnly declared before me on theday of at

.....
Commissioner of Oaths
.....
Full names
.....
Business address
.....
Designation and area or office

FORM B
NOMINATION AS LIQUIDATOR BY REGISTERED UNION
(section 68)

RE: (“the Debtor”)

1. I understand that the Debtor is in liquidation.
2. I declare that(the “Union”) is a registered trade union which -
 - (a) represents the employees of the debtor listed in the annexure to this form signed by me, who were employed by the debtor at the time of liquidation; or
 - (b) represents the following number of employees employed by the

debtor at the time of the liquidation, which number is calculated as indicated in the annexure to this form signed by me.

3. I hereby nominate of telephone number for appointment as liquidator and request you to make the necessary appointment.

4.1 NAME OF UNION:

4.2 ADDRESS OF UNION:

4.3 TELEPHONE NUMBER OF UNION:

4.4 FAX NUMBER OF UNION (IF ANY)

4.5 E-MAIL ADDRESS OF UNION (IF ANY)

Official Stamp of Registered Union

.....
SIGNATURE

.....
DATE

.....
PRINTED NAME

.....
CAPACITY

FORM C

**AFFIDAVIT FOR PROOF OF ANY CLAIM OTHER THAN A CLAIM
BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE
(section 81(6))**

Strike out inapplicable words where * occurs.

In the insolvent estate of:

Date of liquidation:

Name of creditor:

Address of creditor:

E-mail address of creditor

Fax number of creditor

Amount of claim at date of liquidation:

I,declare *under oath/solemnly as follows

-
- (1) *I am the creditor/I am the(capacity) of the creditor and have authority to make this declaration and submit the claim for proof as appears from the attached documentation.
- (2) *I have personal knowledge of the nature and particulars of the claim/I have satisfied myself as to the nature and particulars of the claim.
- (3) *The claim was not obtained by cession after the commencement of liquidation proceedings/The claim was obtained by cession on(date).
- (4) The nature of the claim (for instance money advanced, goods delivered, and salary due) is as appears from the attached documentation or declaration.

(In respect of debts which accrued over a period or in respect of which payments were made a statement shall be submitted with a brief description of all debits and credits over the period of 12 months immediately preceding the date of liquidation.)

- (5) The debt arose on or since (date). The debt was due to me on the date of liquidation/The debt or part thereof became due to me or will become due to me after liquidation as set out on the attached statement.
- (6) *I hold no security in respect of the debt/The particulars of security held by me for payment of the debt and the value placed by me on the security (if a value is placed on the security) are as follows:

* I do not rely on my security for the payment of my claim./I rely solely on my security for the payment of my claim.

- (7) *To the best of my knowledge no one except the insolvent estate is liable for the debt or a part thereof/The particulars of others who are to my knowledge liable for the debt and the security held in respect thereof are as follows
- (8) *I authorise the liquidator to have any dividend due to me transferred

electronically to my banking account (supply name of account, branch number and account number
.....

.....
Signature of declarant

*Sworn to/ solemnly declared before me on:.....(date) at(place)

.....
Commissioner of oaths
.....
Full names
.....
Business address
.....
Designation and area or office

FORM D

AFFIDAVIT FOR THE PROOF OF A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE

(section 81(6))

Strike out inapplicable words where * occurs.

In the insolvent estate of:
Date of liquidation:
Name of creditor:
Address of creditor:
E-mail address of creditor
Fax number of creditor
Amount of claim at date of liquidation:.....

I,declare *under oath/solemnly as follows

- (1) *I am the creditor/I am the(capacity) of the creditor and have authority to make this declaration and submit the claim for proof as appears from the attached documentation.

- (2) *I have personal knowledge of the nature and particulars of the claim/I have satisfied myself as to the nature and particulars of the claim.
- (3) *The claim was not obtained by cession after the commencement of liquidation proceedings/The claim was obtained by cession on(date).

(4) The debtor was on the date of liquidation and still is indebted to me by virtue of the following *promissory note/bill of exchange:

Date of note or bill	Name of maker or drawer	Name of acceptor	Name of person to whom payable	Date when payable	Name of endorser	Amount
-------------------------	-------------------------------	---------------------	---	----------------------	---------------------	--------

(5) The nature of the claim (for instance money advanced, goods delivered, salary due) is..... as appears from the attached documentation or declaration.

