

CONSULTATION DOCUMENT

Notes for this consultation document

This is draft of the proposed Company Insolvency Bill 2019. It is not a final copy that will be recommended to be taken to Parliament.

Comments on proposed Bill

Electronic submissions are preferred; however, hand-delivered or posted submissions will also be accepted.

The closing date for submissions is **Sunday, 9 June 2019**.

Electronic submissions should be directed to: jarrod.harrington@adbpsdi.org

Hand-delivered or posted submissions should be directed to:

Ministry of Commerce, Industry, and Cooperatives
Betio

For enquiries please contact Tieri Kautuntamoa, Business and Companies Regulatory Division, MCIC at ttamoa@commerce.gov.ki or 75126157/75126158.

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REPUBLIC OF KIRIBATI

[CREST]

COMPANY INSOLVENCY BILL 2019

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REPUBLIC OF KIRIBATI

(No _____ of 2019)

I assent,

Beretitenti

this ___ day of ___ of 2019

A Bill

entitled

An Act to provide for the insolvency of companies and related purposes.

Commencement:
2019

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti

PART I – PRELIMINARY MATTERS

1 Short title

This Act may be cited as the Company Insolvency Act 2019.

2 Commencement

This Act comes into operation on a date appointed by the Minister by notice in the Gazette.

3 Purpose

This Act has the following purposes:

- (a) to provide for compromises by a company with its creditors; and
- (b) to provide for the efficient and orderly liquidation of insolvent companies; and
- (c) to reform and provide a modern statement of the law relating to company receiverships.

4 Interpretation

(1) In this Act, unl

(2) ess the context otherwise requires—

“*Companies Act*” means the Companies Act 2019;

“*company*” means a company registered or re-registered under the Companies Act;

“*compromise*” has the meaning set out in section 6;

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“*Court*” means the High Court of Kiribati;

“*creditor*”—

- (a) in Part II, means a person who, in a liquidation would be entitled to claim that a debt is owing to that person by the company, and includes a secured creditor;
- (b) in Part III, means a person who, in a liquidation, would be entitled to claim in accordance with clause 1 of Schedule 2 that a debt is owing to that person by the company, and includes a secured creditor only—
 - (i) for the purposes of sections 22, 26 or 42; or
 - (ii) to the extent of the amount of any debt owing to the secured creditor in respect of which the secured creditor claims under section Part III of Schedule 2 as an unsecured creditor;

“*director*” has the meaning set out in [section 73] of the Companies Act;

“*document*” means a document in any form; and includes—

- (a) any writing on any material; and
- (b) information recorded or stored by means of a tape recorder, computer, or other device; and
- (c) a book, graph, or drawing; and
- (d) a photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced

“*electronic*” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

“*entitled person*” means a person upon the constitution of a company confers any of the rights and powers of a shareholder;

“*file*” means to file, give, provide, submit, deposit, apply or otherwise make available, and include files by electronic means;

“*form*” includes format;

“*information*” includes information (whether or not in its original form) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;

“*Kiribati register*” or “*register*” means the register of companies kept by the Registrar under [section 371] of the Companies Act;

“*liquidator*” means the person appointed under section 20;

“*Minister*” means the Minister responsible for the administration of this Act;

“*overseas company*” means a company that is incorporated outside Kiribati Islands, whether or not it is registered under the Companies Act;

“*person*” includes a corporation sole, a company or other body corporate (whether incorporated in Kiribati or elsewhere), an unincorporated body of person, a public body and a Government department

“*personal representative*”, in relation to an individual, means the executor, administrator, or trustee of the estate of the individual

“*prescribed*” means prescribed by regulations made under this Act;

“*prescribed form*” means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar;

“*property*” includes—

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- (a) real and personal property; and
- (b) an estate or interest in real or personal property; and
- (c) a debt; and
- (d) any thing in action; and
- (e) any other rights, interests, and claims of any kind in relation to property

“*property in receivership*” means property in respect of which a receiver is appointed; “*receiver*” means a receiver, or manager or a receiver and manager in respect of any property of a company appointed—

- (a) by or under a document; or
- (b) by the Court,

whether or not the person appointed is empowered to sell any of the property in receivership, but does not include—

- (c) a mortgagee who, whether personally or through an agent, exercises a power—
 - (i) to receive income from mortgaged property; or
 - (ii) to enter into possession or assume control of mortgaged property; or
 - (iii) to sell or otherwise alienate mortgaged property; or
- (d) an agent of any such mortgagee;

“*Registrar*” means the Registrar of Companies appointed under [section 368] of the Companies Act;

“*registration*”, in relation to registration by the Registrar, means registration on the Kiribati register;

“*regulations*” means regulations made under this Act;

“*related company*” has the meaning set out in clause 4 of Schedule 1 of the Companies Act;

“*relative*”, in relation to any person, means—

- (a) any parent, child, brother or sister of that person; or
- (b) any spouse or de facto partner of that person; or
- (c) any parent, child, brother or sister of a spouse or de facto partner of that person; or
- (d) a nominee or trustee for any of those persons;

“*security*” means a charge over, or security interest in, property;

“*shareholder*” means a person whose name is entered on the share register of a company as the holder of 1 or more shares in the company;

“*signature*” means—

- (a) the name of a person affixed with his or her own hand on a document; or
- (b) in the case of a document filed with the Registrar via electronic means, the name of a person affixed to the document by a method that the Registrar considers acceptable

“*statutory demand*” has the meaning set out in section 26(1);

“*working day*” means a day of the week that is not—

- (a) Saturday and Sunday; or
- (b) a day that is defined as, or declared to be, a public holiday under any Act;

“*writing*” includes representing or reproducing words, figures, or symbols—

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- (a) in a visible and tangible form by any means and in any medium;
 - (b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read.
- (3) A term that is used in this Act but not defined, and that is defined in the Companies Act, has the meaning given in the Companies Act (unless the context otherwise requires).

5 Application to the Republic

This Act binds the Republic.

PART II – COMPROMISES WITH CREDITORS

Division 1—General

6 Meaning of compromise

In this Part, unless the context otherwise requires, “*compromise*” means a compromise between a company and its creditors, including a compromise—

- (a) cancelling all or part of a debt of the company; or
- (b) varying the rights of its creditors or the terms of a debt; or
- (c) relating to an alteration of the company’s constitution that affects the likelihood of the company being able to pay a debt.

7 Who may make compromise proposal

- (1) Any of the following persons with reason to believe that a company is or will be insolvent may propose a compromise under this Part—
- (a) the directors of the company;
 - (b) a receiver appointed to the whole or substantially the whole of the company’s assets and undertaking;
 - (c) a liquidator of the company;
 - (d) with the leave of the Court, any creditor or shareholder of the company.
- (2) Where the Court grants leave to a creditor or shareholder under subsection (1)(d), the Court may make an order directing the company to provide the creditor or shareholder, within a specified time, with—
- (a) a list of the names and addresses of the company’s creditors showing the amounts owed to each of them; and
 - (b) such other specified information that will enable the creditor or shareholder to propose a compromise.

Division 2 – Compromise procedure

8 Proponent must compile list of affected creditors

- (1) A person who proposes a compromise (“the proponent”) must compile, in relation to each class of creditors of the company, a list of the creditors known to the proponent who would be affected by the compromise.
- (2) The list of creditors must set out—
- (a) the amount owing or estimated to be owing to each of them; and

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- (b) the number of votes that each of them is entitled to cast on a resolution approving the compromise.

9 Proponent must give notice of proposed compromise

The proponent must give notice in accordance with Schedule 4 of the intention to hold a meeting of creditors (or any 2 or more classes of creditors) to vote on a resolution approving the proposed compromise.

10 Requirements for notice of proposed compromise

- (1) The notice of the meeting must—
 - (a) comply with Schedule 4; and
 - (b) be accompanied by—
 - (i) a statement that sets out the matters in subsection (2); and
 - (ii) the list of creditors compiled under section 7; and
 - (c) be given to—
 - (i) each known creditor; and
 - (ii) the company; and
 - (iii) any receiver or liquidator; and
 - (d) be filed with the accompanying documents with the Registrar in the approved form for registration.
- (2) The statement accompanying the notice of meeting must—
 - (a) state the proponent's name and address and the capacity in which the proponent is acting; and
 - (b) contain contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and
 - (c) set out the terms of the proposed compromise and the reasons for it; and
 - (d) set out the reasonably foreseeable consequences for creditors of the company if the compromise is approved; and
 - (e) set out the extent of the interest of any director in the proposed compromise; and
 - (f) explain that the compromise will be binding on creditors (whether all creditors or a class of creditors) if approved; and
 - (g) contain details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval.

11 Approval of compromise

- (1) A compromise, including any amendment proposed at the meeting, is approved by the creditors, or a class of creditors if, adopted by the creditors or class of creditors at a meeting conducted in accordance with Schedule 4.
- (2) Approval of a compromise by a class of creditors is presumed, if there is more than 1 class voting, to be conditional on approval by every other class voting, unless the resolution expressly provides to the contrary.
- (3) The proponent must give written notice in the approved form of the result of the voting to—
 - (a) each known creditor, the company, and any receiver or liquidator; and
 - (b) the Registrar for registration.

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Division 3 – Effect of compromise

12 Compromise is binding on company and creditors

A compromise, including any amendment, that is approved by creditors or a class of creditors in accordance with this Part is binding on the company and on all the creditors, or, if there is more than 1 class of creditors, on all creditors of that class, to whom notice of the proposal was given.

13 Variation of compromise

- (1) A compromise approved under section 11 may be varied either—
 - (a) in accordance with any procedure for variation incorporated in the compromise as approved; or
 - (b) by the approval of a variation as if the proposed variation were a proposed compromise to which this Part applies but subject to all necessary modifications.
- (2) This Part applies to any compromise that is varied in accordance with this section.

14 Court may make orders in relation to procedure or moratorium

- (1) On the application of the proponent or the company, the Court may—
 - (a) give directions in relation to a procedural requirement imposed by this Part, or waive or vary that requirement, if it considers that it would be just to do so; or
 - (b) order that during a specified moratorium period—
 - (i) proceedings in relation to a debt owing by the company be stayed; or
 - (ii) a creditor not take any other measures to enforce payment of a debt owing by the company.
- (2) For the purposes of an order under subsection (1)(b), a moratorium period—
 - (a) must not begin earlier than the date on which notice was given of the proposed compromise; and
 - (b) must end not later than 14 days after the date on which notice was given of the result of voting on it.
- (3) Nothing in subsection (1)(b) affects the right of a secured creditor during the specified moratorium period to take possession of, realise or otherwise deal with, property of the company in which that creditor has a security interest.

15 Court may order that creditor not bound by compromise

- (1) A creditor who was entitled to vote on a compromise may apply, on 1 or more of the grounds set out in subsection (3), to the Court for an order that the creditor is not bound by the compromise or for such other order that the Court thinks fit.
- (2) An application under subsection (1) must be made not later than 14 days after the date on which notice of the result of the voting on the compromise was given to the creditor.
- (3) The Court may make the order if it is satisfied that—
 - (a) the creditor was not given sufficient notice of the meeting or the matters required to be notified to creditors under section 10(1)(b); or
 - (b) there was some other material irregularity in obtaining approval of the compromise; or
 - (c) in the case of a creditor who voted against the compromise, the compromise is unfairly prejudicial to that creditor, or to the class of creditors to which that creditor belongs.

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16 Effect of compromise on liquidation of company

- (1) If a compromise is approved, the Court may make an order as it thinks fit with respect to the extent (if any) to which the compromise will, if the company is put into liquidation, continue in effect and be binding on the liquidator.
- (2) The Court may make an order under subsection (1) on the application of—
 - (a) the company; or
 - (b) a receiver appointed in relation to the property of the company; or
 - (c) with the leave of the Court, any creditor or shareholder of the company.
- (3) If a compromise is approved and the company is later put into liquidation, the Court may make an order as it thinks fit with respect to the extent, if any, to which the compromise continues in effect and is binding on the liquidator.
- (4) The Court may make an order under subsection (3) on the application of—
 - (a) the liquidator; or
 - (b) a person described in subsection (2)(b) or (c).

17 Costs of compromise

Unless the Court orders otherwise, the costs incurred in organising and conducting a meeting of creditors for the purpose of voting on a proposed compromise—

- (a) must be met by the company; or
- (b) if incurred by a receiver or a liquidator, are a cost of the receivership or liquidation; or
- (c) if incurred by any other person, are a debt due to that person by the company.

PART III – LIQUIDATION

Division 1 – General

18 What this Part does

This Part sets out the procedure for, and the effect of, the liquidation of a company.

19 Meaning of insolvency in this Part

For the purposes of this Part, unless the context otherwise requires, a company is insolvent if it is unable to pay its debts as they become due in the normal course of business.