(In respect of debts which accrued over a period or in respect of which payments were made a statement shall be submitted with a brief description of all debits and credits over the period of 12 months immediately preceding the date of liquidation.)

- (6) That the said *note/bill is in all respects genuine and valid.
- (7) *I hold no security in respect of the debt / The particulars of security held by me for payment of the debt and the value placed be me on the security (if a value is placed on the security) are as follows:
.....
.....
.....

* I do not rely on my security for the payment of my claim./I rely solely on my security for the payment of my claim.

(8) *To the best of my knowledge no one except the insolvent estate is liable for the debt or a part thereof / The particulars of others who are to my knowledge liable for the debt and the security held in respect thereof are as follows
.....

.....

 *(9) I authorise the liquidator to have any dividend due to me transferred electronically to my banking account (supply name of account, branch number and account number)

.....
 Signature of declarant

*Sworn to/ solemnly declared before me on:(date) at
(place)

.....
 Commissioner of oaths

.....
 Full names

.....
 Business address

.....
 Designation and area or office

FORM E

FORM AND CONTENTS OF ACCOUNTS

1. The accounts shall be lodged on A4 standard paper and totals shall be added up separately at the foot of each sheet with a total at the end of each account.

2. Heading

The heading of the account shall contain the following information:

- (a) the name of the debtor;
- (b) the address of the debtor;
- (c) the identity number or date of birth or registration number of the debtor;
- (d) the date of liquidation;
- (e) the ordinal number of the account or supplementary account;

- (f) the nature of the account (eg liquidation account);
- (g) where applicable, whether it is a final or supplementary account;
- (h) whether it is a distribution account or a contribution account or both;
- (i) the Master's reference number.

3. Liquidation account

3.1 A liquidation account shall contain a record of all receipts derived from the realisation of assets and disbursements made or to be made in defraying the costs of liquidation, except receipts and disbursements reflected in a trading account.

3.2 The record of receipts and disbursements shall reflect full particulars explaining their nature and state the amount thereof in a money column.

3.3 The gross proceeds of assets shall be reflected and the disbursements incidental to the realisation shall be entered as disbursements.

3.4 Receipts and disbursements shall upon the request of the Master be supported by satisfactory vouchers numbered consecutively in the top right-hand corner by reference to the number appearing in the account opposite the relative item.

3.5 The account shall reflect separately the distribution to be made (if any) to secured claims, preferent claims and concurrent claims and the contribution to be levied (if any).

3.6 If security has been realised, the liquidation account shall contain a free residue account dealing with receipts not subject to security and consecutively numbered encumbered asset accounts dealing with receipts subject to security.

3.7 If disbursements or income are apportioned amongst the free residue and encumbered asset accounts the liquidation account shall indicate how the apportionment has been calculated.

3.8 An encumbered asset account shall be drawn to indicate the proceeds of the realisation of security, the disbursements payable out of the proceeds of the security and the amount payable to a creditor or creditors with the period for and rate at which interest before and after liquidation (if any) has been calcu-

lated.

4. Trading account

When the liquidator carried on business by either purchasing stock or entering into new transactions for the purpose of trading, a separate trading account including the following items only, shall be submitted:

- (a) the value of the stock on hand at the date of liquidation shown on the credit side;
- (b) the receipts and disbursement on the trading account;
- (c) the value of stock on hand at the date on which the accounts were made up shown on the debit side with a note of the items in the liquidation account reflecting the proceeds of the stock that has been realised (if any).

5. Bank reconciliation

5.1 The liquidator shall lodge complete statements up to the date on which the accounts were made up of all accounts opened in terms of section 84.

5.2 The account shall contain a bank reconciliation statement with the following information:

- (a) The balance in the cheque account and the date at which the bank statement reflected that balance;
- (b) the amount of the contribution provided for in the contribution account (if any);
- (c) the amount (if any) of each outstanding deposit with sufficient particulars to explain its nature or a reference to the item in the liquidation account which together with the even numbered voucher (if any) explain its nature;
- (d) the amount of each disbursement in the liquidation account that shall still be paid with sufficient particulars to explain its nature or a reference to the item in the liquidation account which

together with the even numbered voucher, if any, explain its nature;

- (e) the amount of the payment (if any) still to be made to each secured creditor with an explanation if this amount does not agree with the amount reflected in the distribution account;
- (f) the total amounts to be paid to preferent creditors and concurrent creditors (if any) with an explanation if these amounts do not agree with the totals reflected in the distribution account;
- (g) the amount (if any) to be transferred to a next account.

6. Distribution account, contribution account or contribution and distribution account

6.1 The liquidator shall, upon the request of the Master, lodge all proved claims and unproved claims admitted or compromised by the liquidator or proved in an action at law.

6.2 The account shall indicate the basis for contribution if this is not the amount of the concurrent claim and contain the following columns that are applicable to the account:

- (a) claim reference number;
- (b) creditor's name and if dividends are to be transferred electronically the account name, branch number and account number of the creditor's account;
- (c) total claim;
- (d) concurrent claim;
- (e) secured claim;
- (f) award in previous accounts;
- (g) concurrent award with a separate column for interest after liquidation (if any) and an explanation in the account of the rate at

and period for which interest has been calculated;

- (h) secured or preferent award;
- (i) amount of contribution;
- (j) shortfall.

6.3 In the event of the debtor being a company debtor or co-operative debtor, the account shall in addition also contain a list of the amounts returnable to contributories, if applicable, and such list shall contain the following columns that are applicable to the account:

- (a) The full christian names and surname of the contributory;
- (b) The number of shares or percentage of the shareholders or members interest held by the contributory;
- (c) The amount returnable to the contributory expressed as a dividend in the rand.

7. Certificate

7.1 Each liquidator shall sign the certificate under oath or affirmation.

7.2 The certificate shall state that the account contains a true account of the administration of the estate.

7.3 If it is a final account, the certificate shall state that so far as the liquidator is aware all the assets of the insolvent estate have been disclosed in the accounts.

7.4 If it is not a final account, the certificate shall reflect a list of all unrealised assets of which the liquidator is aware with the reason why the assets have not been realised and an estimate of the value of the assets.

FORM F1
NOTICE TO ATTEND A HEARING IN TERMS OF SECTION 16/15 (7)(a)
OF THE INSOLVENCY ACT, 2020

In re

ESTATE OF

MASTER'S REFERENCE NO

To:

You are hereby notified in terms of section 15(7)(a) to appear at a hearing to be held at (details of venue) on the.....day of..... 20...., at..... to give evidence and supply proof of earnings received by you or your dependants out of the exercise of your profession, occupation or employment and all assets or income received by you or your dependants from whatever source and the estimated expenses for your own support and that of your dependants.

Dated at.....this.....day of....., 20.....,

Magistrate

(Here insert details of the name, address
 telephone number, fax number and e-mail
 of the liquidator or the attorneys acting for the liquidator)

NOTE:

Your attention is specifically drawn to the provisions of sections 56 and 136(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

FORM F2

**SUMMONS TO ATTEND A MEETING OF CREDITORS FOR
EXAMINATION IN TERMS OF SECTION 61(12) OF THE
INSOLVENCY ACT, 2020**

In re

ESTATE OF
MASTER'S REFERENCE NO

To:

You are hereby summonsed in terms of section 61(12) to appear in person at a meeting of creditors in the above estate to be held at (details of venue) on the.....day of..... 20...., at..... to be questioned by the presiding officer, the liquidator or a creditor who has proved a claim against the estate, or the representative of the liquidator or such creditor in regard to your claim against the insolvent estate. You are summonsed to bring with you all books, documents or records in support of your claim.

Dated at.....this.....day of....., 20.....,

.....
Presiding Officer

.....
(Here insert details of the name, address
telephone number, fax number and e-mail
of the liquidator or the attorneys acting
for the liquidator)

NOTE:

In terms of clause 61(13), if a person who wishes to prove a claim is called upon to be questioned as contemplated in subsection (12) and fails without reasonable excuse to appear or refuses to take the oath or make a solemn declaration or to submit to questioning or to answer fully and satisfactorily any lawful question put to him or her, his claim, may be rejected.