Division 2 – Appointment of liquidator

20 Liquidation begins with appointment of liquidator

- (1) The liquidation of a company begins on the date on which, and the time when, the liquidator is appointed.
- (2) The date and time of appointment must be recorded in the order appointing the liquidator.
- (3) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which a liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

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21 Who may be appointed liquidator

- (1) The liquidator must—
- (a) be a named person; and
 - (b) consent in writing to the appointment.
- (2) Subject to subsection (4), none of the following persons may be appointed or act as the liquidator of a company—
- (a) a corporation;
 - (b) a person who is under 21 years of age;
 - (c) a creditor of the company;
 - (d) a person who has, within the 2 years immediately preceding the commencement of the liquidation, been a shareholder, director, auditor or receiver of the company or of a related company;
 - (e) an undischarged bankrupt in any jurisdiction;
 - (f) a person in respect of whom an order is in force under Kiribati mental health legislation;
 - (g) a person who is prohibited by an order under section 80 from being or continuing as a liquidator;
 - (h) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under this Act.
- (3) The appointment of a person as liquidator without the written consent of that person is of no effect.
- (4) On the application of a person who is or becomes disqualified to become or remain a liquidator under subsection (2)(b) to (h), the Court may order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified.
- (5) A person who acts in contravention of subsection (2) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.

22 Who appoints liquidator

- (1) The Court may appoint a liquidator on the application of—
- (a) the company;
 - (b) a director;
 - (c) a shareholder;
 - (d) a creditor (including any contingent or prospective creditor); or
 - (e) the Registrar.
- (2) At any time after the making of an application under subsection (1) and before a liquidator is appointed, the Court may, on the application of the company or any creditor or shareholder of the company, stay any application or proceeding against the company that is pending in the Court, the Court of Appeal, or any other tribunal.

Division 3 – Court appointment of liquidator

Role of Court

23 When Court may appoint liquidator

The Court may appoint a liquidator if it is satisfied that—

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- (a) the company is insolvent; or
- (b) the company or its directors have persistently or seriously failed to comply with this Act; or
- (c) the company does not comply with [section 6] of the Companies Act; or
- (d) it is just and equitable that a liquidator be appointed.

Proof of insolvency

24 Appointment of liquidator on ground that company is insolvent

- (1) For the purpose of the appointment of a liquidator by the Court, a company's insolvency may be—
 - (a) presumed under section 25; or
 - (b) proved by other means.
- (2) Information or records obtained under [section 148] of the Companies Act or, if the Court so orders, under [section 151] of that Act may be received as evidence that a company is insolvent.
- (3) In determining whether a company is insolvent, the Court may take into account contingent or prospective liabilities.
- (4) However, in the case of a prospective or contingent creditor—
 - (a) the creditor may apply to the Court for the appointment of a liquidator only with the leave of the Court; and
 - (b) the Court may give leave, with or without conditions, only if it is satisfied that a prima facie case has been made out that the company is insolvent.

25 Presumption of insolvency

Unless the contrary is proved, a company is presumed to be insolvent if—

- (a) the company has failed to comply with a statutory demand (see section 26); or
- (b) execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) a person with a security over all or substantially all of the property has appointed a receiver under the document creating the security.

26 Statutory demand

- (1) A statutory demand is a demand by a creditor in respect of a debt owing or due by a company that is made in accordance with subsection (2).
- (2) A statutory demand must—
 - (a) be in respect of a debt that is not less than the prescribed amount; and
 - (b) be in writing; and
 - (c) be served on the company; and
 - (d) require the company to do any of the following things to the reasonable satisfaction of the creditor, within 42 days after the date of service (or any longer period that the Court may order under section 28(3))—
 - (i) pay the debt;
 - (ii) otherwise compound with the creditor;
 - (iii) give a security over its property to secure payment of the debt.

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- (3) For failure by a company to comply with a statutory demand to be admissible as evidence of insolvency in an application to appoint a liquidator, the application must be made within 42 days after the last date for compliance with the demand.

27 Court may set aside statutory demand

- (1) On the application of the company, the Court may set aside a statutory demand if it is satisfied that—
- (a) there is a substantial dispute whether or not the debt is owing or due; or
 - (b) the company appears to have a counterclaim, set-off, or cross-demand for an amount that, when deducted from the amount of the demand, leaves an amount owing or due by the company that is less than the prescribed amount; or
 - (c) the demand ought to be set aside on other grounds.
- (2) The Court must not set aside a statutory demand by reason only of a defect or irregularity unless the Court considers that substantial injustice would result if it were not set aside.
- (3) In subsection (2), defect includes a material misstatement of the amount due to the creditor and a material mis-description of the debt referred to in the statutory demand.
- (4) An order setting aside a demand may be made subject to conditions.

28 Procedure for application to set aside statutory demand

- (1) A company must make its application to set aside a statutory demand, and serve it on the creditor, within 28 days after the date of service of the statutory demand.
- (2) The Court must not extend the time for making or serving the application.
- (3) When hearing an application to set aside a statutory demand, the Court may extend the time for compliance with the demand.

29 Court's options if satisfied that debt is due by company

- (1) This section applies if, on hearing an application to set aside a statutory demand, the Court is satisfied that there is a debt owing or due by the company to the creditor that is not the subject of a substantial dispute nor subject to a counterclaim, set-off, or cross-demand.
- (2) On the ground that the company is unable to pay its debts, the Court may—
- (a) order the company to pay the debt within a specified period and further order that, in default of payment, the creditor may apply for the appointment of a liquidator; or
 - (b) dismiss the application to set aside the demand and immediately make an order appointing a liquidator.
- (3) A company is presumed to be insolvent if it defaults in making payment with the period specified by an order under subsection (2)(a).

Interim liquidator

30 Appointment of interim liquidator

- (1) The Court may appoint a named person as interim liquidator if—
- (a) an application has been made to the Court for the appointment of a liquidator; and

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- (b) the Court is satisfied that the appointment of an interim liquidator is necessary or expedient for maintaining the value of assets owned or managed by the company.
- (2) The appointment takes effect on the date on which, and the time when, the order appointing the interim liquidator is made.
- (3) The Court must record in the order the date and time of the appointment.
- (4) For the purposes of a liquidation, an act done, or a transaction entered into or effected, on the date on which an interim liquidator is appointed, must be treated as done or entered into or effected after the time of the appointment on that date, unless the contrary is shown.

31 Role of interim liquidator

- (1) An interim liquidator has the rights and powers of a liquidator to the extent necessary or desirable to maintain the value of assets owned or managed by the company.
- (2) However, the Court may limit the rights and powers of an interim liquidator as it thinks fit.

Division 4 – Process of liquidation

Commencement of liquidation

32 Liquidator must give [public notice] of appointment

- (1) A liquidator must, without delay after being appointed or being notified of his or her appointment, give public notice of—
 - (a) the liquidator's appointment; and
 - (b) the date and time of the commencement of the liquidation; and
 - (c) the address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours by a creditor or shareholder.
- (2) A liquidator must, within 14 days after being appointed or being notified of his or her appointment, file with the Registrar for registration a notice in the approved form of his or her appointment as liquidator.

33 Documents must state that company is in liquidation

Any document or negotiable instrument entered into, made, or issued by a liquidator of a company must state, in a prominent position, that the company is in liquidation.

34 Effect of commencement of liquidation

- (1) With effect from the commencement of liquidation of a company—
 - (a) the liquidator has custody and control of the company's assets;
 - (b) the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Part;
 - (c) unless the liquidator agrees or the Court orders otherwise, a person must not—
 - (i) commence or continue legal proceedings against the company or in relation to its property; or
 - (ii) exercise or enforce, or continue to exercise or enforce, a right or remedy over or against property of the company;
 - (d) unless the Court orders otherwise, a share in the company must not be transferred;

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- (e) there must be no alteration in the rights and liabilities of a shareholder of the company;
 - (f) a shareholder must not exercise a power under the constitution of the company or this Act except for the purposes of this Part;
 - (g) there must be no alteration in the constitution of the company.
- (2) A creditor is subject to the restrictions relating to prior execution process set out in Schedule 1.
- (3) Subsection (1) does not affect the right of a secured creditor, subject to Part III of Schedule 2, to take possession of, and realise or otherwise deal with, property of the company that is subject to the creditor's security interest.

35 Obligations of suppliers of essential services

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
- (a) refuse to supply the service to the liquidator, or to a company in liquidation, on the ground that the company has defaulted in paying charges due for the service for a period before commencement of the liquidation; or
 - (b) make it a condition of the supply of the service to the liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service for a period before commencement of the liquidation.
- (2) The charges incurred by a liquidator for the supply of an essential service are an expense incurred by the liquidator for the purposes of clause 19(a) of Schedule 2.
- (3) In this section, an essential service means—
- (a) the retail supply of gas; or
 - (b) the retail supply of electricity; or
 - (c) the supply of water; or
 - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
 - (e) telecommunications services.

Taking control of company property

36 Directors and others must deliver company property to liquidator

- (1) A present or former director or employee of a company in liquidation must—
- (a) without delay after the appointment of the liquidator, give the liquidator details of company property in that person's possession or under his or her control; and
 - (b) on being required to do so by the liquidator, without delay or within any time specified by the liquidator—
 - (i) deliver the property to the liquidator or any other person as the liquidator directs; or
 - (ii) dispose of the property as the liquidator directs.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 2 years or both.

Conduct of liquidation

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37 Liquidation must be conducted in accordance with outline

- (1) As soon as practicable after his or her appointment, the liquidator must prepare an outline of the proposed conduct of the liquidation.
- (2) As the liquidator considers necessary or expedient for the proper conduct of the liquidation, the outline must make provision for all or some of the following matters—
 - (a) establishing a list of creditors;
 - (b) meetings of creditors;
 - (c) meetings of shareholders;
 - (d) procedure at shareholder and creditor meetings;
 - (e) reporting to creditors;
 - (f) appointment of a liquidation committee;
 - (g) procedure for making claims by creditors;
 - (h) procedure for dealing with creditors' claims;
 - (i) final report and accounts;
 - (j) any other relevant matter.
- (3) The liquidator's outline must be approved by the Court.

38 Order in which claims are paid

- (1) The liquidator must pay the preferential claims before non-preferential claims, that is, the liquidator must—
 - (a) first pay out of the assets of the company the expenses, fees, and claims set out in Part IV of Schedule 2; and
 - (b) pay them to the extent and in the order of priority specified in Part IV of Schedule 2.
- (2) The assets of the company that remain after paying the preferential claims must be applied in payment of all other claims, that is, the non-preferential claims.
- (3) The non-preferential claims rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among them.

39 Other rules relating to claims

The other rules relating to claims are set out in Schedule 2.

Final report

40 Final report and accounts

- (1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator must—
 - (a) prepare and send the documents set out in subsection (2) to every creditor whose claim has been admitted and to every shareholder; and
 - (b) (using the approved form) file those documents with the Registrar for registration.
- (2) The documents are—
 - (a) the final report and statement of realisation and distribution in respect of the liquidation; and
 - (b) a statement that—

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- (i) all known assets have been disclaimed, or realised, or distributed without realisation; and
 - (ii) all proceeds of realisation have been distributed; and
 - (iii) the company is ready to be removed from the Kiribati register; and
- (c) a summary of the applicable grounds on which a creditor or shareholder may object to the removal of the company from the Kiribati register under [section 341] of the Companies Act.

41 Dispensing with final report and accounts

- (1) On the application of the liquidator, the Court may make an order—
- (a) exempting the liquidator from compliance with section 40; or
 - (b) modifying the application of all or part of section 40 in relation to the liquidation.
- (2) The Court may make the order on any conditions that it thinks fit.

Termination of liquidation

42 Termination of liquidation

- (1) At any time after the appointment of a liquidator, the Court may make an order terminating the liquidation of the company if the Court considers that it is just and equitable to do so.
- (2) The following persons may apply for an order under subsection (1)—
- (a) the liquidator;
 - (b) a director;
 - (c) a shareholder;
 - (d) a creditor;
 - (e) the Registrar.
- (3) The Court may require the liquidator to provide a report to the Court on any facts or matters relevant to the application.
- (4) If the Court makes an order, the company ceases to be in liquidation and the liquidator ceases to hold office with effect on and from the making of the order or any other date specified in the order.
- (5) The Court may, on making the order or at any later time, make any other order that it thinks fit in relation to the termination of the liquidation.

43 Notice of termination of liquidation

- (1) The applicant for an order terminating the liquidation of a company must, within 14 days after the order was made, file (using the approved form) a notice of the order with the Registrar for registration.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

Completion of liquidation

44 Completion of liquidation

- The liquidation of a company is completed when the liquidator—
- (a) complies with section 40(1)(b); or

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- (b) files with the Registrar for registration—
 - (i) a copy of any order made under section 41(1)(a); or
 - (ii) a copy of any order made under section 41(1)(b) together with any documents required to comply with the order.