FORM F3

**SUMMONS TO ATTEND A MEETING OF CREDITORS FOR
EXAMINATION IN TERMS OF SECTIONS 51(1) and 52 OF THE
INSOLVENCY ACT, 2020**

In re

ESTATE OF.....
MASTER'S REFERENCE NO

To:

You are hereby summonsed in terms of section 51(1) to appear in person at a meeting of creditors in the above estate to be held at (details of venue) on the.....day of..... 20...., at..... to give evidence and to be questioned on all matters relating to the insolvent or his business or affairs, whether before or after the liquidation of the estate, and concerning any property which at any time belonged to the insolvent estate and to produce to the presiding officer at the meeting all the books, papers and documents specified hereunder:

LIST OF BOOKS, PAPERS OR DOCUMENTS TO BE PRODUCED

Description of book, paper or document	Date (if any)	Copy or original required
---	---------------	---------------------------

Dated at.....this.....day of....., 20.....,

.....
Presiding Officer

.....
(Here insert details of the name, address
telephone number, fax number and e-mail
of the liquidator or the attorneys action for the liquidator)

NOTES:

1. A cheque for witness fees in the form of appearance money and travelling allowances in the sum of R (....., Rand) is

attached to your copy of the summons. You are entitled to make representations to the Presiding Officer of the meeting for additional necessary witness fees.

2. Your attention is specifically drawn to the provisions of subsections 52(3), 52(6), 52(9), 52(10) and 56 of the Act which sections are printed on the reverse side hereof.

FORM F4

SUMMONS TO ATTEND AN EXAMINATION IN TERMS OF SECTION 53(3)(b) OR 53(5) OF THE INSOLVENCY ACT, 2018

In re

INSOLVENT ESTATE OF
 MASTER'S REFERENCE NO

To:

You are hereby summonsed in terms of section 53(3)(b) or 53(5) to appear in person at a questioning in the above estate to be held at (details of venue) on the.....day of..... 20....., at..... to be questioned on property in your possession belonging to the insolvent estate, amounts due by you to the insolvent estate and all matters relating to the affairs of the insolvent and his property and to produce to the presiding officer at the questioning all the books, documents or records specified hereunder:

LIST OF BOOKS, DOCUMENTS OR RECORDS TO BE PRODUCED

Description of book, document or record	Date (if any)	Copy or original required
--	---------------	---------------------------

Dated at.....this.....day of....., 20.....,

.....
 Master/Court/ Presiding Officer

.....
(Here insert details of the name, address
telephone number, fax number and e-mail
of the liquidator or the attorneys acting for the liquidator)

NOTES:

- 1. A cheque for witness fees in the form of appearance money and travelling allowances in the sum of R (....., Rand) is attached to your copy of the summons. You are entitled to make representations to the Presiding Officer of the meeting for additional necessary witness fees.
- 2. Your attention is specifically drawn to the provisions of sections 52(3), (6), (9), (10), 53(7), (8) and (10), 56 and 136(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

FORM F5

SUMMONS TO ATTEND AN EXAMINATION IN TERMS OF SECTION 55(1) OF THE INSOLVENCY ACT, 2020

In re

INSOLVENT ESTATE OF
MASTER’S REFERENCE NO

To:

You are hereby summonsed in terms of section 55(1) to appear in person at a questioning in the above estate to be held at (details of venue) on the.....day of..... 20...., at..... to furnish information and to be questioned on all information within your knowledge concerning the insolvent or his estate or the administration of the estate and to produce to the presiding officer at the meeting all the books, documents and records specified hereunder:

LIST OF BOOKS, DOCUMENTS OR RECORDS TO BE PRODUCED

Description of book, Date (if any) Copy or original required
document or record

Dated at.....this.....day of....., 20.....,

.....
Master of the High Court

.....
Your attention is specifically drawn to the provisions of sections 52(3), 52(6), 52(9), 52(10), 55(5), 55(6) 56 and 136(2)(a) and (b) of the Act which sections are printed on the reverse side hereof.

FORM G

**LETTER OF DEMAND IN TERMS OF SECTION 5(3) OF THE
INSOLVENCY ACT, 2020**

WARNING

This is an important document. If you should fail to respond to the document within 21 days after service thereof your estate may be liquidated and your assets taken away from you.

DEMAND

To:

Address:
.....

The creditor claims that you are indebted to him or her for the following amount which is now due and payable and that he holds no security for the amount claimed.

When incurred	Type of debt (cause of action)	Amount due as at the date of the demand
---------------	-----------------------------------	--

The creditor demands that you pay the amount due within three weeks after the service of this demand or give security to the reasonable satisfaction of the creditor therefor, or enter into a compromise in respect thereof.