Liquidation of assets of overseas company

45 Court may order liquidation of assets of overseas company

- (1) An application may be made to the Court for an order for the liquidation of the assets in Kiribati of an overseas company in accordance with this Part subject to the modifications and exclusions set out in Schedule 5.
- (2) The Court may make the order whether or not the overseas company—
 - (a) is registered under [section 361] of the Companies Act; or
 - (b) has given public notice of an intention to cease to carry on business in Kiribati in accordance with [section 365(1)(a)] of the Companies Act; or
 - (c) has given notice to the Registrar of the date on which it will cease to carry on business in Kiribati in accordance with [section 365(1)(b)] of the Companies Act; or
 - (d) has been dissolved, or has otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

Pooling of assets and joint liquidation

46 Pooling of assets of related companies

- (1) On the application of a person listed in subsection (2), the Court may, if it considers that it is just and equitable, order that—
 - (a) a company that is, or has been, related to the company in liquidation must pay to the liquidator the whole or part of any or all of the claims made in the liquidation;
 - (b) if 2 or more related companies are in liquidation, the liquidations in respect of each company must proceed together as if they were 1 company to the extent that the Court orders and subject to any terms and conditions that the Court imposes.
- (2) The persons who may make the application are the liquidator, a creditor, or a shareholder of the company in liquidation or of 1 or more of the related companies in liquidation.
- (3) The Court may make any other order or give any directions to facilitate giving effect to an order under subsection (1) that it thinks fit.

47 Guidelines for orders

- (1) In deciding whether it is just and equitable to make an order under section 46(1)(a), the Court must consider the following—
 - (a) the extent to which the related company took part in the management of the company in liquidation;
 - (b) the conduct of the related company towards the creditors of the company in liquidation;
 - (c) the extent to which the circumstances that gave rise to the liquidation of the company are attributable to the actions of the related company;
 - (d) any other matters that the Court considers relevant.

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- (2) In deciding whether it is just and equitable to make an order under section 46(1)(b), the Court must consider the following—
 - (a) the extent to which any of the companies took part in the management of any of the other companies;
 - (b) the conduct of any of the companies towards the creditors of any of the other companies;
 - (c) the extent to which the circumstances that gave rise to the liquidation of any of the companies are attributable to the actions of any of the other companies;
 - (d) the extent to which the businesses of the companies have been combined;
 - (e) any other matters that the Court considers relevant.
- (3) Reliance by the creditors of a company in liquidation on the fact that another company was, or is, related to it is not a ground for making an order under section 46(1).

Division 5 – Office of liquidator

Vacancy

48 Vacancy

- (1) The office of liquidator becomes vacant if the liquidator—
 - (a) resigns in accordance with section 49; or
 - (b) dies; or
 - (c) is removed by the Court; or
 - (d) is or becomes disqualified to act as liquidator.
- (2) Except in the case of resignation, the person vacating office or his or her personal representative must without delay file a notice (using the approved form) of the vacancy with the Registrar.
- (3) If, as a result of vacancy, no person is acting as liquidator, the Registrar may appoint a person to act as liquidator until a successor is appointed by the Court.

49 Resignation

A liquidator may resign by—

- (a) appointing another person as his or her successor; and
- (b) filing a notice (using the approved form) of that appointment with the Registrar for registration.

50 Court may review appointment of successor

- (1) On the application of a person listed in subsection (2), the Court may review the appointment of a successor to a liquidator and instead appoint as liquidator any person qualified for appointment.
- (2) The persons who may make the application are—
 - (a) the company;
 - (b) a shareholder or other entitled person;
 - (c) a director or creditor.

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51 Appointment of successor by Court

- (1) On the application of a person listed in subsection (3), the Court may appoint a liquidator if a vacancy has occurred and—
 - (a) has not been filled; or
 - (b) has been filled by an appointment by the Registrar.
- (2) The Court may appoint as liquidator any person qualified for appointment.
- (3) The following persons may apply—
 - (a) the company;
 - (b) a shareholder or other entitled person;
 - (c) a director or creditor.
- (4) A liquidator appointed under this section must, within 14 days after being appointed or being notified of the appointment, file a notice (using the approved form) of the appointment with the Registrar for registration.

52 Duty to assist successor

- (1) A person vacating the office of liquidator must, where practicable, provide the information and give the assistance to his or her successor as the successor reasonably requires in taking over the duties of liquidator.
- (2) A person vacating the office of liquidator must without delay, or within any reasonable time specified by his or her successor, deliver to the successor the following items that are in his or her possession or under his or her control—
 - (a) any company records or documents;
 - (b) any other property of the company;
 - (c) all claims;
 - (d) the liquidation accounts, records and documents.

Remuneration

53 Remuneration

- (1) A liquidator appointed by a resolution or directors or shareholders is entitled to charge reasonable remuneration for carrying out his or her duties and exercising his or her powers as liquidator.
- (2) Unless the Court orders otherwise, a liquidator appointed by the Court is entitled to charge remuneration—
 - (a) of an amount fixed by regulations made under this Act; or
 - (b) at the rate or rates prescribed by regulations made under this Act.
- (3) A liquidator's remuneration and expenses are payable out of the assets of the company but the Court may approve payment of remuneration and expenses from another specific source.

Division 6 – Duties of liquidator

54 Principal duty of liquidator

The principal duty of a liquidator of a company is, properly and efficiently—

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- (a) to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the company to its creditors in accordance with this Act; and
- (b) if there are surplus assets remaining, to distribute them, or the proceeds of the realisation of the surplus assets—
 - (i) in accordance with the company's constitution; or
 - (ii) if the constitution makes no provision for the distribution of surplus assets, in accordance with [section 21(2)(c)] of the Companies Act.

55 Other duties

Without limiting section 54 a liquidator has the other duties and functions specified in this Act.

56 Liquidator not required to act in relation to property subject to charge or security interest

- (1) Despite anything in this Act, a liquidator may, but is not required to, carry out any duty or exercise any power in relation to property that is subject to a charge or security interest.
- (2) However, subsection (1) does not apply if the charge or security interest is surrendered or taken to be surrendered or redeemed.

57 Duty to consider views of creditors and shareholders

- (1) The liquidator must consider—
 - (a) the views of the shareholders expressed in a resolution at the meeting held to appoint a liquidator;
 - (b) the views of creditors set out in a resolution passed at the first meeting of creditors;
 - (c) the views of creditors or shareholders set out at a meeting of creditors or shareholders called by the liquidator.
- (2) Nothing in this section limits or prevents a liquidator from exercising his or her discretion in carrying out his or her functions and duties under this Act.

58 Duty in relation to accounts

- (1) The liquidator must keep accounts and records of the liquidation (the liquidation accounts and records).
- (2) The liquidator must permit inspection of the liquidation accounts and records, and of the company accounts and records (the company accounts and records), by—
 - (a) a liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
 - (b) if the Court so orders, a creditor or shareholder.
- (3) The liquidator must retain the liquidation accounts and records and the company accounts and records for not less than 1 year after completion of the liquidation.
- (4) However, the Registrar may, whether before or after the completion of the liquidation—
 - (a) authorise the disposal of any accounts and records; and
 - (b) require any accounts or records to be retained for longer than 1 year after the completion of the liquidation.

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59 Duties in relation to funds

- (1) A liquidator must deposit any funds received on behalf of a company in liquidation in a bank account in the name of the company or in a trust account with a bank to be held on trust for the benefit of the company.
- (2) A liquidator may invest funds held on behalf of or to the credit of the company and not required for the time being to meet creditors' claims only in the form of—
 - (a) bank deposits; or
 - (b) securities issued by the Government of Kiribati; or
 - (c) any other investment approved by the Court.

60 Duties in relation to company transactions

- (1) Except with the leave of the Court—
 - (a) a liquidator must not, directly or indirectly, become a purchaser of any asset of the company in liquidation;
 - (b) must not purchase goods or services for the purposes of the liquidation from any person whose connection with the liquidator would result in a direct or indirect benefit to the liquidator as a result of the purchase.
- (2) The Court may set aside a transaction in breach of subsection (1) and may make other orders in relation to the breach as it sees fit, including orders for the recovery of assets and the repayment of any benefit by the liquidator.
- (3) The Court may grant leave under subsection (1) on any conditions that it sees fit.

Division 7 – Powers of liquidator

General powers

61 Powers of liquidator

A liquidator has the powers—

- (a) necessary to carry out the functions and duties of a liquidator under this Act; and
- (b) conferred on a liquidator by this Act.

62 Liquidators must act jointly unless otherwise stated

If 2 or more persons are appointed as liquidators of a company, they must act jointly unless the resolution of shareholders or directors or the order of the Court appointing them states that they may exercise their powers individually.

Specific powers

63 Liquidator has specific powers set out in Schedule 3

Without limiting section 61, a liquidator has the specific powers set out in Schedule 3.

Production of documents and other information

64 Liquidator may require production of company documents or records

A liquidator may, by notice in writing, require a director or shareholder of the company or any other person to deliver to the liquidator any documents or records of the company in that person's possession or under that person's control, as the liquidator requires.

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65 Liquidator may require provision of information

- (1) A liquidator may, from time to time, by notice in writing (“the liquidator’s notice”), require any of the person listed in subsection (2) to—
 - (a) attend on the liquidator at any reasonable time or times, and at the place, specified in the liquidator’s notice (and this may include attendance at a meeting of creditors);
 - (b) provide the liquidator with information requested by the liquidator about the business, accounts, or affairs of the company;
 - (c) be questioned on oath or affirmation by the liquidator or a lawyer acting for the liquidator about any matter relating to the business, accounts, or affairs of the company;
 - (d) assist in the liquidation to the best of the person’s ability.
- (2) The persons referred to in subsection (1) are—
 - (a) a director or former director of the company;
 - (b) a shareholder of the company;
 - (c) a person who was involved in the promotion or formation of the company;
 - (d) a current employee of the company;
 - (e) a past employee of the company;
 - (f) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;
 - (g) a person who is acting, or who has at any time acted, as a lawyer for the company.
- (3) The liquidator may pay the reasonable travel and other expenses incurred by a person listed in subsection (2)(e), (f) or (g) in complying with the liquidator’s notice.
- (4) On the application of a person listed in subsection (2)(e), (f) or (g), the Court may order the liquidator to pay that person reasonable remuneration and travel and other expenses incurred in complying with the liquidator’s notice.
- (5) A person listed in subsection (2)(e), (f) or (g) may not refuse to comply with the liquidator’s notice by reason only that—
 - (a) an application under subsection (4) has yet to be made or determined; or
 - (b) the person has not been paid in advance the remuneration or expenses to which he or she is entitled; or
 - (c) the liquidator has not paid that person travel or other expenses previously incurred.

66 Examination by liquidator

- (1) A liquidator, or a lawyer acting for a liquidator, may administer an oath to, or take the affirmation of, a person required to be questioned under section 65(1)(c).
- (2) A person required to be questioned under section 65(1)(c) is entitled to be represented by a lawyer.
- (3) A liquidator or lawyer acting for a liquidator who questions a person under section 65(1)(c) must ensure that the questions and answers are recorded in writing or by means of a sound recording, video and sound recording, or other similar means.

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- 67 Court may order person to comply with requirement under section 64 or 65**
On the application of the liquidator, the Court may order a person who has failed to comply with a requirement of a liquidator under section 64 or 64 to comply with that requirement.
- 68 Court process for examination and production of documents**
- (1) On the application of the liquidator, the Court may order a person (P) to whom section 65 applies to—
 - (a) attend the Court and be questioned on oath or affirmation by the Court or the liquidator on any matter relating to the business, accounts, or affairs of the company;
 - (b) produce any documents relating to the business, accounts, or affairs of the company in P's possession or under P's control.
 - (2) If P is questioned by the Court or the liquidator under subsection (1)(a)—
 - (a) the questions and answers must be recorded in writing; and
 - (b) the person questioned must sign the record.
 - (3) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under this Part or under [section 94].
- 69 Restriction on enforcement of lien over company**
- (1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over the documents of the company.
 - (2) If the lien arises in relation to a debt for the provision of services to the company before the commencement of the liquidation, the debt is a preferential claim against the company under Part IV of Schedule 2 to the extent of \$000 or such greater amount as may be prescribed at the commencement of the liquidation.
- 70 Document held by secured creditor**
- (1) A person must deliver a document to a liquidator under section 64 even though possession of the document creates a security interest in property of a company.
 - (2) Production of the document to the liquidator does not prejudice the existence or priority of the security interest, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with, or realising, the security interest.
- 71 Self-incrimination**
- (1) A person is not excused from answering a question in the course of being questioned under section 66 (Examination by liquidator) or 68 (Court process for examination and production of documents) on the ground that the answer may incriminate or tend to incriminate that person.
 - (2) The testimony of the person questioned is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

Enforcement of shareholder liability

72 Power to enforce liability of shareholders and former shareholders

A liquidator may enforce the liability of a shareholder or former shareholder in respect of any shares issued to the shareholder or former shareholder.

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Disclaimer of onerous property

73 Meaning of onerous property

For the purposes of sections 74 to 76, onerous property means—

- (a) an unprofitable contract; or
- (b) property of a company that—
 - (i) is unsaleable; or
 - (ii) is not readily saleable; or
 - (iii) may give rise to a liability to pay money or perform an onerous act.

74 Power to disclaim onerous property

- (1) A liquidator may disclaim onerous property even though the liquidator has taken possession of it, tried to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) A liquidator who disclaims onerous property must, within 14 days after the disclaimer, give notice in writing of the disclaimer to any person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

75 Effect of disclaimer

- (1) A disclaimer—
 - (a) brings to an end, on and from the date of the disclaimer, the rights, interests, and liabilities of the company in relation to the property disclaimed;
 - (b) does not, except so far as necessary to release the company from a liability, affect the rights or liabilities of any other person.
- (2) A person who suffers loss or damage as a result of a disclaimer under section 74 may—
 - (a) claim as a creditor of the company for the amount of the loss or damage, taking account of any order made by the Court under paragraph (b);
 - (b) apply to the Court for an order that the disclaimed property be delivered to or vested in that person.
- (3) The Court may make an order under subsection (2)(b) if it is satisfied that it is just and equitable that the property should be vested in the applicant.

76 Liquidator may be required to elect whether to disclaim

- (1) A person whose rights would be affected by the disclaimer of onerous property may give the liquidator notice in writing requiring the liquidator to elect whether to disclaim the property before the close of a date specified in the notice (the specified date).
- (2) The specified date must be at least 28 days after the date on which the notice is received by the liquidator.
- (3) The liquidator is not entitled to disclaim the property after the close of the specified date.

Division 8 – Court supervision

77 Court may make orders and give directions in relation to liquidation

- (1) On the application of a person listed in subsection (2), the Court may do any of the following—

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- (a) give directions in relation to any matter arising in the liquidation;
 - (b) confirm, reverse, or modify an act or decision of the liquidator;
 - (c) order an audit of the liquidator's accounts;
 - (d) order the liquidator to produce the liquidation accounts and records for audit and to provide the auditor with the information about the conduct of the liquidation that the auditor requests;
 - (e) for any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances;
 - (f) order the liquidator to repay remuneration to the extent that the Court finds that it is unreasonable in the circumstances;
 - (g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property;
 - (h) make an order concerning the retention or the disposition of the liquidation accounts and records or the company accounts and records.
- (2) The persons who may make the application are—
- (a) the liquidator; or
 - (b) with the leave of the Court, a creditor, shareholder or director of the company in liquidation.
- (3) The powers of the Court under subsection (1)—
- (a) are in addition to any other powers the Court may exercise in its jurisdiction in relation to liquidators under this Act; and
 - (b) may be exercised—
 - (i) in relation to a matter occurring either before or after the liquidation commenced or the removal of the company from the Kiribati register; and
 - (ii) whether or not the liquidator has ceased to act as liquidator when the application or order is made.

78 Liquidator's defence of acting in accordance with Court direction

- (1) A liquidator who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the liquidator does not have the defence given by subsection (1).

79 Compliance order

- (1) On the application of a person listed in section 81(1), the Court may, if satisfied that there is a failure of liquidator compliance—
- (a) relieve the liquidator of the duty to comply wholly or in part; or
 - (b) order the liquidator to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a liquidator fails to comply with an order made under subsection (1)(b), the Court may make an order removing the liquidator from office.
- (4) In this section and in sections 80 and 81, failure of liquidator compliance means that a liquidator has failed, or is failing, to comply with a relevant duty arising—

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- (a) under this Act or any other enactment or law; or
- (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

80 Prohibition order

- (1) This section applies if the Court is satisfied that a person (P) is unfit to act as liquidator because of—
 - (a) his or her persistent failures of liquidator compliance; or
 - (b) the seriousness of his or her failure of liquidator compliance.
- (2) On the application of a person listed in section 81(1), the Court must prohibit P, for a period not exceeding 5 years, from—
 - (a) acting as a liquidator in a current or other liquidation; and
 - (b) acting as a receiver in a current or other receivership.
- (3) For the purposes of subsection (1)(a), evidence of P's persistent failures of liquidator compliance includes, in the absence of special reasons to the contrary—
 - (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under section 79(1)(b) in respect of P;
 - (b) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under section 79(1)(b) has been made in respect of P and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 14 days after the order is made.

81 Person who may apply for compliance or prohibition orders

- (1) The persons who may make an application under section 79(1) or (3) or 80(2) are—
 - (a) the liquidator;
 - (b) a receiver appointed in relation to the property of the company in liquidation;
 - (c) a creditor, shareholder or director of the company in liquidation; or
 - (d) the Registrar.
- (2) A person other than the liquidator must not apply for an order under section 79(1)(b) unless—
 - (a) notice of the failure of liquidator compliance has been served on the liquidator not less than 7 days before the date of the application; and
 - (b) as at the date of the application, there is a continuing failure of liquidator compliance.

Division 9 – Voidable transactions

82 Voidable transfers

- (1) A transaction involving a transfer of property by the company to another person is voidable on the application of the liquidator if the transfer—
 - (a) was made—
 - (i) on account of an antecedent debt; and
 - (ii) at a time when the company was unable to pay its due debts; and
 - (iii) within the year preceding the commencement of the liquidation; and

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- (b) enabled that person to receive more toward satisfaction of the debt than the person would otherwise have received or be likely to receive in the liquidation.
- (2) Subsection (1) does not apply if the debt was incurred in the ordinary course of business and the transfer was made no later than 60 days after the debt was incurred.
- (3) Unless the contrary is proved, a transfer made within the 6 months preceding the commencement of the liquidation is presumed to have been made—
 - (a) at a time when the company was unable to pay its due debts; and
 - (b) on account of a debt not incurred in the ordinary course of business.

83 Transactions at undervalue

- (1) A transaction entered into by a company is voidable on the application of the liquidator if—
 - (a) it was entered into within the year preceding the commencement of the liquidation; and
 - (b) the value of the consideration received by the company was significantly less than the value of the consideration provided by the company; and
 - (c) either—
 - (i) when the transaction was entered into, the company was unable to pay its due debts; or
 - (ii) the company became unable to pay its due debts as a result of the transaction.
- (2) Unless the contrary is proved, the value of the consideration received by the company under a transaction is presumed to be significantly less than the value of the consideration provided by the company if—
 - (a) either—
 - (i) the other party to the transaction was with a related company; or
 - (ii) in which a director of the company had a material interest in the transaction; and
 - (b) the transaction was entered into within the six months preceding the commencement of the liquidation.

84 Voidable security

- (1) A transaction providing for or creating a security over any property or undertaking of a company in respect of any debt is voidable on the application of the liquidator if the security was given within the year preceding the commencement of the liquidation on account of antecedent debt, unless—
 - (a) the security secures the actual price or value of property sold or supplied to the company, or any other valuable consideration given by the grantee of the security prior to the execution of the security, and, immediately after the security was given, the company was able to pay its due debts; or
 - (b) the security is in substitution for a security given more than one year preceding the commencement of the liquidation.
- (2) Unless the contrary is proved, a company giving a security within the 6 months preceding the commencement of the liquidation is presumed to have been unable to pay its due debts immediately after giving the security.

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85 Procedure for setting aside voidable transaction etc

- (1) On an application by the liquidator of a company in liquidation, the Court may make an order setting aside a voidable transaction.
- (2) The Court must not set aside a voidable transaction unless it is satisfied that it is just and equitable to do so.
- (3) The Court must not set aside a voidable transaction to the extent that to do so would affect the title or interest of a person in property which that person has acquired—
 - (a) from a person (P) other than the company; and
 - (b) for valuable consideration; and
 - (c) without knowledge of the circumstances of the transaction under which P acquired the property from the company.
- (4) The Court may make any orders that it considers necessary or expedient for giving effect to setting aside the transaction.

Division 10 – Liability of directors and others

86 Liability if proper accounting records not kept

- (1) This section applies if—
 - (a) a company in liquidation is unable to pay all its debts; and
 - (b) the company has failed to comply with—
 - (i) [section 135] of the Companies Act (which relates to the keeping of accounting records); or
 - (ii) [section 137] of the Companies Act (which relates to the preparation of financial statements); and
 - (c) the Court considers that—
 - (i) the failure to comply has—
 - (A) contributed to the company’s inability to pay all its debts; or
 - (B) resulted in substantial uncertainty as to the company’s assets and liabilities; or
 - (C) substantially impeded the orderly liquidation; or
 - (ii) for any other reason it is proper to make a declaration under subsection (2).
- (2) On the application of the liquidator, the Court may declare that any 1 or more of the directors or former directors of the company are personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company.
- (3) The Court may give any direction it thinks fit for giving effect to the declaration.
- (4) The Court may make a declaration under this section even though the person concerned is liable to be convicted of an offence.

87 Defence to liability under section 86

The Court must not make a declaration under section 86 in relation to a person if the Court considers that the person—

- (a) took all reasonable steps to secure compliance by the company with the applicable provision referred to in section 86(1)(b); or
- (b) had reasonable grounds to believe, and did believe, that a competent and reliable person was responsible for ensuring compliance with that provision and was in a position to discharge that responsibility.

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88 Court may require repayment of money or return of property

- (1) This section applies if it appears to the Court that a person (P) listed in subsection (3) has—
 - (a) misapplied, or retained, or become liable or accountable for, money or property of a company; or
 - (b) been guilty of negligence, default, or breach of duty or trust in relation to a company.
- (2) On the application of the liquidator or a creditor or shareholder, the Court may—
 - (a) inquire into the conduct of P; and
 - (b) order P to—
 - (i) repay or restore the money or property or any part of it with interest at a rate that the Court thinks just; or
 - (ii) contribute such sum to the assets of the company by way of compensation as the Court thinks just; or
 - (c) if the application is made by a creditor, order that person to pay or transfer to the creditor the money or property or any part of it with interest at a rate that the Court thinks just.
- (3) The persons referred to in subsection (1) are—
 - (a) a past or present director of the company;
 - (b) a manager or officer of the company;
 - (c) a liquidator or receiver of the company.
- (4) This section has effect even though the conduct may constitute an offence.

PART IV – COMPANY RECEIVERSHIPS

Division 1 – General

89 What this Part does

This Part sets out the law relating to the conduct of company receiverships.

90 Outline of company receivership

- (1) A receiver is appointed by a secured creditor of a company to take control of the property of the company that is subject to the creditor's security.
- (2) In this Part, unless the context otherwise requires—

“*company*” means the company in respect of whose property a receiver is appointed;

“*property*” in receivership means the property of the company in respect of which a receiver is appointed.

Division 2 – Appointment of receiver

91 Who may be appointed receiver

- (1) Subject to subsection (3), none of the following persons may be appointed or act as the receiver of a company—
 - (a) a corporation;
 - (b) a person who is under 21 years of age;
 - (c) a creditor of the company;

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- (d) a person who is, or who has within the 2 years immediately before the commencement of the receivership, been—
 - (i) a director or employee of the company;
 - (ii) a director or employee of a mortgagee of the property in receivership;
 - (e) an undischarged bankrupt in any jurisdiction;
 - (f) a person in respect of whom an order is in force under Kiribati mental health legislation;
 - (g) a person who is prohibited by an order under section 80 from being or continuing as a liquidator;
 - (h) a person who is prohibited by an order under [section 332] from being or continuing as a receiver;
 - (i) a person who is prohibited from being a director or promoter, or being concerned in or taking part in the management, of a company under [section 104] of the Companies Act;
 - (j) a person who is disqualified from acting as a receiver by the document that confers the power to appoint a receiver.
- (2) A person who acts in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months, or both.
- (3) The appointment of a person as a receiver without the written consent of that person is of no effect.
- (4) On the application of a person who is or becomes disqualified to become or remain a receiver under subsection (1)(b) to (j), the Court may order that the person may be appointed and act, or may continue to act, as a receiver, despite being disqualified.

92 Appointment of receiver under document

- (1) A receiver may be appointed in respect of the property of a company by, or in the exercise of a power conferred by, a document to which the company is a party.
- (2) The appointment of a receiver in the exercise of a power conferred by a document must be in writing.
- (3) A receiver appointed under subsection (1) is the agent of the company unless the terms of appointment expressly provide otherwise.
- (4) Appointment under subsection (1) is in addition to appointment by the Court.