Should you fail to comply with this demand, this does not preclude you from opposing an application for the liquidation of your estate. If you deny indebtedness wholly or in part, you should contact the creditor without delay.

SIGNATURE:

NAME OF CREDITOR:
(PRINT)

DATE:

CAPACITY:
(IF NOT CREDITOR PERSONALLY)

ADDRESS:
.....
.....

TEL NO:
PERSON YOU MAY CONTACT IF NOT CREDITOR PERSONALLY:

NAME:

ADDRESS:
.....
.....

If debt obtained by cession or otherwise:

Name	Date of cession or other act
------	------------------------------

Original creditor

Cessionaries

SCHEDULE 2**TARIFF A****SHERIFF'S FEES****(section 38)**

In this Tariff a reference to the tariff in an item refers to the items in the tariff applicable according to Rule 68 of the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa (otherwise known as the Uniform Rules of Court), as amended from time to time.

1. For service or attempted service of documents the tariff in item 2.
2. For each separate attachment of property the tariff in item 5.
3. For making an inventory and the list of books and records referred to in section 33(7) of the Act the tariff in item 6.
4. For reporting on the attachment of assets the tariff in item 7.
5. For making of all necessary copies of documents the tariff in item 9.
6. Travelling allowance, per kilometre or fraction thereof according to the tariff in item 3.
7. For each necessary letter, excluding formal letters accompanying attachment or service of documents the tariff in item 12.
8. For each necessary attendance by telephone (in addition to prescribed trunk charges) the tariff in item 13.
9. For sending and receiving of each necessary facsimile per A4 size page (in addition to telephone charges) the tariff in item 14.
10. Bank charges: Actual costs incurred regarding bank charges and cheque forms.
11. For any work necessarily done by or on behalf of the sheriff in perform-

ing the duties under section 38 of the Act, for which no provision is made in this tariff: An amount to be determined by the Master.

RULES FOR THE CONSTRUCTION OF THE TARIFF AND THE GUIDANCE OF THE SHERIFF

- (1) Where there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto, or unless the party at whose instance process is executed desires any particular way to be adopted at his expense.
- (2) Where any dispute arises as to the validity or amount of any fees or charges the matter shall be determined by the Master.
- (3) The sheriff may pay rent, if necessary for premises required for the storage of goods attached, for a period of one month or such longer period as the Master or the liquidator authorises.

TARIFF B

REMUNERATION OF LIQUIDATOR

(section 44)

1. On the gross proceeds of any immovable property sold by the liquidator or the value at which property constituting security has been disposed of to a creditor in settlement of his claim or the gross proceeds of any sales by the liquidator in carrying on the business of the debtor, or any part thereof, in terms of section 45(3)(d) 5 per cent
2. On debts collected by a creditor on behalf of a liquidator 5 per cent
3. On the gross proceeds of any other movable property sold by the liquidator or other gross amounts collected by the liquidator 10 per cent.

Provided that the total remuneration of a liquidator in terms of this tariff shall not be less than five thousand Maloti.

REMUNERATION OF INTERIM LIQUIDATOR
(section 74)

A reasonable remuneration to be determined by the Master, not to exceed the rate of remuneration of a liquidator under this tariff.

TARIFF C

FEES OF THE OFFICE OF THE MASTER
(section 83(1)(b))

1. On all insolvent estates under final liquidation in which the total gross value of the assets according to the liquidator's account for each complete M5 000 M25 subject to a minimum fee of M500 and a maximum fee of M25 000.
2. (a) For a copy of or an extract from any document preserved in the office of a Master, when made in such office (including the certification of such copy or extract), a fee of M4,50 shall be paid.

(b) For the certification of such copy or extract not made in such office a fee of M9,00 shall be paid.
3. On any amount paid by the liquidator into the Guardians' Fund for account of creditors, a commission of five per cent is payable, to be deducted by the Master from the moneys so paid into the Guardians' Fund.
4. The fees referred to in item 1 and 2 shall be assessed by the Master and are payable at magistrates' Courts or by direct deposit into designated accounts of the Department of Justice and Constitutional Development. Proof of such payment of the fees referred to in item 1 shall be submitted by the liquidator to the Master.