93 Extent of power to appoint receiver

- (1) A power conferred by a document to appoint a receiver includes, unless the document expressly provides otherwise, the power to appoint—
 - (a) 2 or more receivers;
 - (b) an additional receiver;
 - (c) a receiver to succeed a receiver who has vacated office.
- (2) Two or more receivers may act jointly or severally to the extent that they have the same powers unless the terms of appointment expressly provide otherwise.

94 Notice of appointment

- (1) A receiver must, within 7 days after appointment—
 - (a) give written notice of appointment to the company; and

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- (b) give [Q: public notice] of appointment, including—
 - (i) the receiver's full name; and
 - (ii) the date of appointment; and
 - (iii) the receiver's address and contact details (including telephone numbers and postal and email addresses) to which inquiries may be directed during normal business hours; and
 - (iv) a description of the property in receivership; and
- (c) file a copy of the public notice (using the approved form) with the Registrar.
- (2) If applicable, a notice under this section must also state that the receiver is
 - (a) appointed as an additional receiver;
 - (b) appointed as a replacement receiver.
- (3) A receiver who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

95 Notice of receivership

- (1) A company or receiver who, in the course of a receivership, issues a document on which the name of the company appears must ensure that the document clearly states that a receiver has been appointed.
- (2) A failure to comply with subsection (1) does not affect the validity of the document.
- (3) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

Division 3 – Vacancy

96 Vacancy

The office of receiver becomes vacant if the receiver—

- (a) resigns; or
- (b) dies; or
- (c) is removed by the Court; or
- (d) is or becomes disqualified to act as receiver.

97 Resignation

- (1) A receiver resigns by giving written notice of not less than 7 days to the person who appointed him or her.
- (2) A receiver appointed by the Court resigns by giving written notice of not less than 7 days to the Registrar of the Court.

98 Notice of resignation or disqualification

- (1) If a receiver is disqualified, he or she must without delay give written notice of the resulting vacancy to the person who appointed him or her.
- (2) If a receiver resigns or is disqualified, he or she—
 - (a) must without delay give public notice of the resulting vacancy; and
 - (b) must, within 7 days after the vacancy occurred, file a notice (using the approved form) of the vacancy with the Registrar.

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- (3) A person who fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

99 Duty to assist successor

- (1) A person vacating the office of receiver must, where practicable, provide the information and give assistance in the conduct of the receivership to his or her successor as that person reasonably requires.
- (2) On the application of a replacement receiver, the Court may make any order that the Court considers necessary or desirable to facilitate the performance of the receiver's duties.

Division 4 – Duties of receiver

100 General duties

- (1) A receiver must exercise his or her powers in good faith and for a proper purpose.
- (2) A receiver must exercise his or her powers in a manner that he or she believes on reasonable grounds to be in the best interests of the person in whose interests he or she was appointed.
- (3) To the extent consistent with subsections (1) and (2), a receiver must exercise his or her powers with reasonable regard to the interests of—
- (a) the company; and
 - (b) persons claiming, through the company, interests in the property in receivership; and
 - (c) unsecured creditors of the company; and
 - (d) sureties who may be called upon to fulfil obligations of the company.
- (4) If a receiver appointed under a document acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver—
- (a) is not in breach of the duty referred to in subsection (2); but
 - (b) is still liable for breach of the duty referred to in subsection (1) or (3).
- (5) Nothing in this section limits section 101 (Duty of receiver disposing of property in receivership).

101 Duty of receiver disposing of property in receivership

- (1) In disposing of the property in receivership, a receiver owes a duty to the persons listed in subsection (2) to act in a commercially reasonable manner.
- (2) The duty is owed to—
- (a) the company;
 - (b) persons claiming, through the company, interests in the property in receivership;
 - (c) unsecured creditors of the company; and
 - (d) sureties who may be called upon to fulfil obligations of the company.
- (3) A disposition is not commercially unreasonable merely because a better price could have been obtained by disposition at a different time or by a different method from the time and method adopted by the receiver.
- (4) In the case of personal property, a disposition of the property is commercially reasonable if the receiver disposes of the property—

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- (a) in conformity with commercial practice among dealers in that type of property;
or
 - (b) at a public auction held after public notice of not less than 7 days.
- (5) If the Court has given directions for the disposition of the property in receivership, disposition in accordance with those directions is commercially reasonable, but nothing in this section requires that the directions of the Court be obtained.

102 No defence or indemnity

Despite any enactment or rule of law or anything contained in the document under which a receiver is appointed—

- (a) it is not a defence to a breach of the duty in section 101 that the receiver was acting as the company's agent or under a power of attorney from the company;
- (b) a receiver is not entitled to compensation or indemnity from the property in receivership or the company for any liability for breach of the duty in section 101.

103 Duty in relation to money

A receiver must keep money relating to the property in receivership separate from—

- (a) the other money received in the course of, but not relating to, the receivership;
and
- (b) other money held by or under the control of the receiver.

104 Duty in relation to accounting records

- (1) A receiver must at all times keep accounting records that correctly record and explain the receipts, expenditure, and other transactions relating to the property in receivership.
- (2) The receiver must retain the accounting records for not less than 7 years after the receivership ends.

105 Duty to notify suspected offences, etc

- (1) A receiver of a company must notify the Registrar in writing if the receiver considers that—
 - (a) the company or any director or officer of the company has committed an offence under this Act; or
 - (b) any director or officer of the company has been guilty of any default, breach of duty, or breach of trust in relation to the company.
- (2) A report made under subsection (1), and any communication between the receiver and the Registrar relating to that report, are protected by absolute privilege.
- (3) Nothing in subsection (1) imposes a duty on a receiver to investigate whether an offence has been committed.
- (4) A receiver who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

106 Duty to prepare reports

- (1) A receiver must prepare the following reports—
 - (a) an initial report that complies with clause 1 of Schedule 6;
 - (b) interim reports that comply with clause 2 of Schedule 6 for each 6-month period after appointment;

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- (c) a final report that complies with clause 3 of Schedule 6 at the end the receivership.
- (2) The receiver must prepare—
 - (a) the initial report within 2 months after appointment;
 - (b) an interim report within 2 months after the end of the period to which it relates;
 - (c) the final report within 2 months after the end of the receivership.
- (3) On the application of the receiver, the time for preparing a report may be extended by—
 - (a) the Court, in the case of a receiver appointed by the Court;
 - (b) the Registrar, in all other cases.
- (4) In this section and section 107, “*receiver*” includes the person who was receiver at the end of the receivership.
- (5) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

107 Persons entitled to receive and inspect receiver’s reports

- (1) A receiver must send a copy of each report required under section 106—
 - (a) within 7 days after preparing it, to each of the following—
 - (i) the company;
 - (ii) the person in whose interests the receiver was appointed;
 - (iii) the Registrar (using the approved form);
 - (iv) the Registrar of the Court, if the receiver was appointed by the Court;
 - (b) to any of the following, within 21 days of a written request for a copy and on payment of the reasonable cost of making and sending the copy—
 - (i) a creditor, director or surety of the company;
 - (ii) any other person with an interest in the receivership;
 - (iii) the authorised agent of a person referred to in subparagraph (i) or (ii).
- (2) A person entitled to receive a receiver’s report is entitled to inspect it at the office of the receiver during normal business hours.
- (3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding a fine not exceeding \$4,000.

Division 5 – Powers of receiver

108 General powers

A receiver has the powers expressly or impliedly conferred by the terms of appointment.

109 Specific powers

Subject to the terms of appointment, a receiver may do any of the following—

- (a) demand and recover income of the property in receivership;
- (b) issue receipts for income recovered;
- (c) manage the property in receivership;
- (d) insure the property in receivership;
- (e) repair and maintain the property in receivership;
- (f) inspect at any reasonable time documents that relate to the property in receivership and are in the possession or under the control of the company;

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- (g) exercise, on behalf of the company, a right to inspect documents that relate to the property in receivership and that are in the possession or under the control of a person other than the company;
- (h) buy and sell the property in receivership in the ordinary course of business.

110 Power to execute documents

- (1) A receiver may execute in the name and on behalf of the company all documents necessary or incidental to the exercise of the receiver's powers.
- (2) A document signed by a receiver on behalf of the company must be taken to have been properly executed.

111 Power to sell real property in absence of mortgagee's consent

- (1) This section applies if a receiver is unable to obtain the requisite consent of a mortgagee to the sale of real property in the receivership.
- (2) On an application by the receiver, the Court may make any order that it thinks fit authorising the receiver to sell the property (alone or together with other assets) if the Court is satisfied that—
 - (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
 - (b) the sale—
 - (i) is in the interests of the company and the company's creditors; and
 - (ii) will not substantially prejudice the interests of the mortgagee.
- (3) An order under subsection (2) may be made on the terms and conditions that the Court thinks fit.

112 Power of receiver on liquidation

- (1) Subject to subsection (2), a receiver may, unless the Court orders otherwise, be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company in liquidation.
- (2) A receiver in respect of property of a company in liquidation may act as the agent of the company only—
 - (a) with the approval of the Court; or
 - (b) with the written consent of the liquidator.
- (3) A person who is excluded by subsection (2) from acting as the agent of the company does not on that account become the agent of a person by whom or in whose interests the receiver was appointed.
- (4) A debt or liability incurred by a company through the acts of a receiver acting as the agent of the company is not a cost, charge, or expense of the liquidation.

113 Validity of receiver's acts

- (1) The act of a receiver is not invalid merely because of any of the following defects—
 - (a) the receiver was not validly appointed;
 - (b) the receiver is disqualified as a receiver;
 - (c) the receiver is not authorised to do the act.
- (2) However, subsection (1) does not apply to a transaction entered into by a receiver if the person dealing with the receiver—
 - (a) knows of a defect listed in subsection (1); or

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- (b) ought to know of that defect by reason of the person's relationship with the receiver or the receiver's appointor.

Division 6 – Liability of receiver

114 Contractual liability

- (1) A receiver is personally liable on a contract entered into in the exercise of any of the receiver's powers.
- (2) However, the contract may exclude or limit the personal liability of a receiver who is not appointed by the Court.

115 Liability for wages or salary under existing contract of employment

- (1) A receiver is personally liable for payment of wages or salary that accrue under a contract of employment entered into before the receiver's appointment if—
 - (a) the wages or salary accrue during the receivership; and
 - (b) the contract of employment relates to the property in receivership.
- (2) However, subsection (1) does not apply if, within 14 days after his or her appointment, the receiver gives notice lawfully terminating the contract of employment.
- (3) On the application of the receiver and on any conditions that the Court thinks fit, the Court may extend the period for terminating the contract after appointment.
- (4) The application must be made before the expiry of the 14-day period.

116 Liability for director's remuneration

A receiver is personally liable for the payment of remuneration under a contract with a director of the company if the receiver has expressly confirmed the contract.

117 Liability for rent and other payments

- (1) This section applies if—
 - (a) rent and any other payments become due under an agreement in force at the date of appointment of a receiver; and
 - (b) the rent and payments relate to the use, possession, or occupation by the company of property in receivership.
- (2) The receiver is personally liable for that portion of the rent or other payments that accrues in the period beginning 14 days after the date of appointment and ending on the earlier of—
 - (a) the date on which the receivership ends; or
 - (b) the date on which the company ceases to use, possess, or occupy the property.
- (3) The Court may, on the application of a receiver—
 - (a) excuse the receiver from liability under this section; or
 - (b) limit the liability of the receiver to a greater extent than specified in this section.
- (4) Nothing in this section—
 - (a) must be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (1)(a); or
 - (b) renders a receiver liable to perform any other obligation under the agreement.

118 Liability on contract entered into without authority

Nothing in sections 114 to 117—

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- (a) limits the liability of a receiver on a contract entered into without authority; or
- (b) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

Relief from liability

119 Receiver is entitled to indemnity

A receiver is entitled to an indemnity out of the property in receivership in respect of the receiver's liability under sections 114 to 117.

120 Court may relieve receiver from liability

- (1) The Court may make an order relieving a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if the Court is satisfied that—
 - (a) the liability was incurred solely by reason of a defect in the receiver's appointment or in the document or order of Court under which the receiver was appointed; and
 - (b) the receiver acted honestly and reasonably; and
 - (c) the receiver ought, in the circumstances, to be excused.
- (2) The Court may make the order on any terms and conditions that it thinks fit.
- (3) A person in whose interests a receiver was appointed is liable, subject to any terms and conditions that the Court thinks fit, to the extent that the receiver is relieved from liability under subsection (1).

Division 7 – Court supervision

121 Court may give directions in relation to receivership

On the application of a receiver, the Court may—

- (a) give directions in relation to any matter arising in the receivership;
- (b) revoke or vary those directions.

122 Court may make orders in relation to remuneration and validity of appointment

- (1) On the application of a person listed in subsection (2), the Court may—
 - (a) for any period, review or fix a receiver's remuneration at a level that is reasonable in the circumstances;
 - (b) order a receiver to refund remuneration in excess of what the Court finds is reasonable remuneration in the circumstances;
 - (c) declare whether or not a receiver was validly appointed in respect of any property;
 - (d) declare whether or not a receiver validly entered into possession or assumed control of any property; or
 - (e) revoke or vary an order made under this subsection.
- (2) The persons who may make an application under subsection (1) are any of the following—
 - (a) the receiver;
 - (b) the company;
 - (c) a creditor of the company;

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- (d) a person claiming, through the company, an interest in the property in receivership;
 - (e) the directors of the company or, if the company is in liquidation, the directors of the company at the time the liquidator was appointed;
 - (f) if the company is in liquidation, the liquidator.
- (3) The powers of the Court under this section or section 121 may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

123 Receiver's defence of acting in accordance with Court direction

- (1) A receiver who acts in accordance with a direction of the Court has a defence in relation to anything done or not done in accordance with that direction.
- (2) However, on the application of any person, the Court may order that, because of the circumstances in which the direction was obtained, the receiver does not have the defence given by subsection (1).

124 Compliance order

- (1) On the application of a person listed in section 126(1), the Court may, if satisfied that there is a failure of compliance—
- (a) relieve the receiver of the duty to comply wholly or in part; or
 - (b) order the receiver to comply to the extent specified in the order (which may extend the time for compliance).
- (2) An order to comply is made without prejudice to any other remedy that may be available in relation to the failure to comply.
- (3) If a receiver fails to comply with an order made under subsection (1)(b), the Court may make an order removing the receiver from office.
- (4) In this section, failure of compliance means that a receiver has failed, or is failing, to comply with a relevant duty arising—
- (a) under this Act or any other enactment or law; or
 - (b) any order or direction of the Court (other than an order made under subsection (1)(b)).

125 Prohibition order

- (1) This section applies if the Court is satisfied that a person (P) is unfit to act as receiver because of—
- (a) the seriousness of his or her failure of compliance; or
 - (b) his or her persistent failures of compliance.
- (2) On the application of a person listed in section 126(1), the Court must prohibit P, for a period not exceeding 5 years, from—
- (a) acting as a receiver in a current or other receivership;
 - (b) acting as a liquidator in a current or other liquidation.
- (3) For the purposes of subsection (1)(b), evidence of P's persistent failures of compliance includes, in the absence of special reasons to the contrary—
- (a) evidence that, on 2 or more occasions within the preceding 5 years, the Court has made a compliance order under [section 79(1)(b) or 124(1)(b)] in respect of P;

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- (b) evidence that, within the preceding 5 years and in respect of P, the Court has made 1 or more orders under section 79(1)(b) and 1 or more orders under section 124(1)(b);
 - (c) evidence that, on 2 or more occasions within the preceding 5 years, an application for a compliance order under [section 275(1)(b) or 331(1)(b)] has been made in respect of P and that in each case P complied after the application was made and before the hearing;
 - (d) evidence that, within the preceding 5 years and in respect of P, there have been 1 or more applications for an order under [section 79(1)(b)] and 1 or more applications for an order under [section 124(1)(b)] and that in each case P complied after the application was made and before the hearing.
- (4) The applicant for an order made under this section must file a copy of the order with the Registrar within 14 days after the order is made and the Registrar must file the order by reference to the name of the person subject to the order.

126 Person who may apply for compliance or prohibition orders

- (1) The persons who may make an application for an order under section 124(1) or (3) or 125(2) are any of the following—
- (a) the Registrar;
 - (b) a receiver;
 - (c) a person seeking appointment as a receiver;
 - (d) the company;
 - (e) a creditor of the company;
 - (f) a person claiming, through the company, an interest in the property in receivership;
 - (g) a guarantor of an obligation of the company;
 - (h) if the company is in liquidation, the liquidator.
- (2) A person must not apply for an order under section 124(1) unless—
- (a) notice of the failure of compliance has been served on the receiver not less than 7 days before the date of the application; and
 - (b) as at the date of the application, there is a continuing failure of compliance.

127 Order protecting property in receivership

The Court may, on making an order that removes or has the effect of removing a receiver from office, make the orders that it thinks fit—

- (a) for preserving the property in receivership;
- (b) requiring the receiver for that purpose to make available to any person specified in the order any information and documents in or under the receiver's possession or control.

128 Court may terminate or limit receivership

- (1) On the application of a person listed in subsection (2), the Court may make an order—
- (a) terminating the receivership, including prohibiting the appointment of another receiver; or
 - (b) limiting the receivership to specified assets.
- (2) The persons who may make an application under subsection (1) are—

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- (a) the company; or
 - (b) if the company is in liquidation, the liquidator.
- (3) An order under this section—
- (a) may be made only if the Court is satisfied that the purpose of the receivership has as far as possible been met or that its continuation is not justified;
 - (b) may include an order prohibiting a person in whose interests the receiver was appointed from taking possession or assuming control of the property in receivership;
 - (c) may be made on the terms and conditions that the Court thinks fit;
 - (d) may be rescinded or amended on the application of any person who applied for the order or who is affected by it;
 - (e) except for an order under paragraph (b), does not affect a security or charge over the property to which the order relates.
- (4) Unless the Court orders otherwise,—
- (a) a copy of an application under this section must be served on the receiver not less than 7 days before the hearing of the application; and
 - (b) the receiver may appear and make submissions at the hearing.

Division 8 – Supply of essential services

129 Obligations of suppliers of essential services

- (1) Despite any other enactment or contract, a supplier of an essential service must not—
- (a) refuse to supply the service to a receiver or to the company on the ground that the company has defaulted in paying charges due for the service for a period before the date of the appointment of the receiver; or
 - (b) make it a condition of the supply of the service to a receiver or to the company that payment be made of outstanding charges due for the service for a period before the appointment of the receiver.
- (2) In this section, “*essential service*” means—
- (a) the retail supply of gas;
 - (b) the retail supply of electricity;
 - (c) the supply of water;
 - (d) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
 - (e) telecommunications services.

PART V—MISCELLANEOUS

130 Registrar may approve forms

The Registrar may approve forms for the purposes of this Act.

131 Notices

A notice or other document that must be served or given under this Act may served or given in accordance with the methods of service specified by [Schedule 6] of the Companies Act.

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132 Regulations

The Beretitenti, acting on the advice of the Cabinet, may make regulations to give effect to the provisions of this Act and in particular for all or any of the following purposes—

- (a) prescribing forms (including Court forms in respect of any Court proceedings under this Act); and those regulations may require—
 - (i) the inclusion in, or attachment to, forms of specified information or documents; and
 - (ii) forms to be signed by specified persons;
 - (b) prescribing the information that must be provided for the proper completion of an approved form;
 - (c) prescribing requirements with which documents filed for registration must comply;
 - (d) prescribing when a fee, penalty, or other sum is payable under this Act;
 - (e) prescribing the amount of any fee, penalty or other sum payable under this Act;
 - (f) prescribing the circumstances in which the Registrar may waive, or exempt a person or class of persons from liability to pay, a fee, penalty or other sum payable under this Act, whether in whole or in part;
 - (g) prescribing the minimum amount of a debt for the purposes of a statutory demand (see section 26(2)(a));
 - (h) fixing the amount or rates of remuneration of a liquidator appointed by the Court (see section 53(2));
 - (i) fixing the maximum amount for which a debt subject to a lien is a preferential debt (see section 69(2));
 - (j) fixing the maximum priority sum under clause 20(2) of Schedule 2;
 - (k) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.
- (2) Without limiting subsection (1)(b), a provision of this Act requiring or contemplating prescribed information for the purposes of completing a approved form is satisfied if the information necessary for the proper completion of the form appears from the face of the form or from the content of the form.

133 Regulations providing for transitional matters, etc

The Beretitenti, acting on the advice of the Cabinet, may make regulations—

- (a) providing transitional, savings, and consequential provisions relating to the coming into force of this Act, which may be in addition to, or in place of, or which may amend, any transitional, savings, and consequential provisions in this Part;
- (b) providing provisions relating to the re-registration of companies, which may be in addition to, or in place of, or which may amend, the re-registration provisions in this Part;
- (c) to facilitate the bringing into force of any regulations under this Act;
- (d) providing that subject to such conditions as are specified in the regulations, during a specified transitional period, specified provisions of this Act (including definitions) do not apply;
- (e) providing for any other matters necessary for facilitating or ensuring an orderly transition from any enactments replaced by this Act to the provisions of this Act.

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- 134 Liquidation or other proceeding that is incomplete on commencement of this Act**
- (1) This section applies to the liquidation or other proceeding under this Act that is incomplete on the commencement of this Act.
 - (2) The balance of the proceeding must be conducted in accordance with the law in force immediately after the commencement of this Act with all necessary modifications.
 - (3) If necessary, the Court on the application of the company, a creditor, a liquidator or a receiver may give directions as the Court thinks fit for the conduct of the proceeding.

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Schedule 1—Restrictions on prior execution process

1. Restriction on creditor’s right to complete execution process

- (1) Subject to subclause (2) and section 216(2), a creditor is not entitled to retain the benefit of any execution process, distraint, or attachment over or against the property of a company unless the execution process, distraint, or attachment is completed before,
 - (a) in the case of a liquidator appointed by a resolution of shareholders, the passing of the resolution or the date on which the creditor had notice of the meeting at which the resolution was proposed, whichever occurred earlier:
 - (b) in the case of a liquidator appointed by a resolution of directors, the passing of the resolution or the date on which the creditor had notice of the meeting at which the resolution was proposed, whichever occurred first:
 - (c) in the case of a liquidator appointed by the Court, the making of the application for the appointment.
- (2) The Court may set aside the application of subclause (1) to the extent and on the terms and conditions that the Court thinks fit.

2. When execution process is completed

For the purposes of clause 1—

- (a) an execution or distraint against personal property is completed by seizure and sale:
- (b) an attachment of a debt is completed by receipt of the debt:
- (c) an execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.

3. Good faith purchaser protected

Despite clause 1—

- (a) a person who, in good faith, purchases property of a company from a court officer responsible for an execution process acquires a good title as against the liquidator of the company:
- (b) a person who, in good faith, purchases property of a company on which distress has been levied acquires a good title as against the liquidator of the company.

4. Division 9 of Part III not limited or affected

Nothing in clauses 1 to 3 limits or affects the provisions of Division 9 of Part III of this Act.

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5. Liquidator may require transfer of company property if court officer had notice of appointment

- (1) The court officer responsible for an execution process in which company property has been taken must deliver or transfer to the liquidator that property (including any money received in satisfaction or partial satisfaction of an execution or paid to avoid a sale of the property) if—
 - (a) before completion of the execution process, the court officer received notice that the liquidator had been appointed; and
 - (b) the liquidator requires the delivery or transfer of the property.
- (2) The costs of the execution process are a first charge on any property or money delivered or transferred to the liquidator under subclause (1) and the liquidator may sell all or some of the property to satisfy that charge.

6. Court officer must retain proceeds of sale, etc for 14 days

- (1) This clause applies where—
 - (a) property of a company is sold in an execution process in respect of a judgment for a sum exceeding \$500 (or such sum as may be prescribed); or
 - (b) money is paid to the court officer responsible for the execution process to avoid a sale.
- (2) The court officer must—
 - (a) retain the proceeds of sale or the money paid for 14 days; and
 - (b) if, within that period, the court officer has notice of the liquidation, pay the proceeds or money to the liquidator after deducting the costs of the execution.
- (3) For the purposes of subclause (2), the court officer has notice of the liquidation if he or she has notice—
 - (a) in the case of a liquidator appointed by a resolution of shareholders, of the meeting at which the resolution was proposed;
 - (b) in the case of a liquidator appointed by a resolution of directors, of the meeting at which the resolution was proposed;
 - (c) in the case of a liquidator appointed by the Court, of the making of the application for the appointment.
- (4) The liquidator who is paid money under subclause (2)(b) is entitled to retain it as against the execution creditor.

7. Court may set aside application of clause 5 or 6

The Court may set aside the application of clause 5 or 6 to the extent and on the terms and conditions that the Court thinks fit.

Schedule 2—Creditors' claims

PART I—PRELIMINARY PROVISIONS

1. Admissible claims

- (1) Subject to subclause (2), a debt or liability may be admitted as a claim against a company in liquidation, whether the debt or liability is—
 - (a) present or future; or
 - (b) certain or contingent; or
 - (c) an ascertained debt or a liability for damages.
- (2) Fines, monetary penalties, and costs to which clause 4 applies are not claims that may be admitted against a company in liquidation.

2. Ascertainment of amount of claim

- (1) The amount of a claim must be ascertained as at the date and time of commencement of the liquidation.
- (2) The amount of claim based on a debt or liability denominated in a currency other than the currency of Kiribati must be converted into the currency of Kiribati at the rate of exchange on the date of commencement of the liquidation.