SCHEDULE 3

STATEMENT IN RESPECT OF PROPOSED PRE-LIQUIDATION COMPOSITION

(sections 135 and 136)

PART A PERSONAL PARTICULARS OF DEBTOR

Full names and surname

.....

Address.....

(Documents in connection with the composition may be delivered to the debtor at this address until such time as he has notified the administrator of a change of address)

Date of birth

Identity number, if one has been assigned

Marital status

If married, state—

full names of spouse, “spouse” means a person’s -

- (a) partner in a marriage;
- (b) partner in a customary union or customary marriage according to customary law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a partnership contemplated in paragraphs (a) or (b) even if one or both are in such a partnership with another partner;

.....

date of birth of spouse

identity number of spouse, if one has been assigned

whether the debtor is or was married in or without community of property and whether the accrual system applies

.....

date of marriage
 whether the matrimonial property system has changed since entering
 into the marriage and, if so, the nature of the change

Whether the estate of debtor has been placed under administration during the
 last five years or whether it is under administration at present and, if so, the date
 of the administration order and whether it has been concluded

Whether the debtor has made an application for debt review in terms of section
 86 of the National Credit Act, 2005 (Act No. 34 of 2005) and whether the appli-
 cation has been concluded

Whether the debtor has during the last six months lodged a composition with a
 magistrate for submission to creditors

Whether the estate of debtor has been liquidated during the last ten years and, if
 so, the date of liquidation and the Division of the High Court that issued the liq-
 uidation order

PART B
APPLICABLE STATUTORY PROVISIONS

The debtor declares that he is aware of the following statutory provisions in con-
 nection with his application:

If the composition provides for the payment of a cash amount for distri-
 bution among creditors, the amount shall, pending the outcome of the
 offer of composition, be paid to the administrator.

If a debtor incurs debt during the period from lodging the composition
 with the administrator until creditors have voted on the composition, he
 shall notify the creditor who offers him or her credit of the pending com-
 position and provide full particulars concerning the said debt incurred
 by him or her to the administrator. During the said period or after a com-
 position has been accepted, a debtor shall not alienate, encumber or
 voluntarily dispose of any property which is to be made available to
 creditors in terms of the composition or do anything which can impede
 compliance with the composition. A debtor who contravenes these
 provisions is guilty of an offence.

If the composition provides for payments by the debtor in determined instalments or otherwise, the acceptance of the composition has the effect of a judgment in terms of section 65 of the Magistrates' Courts Act, 32 of 1944 in respect of the payments. Any person who in terms of the composition is to receive the payments on behalf of creditors, or if there is no such person, any creditor who is in terms of the composition entitled to a benefit out of the payments, has the rights which a judgment creditor would have in terms of the section.

The administrator may revoke the composition for good reasons, including the following:

1. If the debtor does not comply with his obligations in terms of the composition; or
2. If the debtor gives false information in his statement or in the course of the questioning; or
3. If the debtor gives a benefit in respect of a claim which falls under the composition to a creditor on whom the composition is binding and who is not entitled to the benefit in terms of the composition.

PART C INCOME AND EXPENDITURE

The name and business address of the debtor's employer or, if the debtor is not employed, the reason why he is not employed

.....
.....

The debtor's trade or vocation and his gross weekly or monthly income as well as the income of his spouse living in with him or her, and particulars of all deductions therefrom by way of debit order or otherwise, supported as far as possible by written statements by the employer of the debtor or his spouse

.....
.....
.....

A detailed list of the debtor's weekly or monthly necessary expenses and the expenses of persons who are dependent on him or her, including the travelling ex-

penses of the debtor or his spouse to and from work and such expenses of his children to and from school, and expenses required to retain assets that are subject to the composition

.....

The number and ages of persons who are dependent on the debtor or his spouse and their relationship to the debtor or his spouse

.....

**PART D
 ASSETS**

(i) Assets not subject to the composition

Description of asset	Value	Subject to secured claim? (Bond, property tax, pledge, cession, hire-purchase, instalment contract, etc)
----------------------	-------	--

.....

(ii) Assets subject to the composition

Description of asset	Value	Subject to secured claim? (Bond, property tax, pledge, cession, hire-purchase, instalment contract, etc)
----------------------	-------	--

.....