3. Claim for unascertained amount

- (1) This clause applies if—
 - (a) a claim is subject to a contingency; or
 - (b) a claim is a claim for damages; or
 - (c) for some other reason, the amount of the claim is not certain.
- (2) The liquidator may—
 - (a) make an estimate of the amount of the claim; or
 - (b) refer the matter to the Court for a decision on the amount of the claim.
- (3) On the application of the liquidator, or of a claimant who is aggrieved by an estimate made by the liquidator, the Court may determine the amount of the claim as it thinks fit.

4. Fines and penalties

Nothing in this Act limits or affects the recovery of—

- (a) a fine imposed on a company, whether before or after the commencement of its liquidation, for the commission of an offence; or
- (b) a monetary penalty payable to the Crown imposed on the company by the Court, whether before or after the commencement of its liquidation, for breach of any enactment; or

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- (c) costs ordered to be paid by the company in relation to proceedings for the offence or the breach.

5. Claims relating to debts payable after commencement of liquidation

- (1) A claim in respect of a debt that, but for the liquidation, would not be payable until a date that is 6 months or more after the date of commencement of the liquidation must be treated as a claim for the present value of the debt.
- (2) The present value of a debt must be determined by deducting from the amount of the debt interest at the appropriate rate for the period from the date of commencement of the liquidation to the date when the debt is due.

PART II—PROCEDURE FOR CLAIMS

6. Claims by unsecured creditors

- (1) A claim by an unsecured creditor against a company in liquidation must be made in the prescribed form and must—
 - (a) contain full details of the claim; and
 - (b) identify any documents that evidence or substantiate the claim.
- (2) If the claimant identifies a document as evidencing or substantiating the claim, the liquidator may require the claimant to produce it.
- (3) The liquidator—
 - (a) must, as soon as practicable, either admit or reject a claim in whole or in part; and
 - (b) may revoke a decision to admit or reject a claim in whole or in part, if the liquidator considers that the decision was wrong; and
 - (c) must record in writing any decision made under this subclause.
- (4) If a liquidator rejects a claim, whether in whole or in part, he or she must without delay give the creditor written notice of the rejection.
- (5) The costs of making a claim under subclause (1) or producing a document under subclause (2) must be met by the claimant.

7. Claim on behalf of employees

- (1) A person may make a claim on behalf of all or a number of employees of the company.
- (2) A list setting out the names of the employees, and the amounts due to each of them, must be attached to the claim.
- (3) A claim made in compliance with this clause has the same effect as if a separate claim had been made by each employee.

8. Notice to creditors to claim

- (1) Subject to the provisions of this Act, and unless otherwise ordered by the Court, the liquidator may fix a certain time and date, which must not be less than 14 days from the date of the notice, as the deadline for creditors of the company to—

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- (a) make their claims; and
 - (b) establish any priority their claims may have under Part 4 of this Schedule.
- (2) The liquidator must give public notice of the deadline for claims.

9. Late claims

- (1) Subject to subclause (2), a creditor who fails to make a claim within the deadline for claims must be excluded from the benefit of any distribution made before the creditor's claim is received.
- (2) A creditor whose late claim is admitted is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain or, in the liquidator's opinion, are likely to remain, available for distribution.

10. Failure to establish priority within deadline for claims

- (1) Subject to subclause (2), a creditor who fails to establish priority for a claim within the deadline for claims may not object to any distribution made before the priority of the claim is established.
- (2) The liquidator may, in making any distribution after the claim is admitted, make an assumption as to the priority that the claim may have and accord the creditor the benefit of the distribution accordingly.
- (3) A creditor who established the priority of a claim after the deadline for claims is entitled to receive the benefit of any distribution from which the creditor was previously excluded if any assets remain or, in the liquidator's opinion, are likely to remain, available for distribution.

11. Dividends in respect of rejected claims

- (1) If a creditor applies for an order under section 77(1)(b) reversing or modifying the decision of the liquidator to reject the creditor's claim, the liquidator may make provision for the dividend on the claim, and the probable cost of the application in the event of the claim being admitted.
- (2) If notice of an application under section 77(1)(b) has not been given within the time specified in the rules of court for appeals to the Court from a decision of the liquidator, the liquidator must exclude all claims that have been rejected from participation in the dividend.

12. Costs of proceedings relating to liquidator's decision on claim

On an application by a creditor for an order under section 77(1)(b) reversing or modifying the decision of the liquidator to reject the creditor's claim, the Court may, if it thinks fit,—

- (a) allow any costs of the creditor to be added to the claim;
- (b) allow any costs of any party to the proceedings to be paid out of the assets of the company as expenses of the liquidator;
- (c) order any costs to be paid by any party to the proceedings other than the liquidator.

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PART III—SECURED CREDITORS

13. Secured creditor's options

- (1) A secured creditor has the option to —
 - (1) realise property subject to a charge or security interest, if entitled to do so (**option 1**); or
 - (2) value the property subject to the charge or security interest and claim in the liquidation as an unsecured creditor for the balance due, if any (**option 2**); or
 - (3) surrender the charge or security interest to the liquidator for the general benefit of the creditors and claim in the liquidation as an unsecured creditor for the whole debt (**option 3**).
- (2) A secured creditor may exercise option 1 whether or not the creditor has exercised option 2.

14. Realisation of property subject to charge or security interest

A secured creditor who realises property subject to a charge or security interest—

- (a) may, unless the liquidator has accepted a valuation and claim by the creditor under clause 16, claim as an unsecured creditor for any balance due after deducting the net amount realised:
- (b) must account to the liquidator for any surplus remaining from the net amount realised after satisfaction of the debt, including interest payable in respect of that debt up to the time of its satisfaction, and after making proper payments to the holder of any other charge over, or security interest in, the property.

15. Valuation of security

- (1) This clause applies if a secured creditor values the security and claims as an unsecured creditor for the balance due, if any.
- (2) The valuation and any claim must be made in the prescribed form and—
 - (a) contain full details of the valuation and any claim; and
 - (b) contain full details of the charge or security interest, including the date on which it was created; and
 - (c) identify any documents that evidence or substantiate the claim and the charge or security interest.
- (3) If the claimant identifies a document as evidencing or substantiating the claim and the charge or security interest, the liquidator may require the claimant to produce it.

16. Procedure on claim by secured creditor after valuation of security

- (1) If a secured creditor makes a claim under clause 15, the liquidator must—
 - (a) accept the valuation and claim; or
 - (b) reject the valuation and claim, in whole or in part.

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- (2) If the valuation and claim are rejected, in whole or in part, the creditor may make a revised valuation and claim within 14 days after receiving notice of the rejection.
- (3) The liquidator may re-consider the rejection of a valuation and claim, in whole or in part, and revoke or amend that decision.
- (4) If the liquidator ultimately accepts a valuation and claim, the liquidator may, unless the secured creditor has realised the property, at any time redeem the security on payment of the assessed value.
- (5) The liquidator must record in writing any decision that the liquidator makes under this clause.

17. Liquidator may require secured creditor to elect option

- (1) The liquidator may at any time, by written notice, require a secured creditor, within 28 days after receipt of the notice, to—
 - (a) elect an option under clause 13(1); and
 - (b) if the creditor elects option 2 or 3, to exercise that option within the 28-day period.
- (2) If the creditor fails to comply with the notice, the creditor must be taken to exercise option 3.
- (3) Subject to subclause (4), a creditor who exercises, or is taken to exercise, option 3 may—
 - (a) withdraw the surrender and rely on the charge or security interest; or
 - (b) submit a new claim.
- (4) A creditor may exercise the right to withdraw a surrender or submit a new claim only if—
 - (a) the creditor has obtained the leave of the Court; and
 - (b) complies with any conditions that the Court or the liquidator impose; and
 - (c) exercise the right before the liquidator has realised the property subject to the charge or security interest.

PART IV—PREFERENTIAL CLAIMS

18. Interpretation

- (1) In this Part, “*holiday pay*”, in relation to a person (P), means all sums payable to P by the company that under any enactment, award, agreement, or contract of service are payable to P by the company as holiday pay
- (2) For the purposes of this Part, remuneration, in respect of a period of holiday or absence from work through sickness or other good cause must be treated as wages for services rendered to the company during that period.

19. First priority claims

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The liquidator must first pay the following, in the order of priority in which they are listed:

- (a) the fees and expenses properly incurred by the liquidator in the process of the liquidation and the liquidator's remuneration:
- (b) the reasonable costs of a person who applied to the Court for an order that the company be put into liquidation, including the reasonable costs incurred between lawyer and client in obtaining the order.
- (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.

20. Second priority claims

- (1) After paying the claims listed in clause 19, the liquidator must next pay the following claims (to the extent that they remain unpaid):
 - (a) subject to subclause (2), all wages or salary of any employee for services provided to the company during the 4 months before the commencement of the liquidation:
 - (b) subject to subclause (2), any holiday pay payable to an employee on the termination of his or her employment before, or because of, the commencement of the liquidation:
 - (c) subject to subclause (2), any compensation for redundancy owed to an employee that accrues before, or because of, the commencement of the liquidation:
 - (d) subject to subclause (2), amounts deducted by the company from the wages of an employee in order to satisfy obligations of the employee:
 - (e) contributions payable by the company to a superannuation scheme or provident fund of an employee:
 - (f) amounts due in respect of any compensation or liability for compensation payable to an employee or his or her dependants that accrued before the commencement of the liquidation:
 - (g) amounts that are preferential claims under section 69(2);
 - (h) all sums that by any other enactment must be paid in accordance with the priority established by this clause.
- (2) The total sum to which priority is to be given under subclause (1)(a)–(e) must not, in the case of any 1 employee, exceed the greater of—
 - (a) the equivalent of the employee's wages for the 3 month period before the commencement of liquidation; or
 - (b) \$5,000 (or any greater amount that is prescribed at the commencement of the liquidation).

21. Third priority claims

After paying the claims listed in clause 20, the liquidator must next pay the following claims (to the extent that they remain unpaid):

- (a) income and other tax payable by the company:

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- (b) deductions made by the company in respect of the earnings of employees of the company;
- (c) customs and excise duty payable by the company.

22. Ranking of claims in clauses 20 and 21

- (1) The claims listed in each of clauses 20 and 21 rank equally among themselves and must be paid in full, unless there are insufficient assets to pay them, in which case they abate in equal proportions.
- (2) The claims listed in each of clauses 20 and 21—
 - (a) have priority over the claims of any person under a security interest to the extent that the security interest is not a security interest [that has been perfected under the Personal Property Securities Act 2017] at the commencement of the liquidation; and
 - (b) if necessary, must be paid out of the assets subject to that security interest (or their proceeds).
- (3) For the purposes of subclause (2), “security interest” has [the same meaning as in the Personal Property Securities Act 2017].
- (4) To the extent that the claims listed in clauses 20 and 21 are paid out of assets referred to in subclause (2)(b), the amount so paid is an unsecured debt due by the company to the secured party.

23. Subrogation following payment of preferential claim

If a payment has been made to a person (A) on account of any preferential claim set out in this Schedule out of money advanced by another person (B) for that purpose, then B has, in a liquidation, the same right of priority in respect of the money so advanced as A would have if the payment had not been made.

24. Priority given to person who distrains on goods

- (1) If a person has distrained on goods or effects of the company during the 28 days before the commencement of the liquidation, the preferential claims set out in this Schedule are a first charge on the goods or effects so distrained, of the proceeds from their sale.
- (2) However, if any money is paid to a claimant under that charge, the person has the same rights of priority as that claimant.

PART V—MUTUAL CREDIT AND SET OFF

25. Mutual credit and set off

- (1) This clause applies if there have been mutual credits, mutual debts, or other mutual dealings between a company and a person claiming to have a claim admitted in the liquidation of the company.
- (2) In a case to which this clause applies,—
 - (a) an account must be taken of what is due from 1 party to the other in respect of their mutual credits, debts, or dealings; and

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- (b) an amount due from 1 party must set off against an amount due from the other party; and
- (c) only the balance of the account may be claimed in the liquidation, or is payable to the company, as the case may be.

26. Restrictions on claiming set off

A person is not entitled to claim a set off under clause 25 if—

- (a) the set off arises from—
 - (i) a transaction (the **transaction**) in which P gave credit to the company or the company gave credit to P; or
 - (ii) the assignment (the **assignment**) to P of a debt owed by the company to another person; and
- (b) the transaction or assignment occurred—
 - (i) within the 2-year period, if P is a related person; or
 - (ii) within the 6-month period, if P is not a related person; and
- (c) P fails to prove that, at the time of the transaction or the assignment, P did not have reason to suspect that the company was unable to pay its debts as they became due.

27. Definitions for this Part

In this Part,—

“*2-year period*” means the period of 2 years counted back from the close of the day on which the application was filed in the Court plus the period counted forward from that day until the time and date of the order; and

“*6-month period*” has the same meaning as 2-year period except that “6 months” must be substituted for “2 years”

“*related person*” includes—

- (a) a related company;
- (b) a director of the company in liquidation.