The debtor affirms that assets which are subject to the composition are in safe custody, that obligations in respect of the assets are included in “necessary expenses” in Part C above, and that such obligations will be fulfilled until conclu-

sion of the composition.

**PART E
DEBTS**

(i) Debts not subject to security

Name and address of debtor if the debt is not immediately claimable	Amount	Give particulars
--	--------	------------------

(ii) Debts subject to security

Name and address of debtor security and identification of asset subject to security (Part D above) if the debt is not immediately claimable	Amount	Nature of Give particulars
---	--------	-------------------------------

.....
.....

Name and address of any other person who is apart from the debtor liable for any of the abovementioned debts

.....
.....

**PART F
AFFIDAVIT/SOLEMN DECLARATION**

I,.....declare under oath/solemnly and sincerely declare* that to the best of my knowledge and belief the statements contained in this form are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

.....
Signature of declarant

Sworn/solemnly declared before me on theday
of.....at.....

.....
Commissioner of Oaths

.....
Full names

.....
Business address

.....
Designation and area of office

* Delete which is not applicable.

NOTE

1. Act No. 51 of 1951
2. Act No. 18 of 2011
3. L.N. No. 39 of 2013
4. Act No. 24 of 1992
5. Act No. 43 of 1983
6. Act No. 9 of 1977
7. Act No. 7 of 1964
8. Act No. 3 of 2012
9. Act No. 9 of 1981 as Amended by Act No. 10 of 1998
10. Act No. 9 of 1993 as Amended by Act No. 2 of 1994
11. Act No. 13 of 1977
12. Act No. 13 of 1983

GOVERNMENT NOTICE NO. 40 OF 2022

The Parliament of Lesotho

Statement of Objects and Reasons of the Insolvency Act, 2022

**(Circulated by the Authority of the Minister of Law and Justice
Honourable Lekhetho Rakuoane)**

The purpose of Insolvency Act, 2022 is to make the winding up process of body corporate, other institutions and individuals simple and short. It introduces new procedures into our law which will be alternative to liquidation, it improves on some of the procedures already available in the Insolvency Proclamation of 1957 with a view to make the processes participatory and transparent.

The Act, proposes the establishment of the office of the Insolvency Regulator together with its functions and powers. The regulator will regulate the insolvency and business rescue practice in Lesotho and oversee the code of conduct for all insolvency and business rescue practitioners.

The Act, sets out the distinction between the powers of the Master of the High Court and Registrar of Companies in relation to insolvency procedures. The Master of High Court will oversee liquidation of individuals while the Registrar of Companies will oversee liquidation of juristic person, other institutions and business rescue proceedings.

The Act, further introduces business rescue proceedings wherein viable businesses which are under financial distress will be salvaged. All stakeholders will be involved in the rescue process. This new proceeding is intended to replace the current judicial management which had short coming to rescuing the company that is in distress. Moreover, the business rescue has given employees and trade unions powers to participate in decision making when the company is in distress.

It further improves the powers of the insolvency practitioners in relation to convening meeting of creditors, and leaves only oversight functions to the Master of the High Court and the Registrar of Companies in liquidation of body corporate and other institutions on one hand and liquidation in individuals on the other.

It introduces new and modern ways of making notices during winding-up. These new ways include emails and facsimile which will ease the manner in which practitioners, the Master and the Registrar make notices to save time and costs of winding-up while increasing the recovery rate of the insolvent estate.

The Bill improves the ranking of employees and elevates employees as preferent creditors which means that they will be paid before concurrent creditors. It also provides for suspension of contracts of employees as opposed to termination thereof during liquidation. This will help in securing employment.

It also provides for pre-liquidation compositions as opposed to post liquidation compositions to give creditors an opportunity to recover their money without following the liquidation process.

The Bill further decreases the rehabilitation period from ten years to two years for individual that are declared insolvent for the first time. It considers several aspects before allowing rehabilitation of a debtor and therefore provides for different times for rehabilitation.

The Bill introduces the new concept of cross border insolvency wherein creditors in Lesotho can lodge their claims in foreign countries. This will also improve cooperation and collaboration between Lesotho and other countries in relation to ease of recovering debts.

The current Insolvency Proclamation of 1957 had shortcomings in some respects which made it difficult, costly and took long period to resolve insolvency and allow people to go back into business. Consequently, this seeks to repeal the insolvency Proclamation.