28. Exception for amount paid or payable by shareholder

Clauses 25 to 27 do not apply to an amount paid or payable by a shareholder or former shareholder—

- (a) as the consideration, or part of the consideration, for the issue of a share; or
- (b) in satisfaction of a call in respect of an outstanding liability of the shareholder made by the directors or the liquidator.

PART VI—MISCELLANEOUS

29. Interest on claims

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- (1) The amount of a claim may include interest up to the date of commencement of the liquidation—
 - (a) at the rate specified or contained in any contract that makes provision for the payment of interest on that amount; or
 - (b) in the case of a judgment debt, at the rate payable on the judgment debt.
- (2) If any surplus assets remain after the payment of all admitted claims—
 - (a) interest must be paid at the prescribed rate on those claims from the date of commencement of the liquidation to the date on which each claim is paid; but
 - (b) payment of interest must abate rateably among all claims in the event that that the surplus assets are insufficient to pay interest in full.
- (3) If any surplus assets remain after the payment of interest under subclause (2)—
 - (a) interest must be paid on all admitted claims referred to in subclause (1) from the date of commencement of the liquidation to the date on which the claim is paid at a rate equal to the excess between the prescribed rate and the rate referred to in subclause (1)(a); but
 - (b) payment of interest must abate rateably among all claims in the event that that the surplus assets are insufficient to pay interest in full.
- (4) For the purposes of this clause, “prescribed rate” means the rate prescribed in regulations made under this Act or, if no such rate is prescribed, the rate at which interest is payable on money due under a judgment of the Court.

30. Trade discounts

A creditor making a claim must deduct all trade discounts that the creditor would otherwise have given if the company had not gone into liquidation.

31. Periodical payments

- (1) When liquidation commences between periodical payment dates, for example, between dates for payment of rent, the person entitled to payment may claim up to the date of commencement of liquidation as if the payment accrued on a daily basis.
- (2) Nothing in subclause (1) affects the right of the lessor of property to claim rent that accrues on or after the commencement of liquidation.

Schedule 3—Powers of liquidator

1. Liquidator's powers

A liquidator of a company has power to—

- (a) commence, continue, discontinue and defend legal proceedings;
- (b) to the extent necessary for the liquidation, carry on the business of the company;
- (c) appoint a lawyer;
- (d) pay any class of creditors in full;
- (e) make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not;
- (f) compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts, and claims, present or future, actual or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person and all questions relating to, or affecting the assets or the liquidation of, the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge;
- (g) sell or otherwise dispose of the property of the company;
- (h) act in the name and on behalf of the company and enter into deeds, contracts and arrangements in the name and on behalf of the company;
- (i) prove, rank, and claim in the bankruptcy or insolvency of a debtor or shareholder for any balance against that person's estate, and to receive dividends in the bankruptcy or insolvency, as a separate debt due from the bankrupt or insolvent and rateably with other creditors;
- (j) draw, accept, make, and endorse a bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;
- (k) borrow money on the security of the company's assets;
- (l) take out, in his or her name as liquidator, letters of administration to a deceased shareholder, and to do in that name any other act necessary for obtaining payment of money due from a debtor or shareholder or his or her estate, that cannot be conveniently done in the name of the company. In all such cases, the money due is, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, deemed to be due to the liquidator;
- (m) call a meeting of creditors or shareholders for—
 - (i) the purpose of informing creditors or shareholders of progress in the liquidation;
 - (ii) the purpose of ascertaining the views of creditors or shareholders on any matter arising in the liquidation;

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- (iii) such other purpose connected with the liquidation as the liquidator thinks fit; and
- (n) appoint an agent to do anything that the liquidator is unable to do;
- (o) change the registered office or address for service of the company.

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Schedule 4—Meetings of creditors

PART I—PROVISIONS THAT APPLY TO MEETING OF CREDITORS GENERALLY

1. Methods of holding meetings

A meeting of creditors may be held—

- (a) by assembling together those creditors entitled to take part who choose to attend at the place, date, and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting; or
- (c) by conducting a postal ballot in accordance with clause 7 of those creditors entitled to take part.

2. Notice of meeting

At least 7 days before a creditors meeting, written notice must be sent to every creditor entitled to attend and to any liquidator of—

- (a) the time and place of the meeting if it is to be held under clause 1(a); or
- (b) the time and method of communication for the meeting if it is to be held under clause 1(b); or
- (c) the time and address for the return of voting papers if it is to be held under clause 1(c).

3. Contents of notice

The notice of meeting must—

- (a) state the nature of the business to be transacted at the meeting in sufficient detail to enable a creditor to form a reasoned judgment in relation to it; and
- (b) set out the text of any resolution to be submitted to the meeting; and
- (c) include a voting paper in respect of each resolution and voting and mailing instructions; and
- (d) state that, if a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting—
 - (i) the creditor’s postal vote is invalid in respect of that different resolution; but
 - (ii) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy; and
- (e) state the name of the person authorised to receive and count postal votes in relation to the meeting.

4. Effect of irregularity, etc, in notice

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An irregularity in the notice of a meeting of creditors, or failure to receive the notice, does not invalidate anything done by the meeting if—

- (a) the irregularity or failure is not material; or
- (b) all the creditors entitled to attend and vote at the meeting attend without protest to the irregularity or failure; or
- (c) all those creditors agree to waive the irregularity or failure.

5. Adjournment of meeting

- (1) If the meeting of creditors agrees, the chairperson may adjourn the meeting from time to time and from place to place.
- (2) An adjourned meeting must be held in the same place unless another place is specified in the resolution for the adjournment.
- (3) If a meeting of creditors held under clause 1(a) or (b) is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting that it is adjourned.

6. Chairperson

- (1) The chairperson of a meeting held under clause 1(a) or (b) is—
 - (a) the liquidator, if appointed and present; or
 - (b) the liquidator's nominee, if appointed and present.
- (2) If the liquidator or his or her nominee is not present, or there is no liquidator acting, the creditors participating must choose 1 of their number to be chairperson.
- (3) For a meeting held under clause 1(c), the person convening the meeting must do everything necessary that would otherwise be done by the person chairing a meeting.

7. Quorum

- (1) A quorum for a meeting of creditors is present when—
 - (a) 3 creditors who are entitled to vote or their proxies are present or have cast postal votes; or
 - (b) if the number of creditors entitled to vote is 3 or less, the creditors who are entitled to vote or their proxies are present or have cast postal votes.
- (2) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the chairperson may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the creditors present or their proxies are a quorum.

8. Voting

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- (1) At any meeting of creditors or a class of creditors, other than a meeting to approve a compromise under section 193, a resolution is adopted if a majority in number and value of the creditors or class of creditors vote in favour of the resolution.
- (2) At any meeting of creditors or a class of creditors for the purpose of approving a compromise under section 193, a resolution is adopted if a majority in number representing 75% of the value of the creditors or class of creditors vote in favour of the resolution.
- (3) A creditor chairing the meeting does not have a casting vote.

9. Proxies

- (1) A creditor may vote either by being present in person or by proxy.
- (2) A proxy for a creditor is entitled to attend and speak at a meeting of creditors as if the proxy were the creditor.
- (3) A creditor may may appoint any person, including the liquidator, to act as the creditor's proxy.
- (4) A proxy must be appointed by notice in writing signed by the creditor and the notice must state whether the appointment is for a particular meeting or a specified term (which must not exceed 12 months).
- (5) No proxy is effective in relation to a meeting unless, not less than 2 working days before the meeting, a copy of the notice of appointment is delivered to the liquidator or, if there is no liquidator acting, to the person who gave the notice convening the meeting.

10. Postal votes

- (1) A creditor entitled to vote at a meeting of creditors held under clause 1(a), (b), or (c) may vote by casting a postal vote in relation to a matter to be decided at the meeting.
- (2) If a creditor votes by casting a postal vote in respect of a resolution that is to be submitted to the meeting and a different resolution is submitted to the meeting,—
 - (a) the creditor's postal vote is invalid in respect of that different resolution; but
 - (b) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.
- (3) A creditor may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a marked voting paper to a person authorised to receive and count postal votes in relation to that meeting, so as to reach that person not less than 2 working days before the start of the meeting or, if the meeting is held under clause 1(c), not later than the date named for the return of the voting paper.
- (4) If no person has been authorised to receive and count postal votes in relation to a meeting, or if no person is named as being so authorised in the notice of the meeting, every director or, if the company is in liquidation, the liquidator, is deemed to be so authorised.
- (5) If a vote is taken at a meeting held under clause 1(a) or (b) on a resolution on which postal votes have been cast, the person chairing the meeting must include

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the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

11. Duty of person authorised to receive and count postal votes

- (1) A person authorised to receive and count postal votes in relation to a meeting must—
 - (a) collect together all postal votes received by him or her; and
 - (b) in relation to each resolution to be voted on—
 - (i) count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting in favour of the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (ii) count the number of creditors or creditors belonging to a class of creditors, as the case may be, voting against the resolution and determine the total amount of the debts owed by the company to those creditors; and
 - (c) sign a certificate—
 - (i) certifying that he or she has carried out the duties set out in paragraphs (a) and (b); and
 - (ii) stating results of the counts and determinations required by paragraph (b); and
 - (d) ensure that the certificate required by paragraph (c) is presented to the person chairing or convening the meeting.
- (2) A certificate given under subclause (1)(c) must be annexed to the minutes of the meeting.

12. Record of attendance and minutes

- (1) The chairperson of a meeting of creditors or, if the meeting is held under clause 1(c), the person convening the meeting must—
 - (a) ensure that an accurate record is kept of all creditors present or represented at the meeting, including—
 - (i) the name of each creditor present or represented; and
 - (ii) whether the creditor has made a claim, and the amount of the claim; and
 - (iii) whether the creditor has filed a proxy or is present in person; and
 - (iv) the total number of creditors present or represented; and
 - (b) ensure that minutes are kept of all proceedings.
- (2) Records of attendance or minutes that have been signed as correct by the chairperson or the person convening the meeting are prima facie evidence of the details recorded and the proceedings of the meeting.

13. Body corporate may act by representative

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A body corporate that is a creditor may appoint a representative to attend a meeting of creditors on its behalf.

14. Procedure generally

Except as provided in this Schedule and in any regulations made under this Act, a meeting of creditors may regulate its own procedure.

15. Effect of irregularity or defect

- (1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done by the meeting, unless the Court orders otherwise.
- (2) The Court may, on the application of a liquidator or a creditor of the company, make an order under subclause (1) if it is satisfied that substantial injustice would be caused if the order were not made.

PART II—PROVISIONS THAT APPLY TO MEETING OF CREDITORS OF COMPANY IN LIQUIDATION

16. Creditors entitled to vote

A person is not entitled to vote as a creditor unless, by the time the vote is taken, the creditor has made a claim under Schedule 9 and either—

- (a) the liquidator has admitted the claim wholly or in part either for payment or for voting purposes; or
- (b) the chairperson of the meeting of creditors allows the person to vote in accordance with clause 17.

17. Chairperson has power to admit or reject claim for purposes of voting

- (1) The chairperson of a meeting of creditors has the power to admit or reject a claim for the purposes of voting at that meeting but his or her decision is subject to appeal to the Court.
- (2) If the chairperson is uncertain as to whether a person is a creditor of the company or as to the value of the person's claim against the company, the company must allow the person to vote subject to the vote being declared invalid in the event of rejection of the claim for purposes of voting.

18. Liquidator must not solicit for proxies

- (1) Subject to a direction of a meeting of creditors, a liquidator must not solicit for proxies.
- (2) Without limiting the orders that the Court may make, if a liquidator has not complied with subclause (1), the Court may—
 - (a) order that the liquidator is not entitled to his or her remuneration;
 - (b) remove the liquidator from office;
 - (c) declare any transaction entered into by the liquidator to be void or overturn any vote, and grant any consequential relief that the Court thinks fit.

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19. Irregularity in notice of proxy

If a notice of proxy is irregular but the irregularity is not material, the liquidator or chairperson of a meeting, as the case may be, may accept the proxy as being valid for voting purposes, if he or she is satisfied that the proxy holder represents the creditor.

20. Disqualification from voting

- (1) Subject to subclause (2), no person acting under a proxy may vote in favour of or against any resolution that would place that person, either directly or indirectly, in a position to receive any benefit out of the assets of the company otherwise than as a creditor rateably with the other creditors of the company.
- (2) Any person who holds a proxy to vote for the appointment of a liquidator may use the proxy to vote in favour of the appointment of himself or herself as liquidator if it is not inconsistent with the terms of the proxy to do so.

21. Use of proxy by liquidator's nominee

- (1) If a liquidator who holds a proxy cannot attend a meeting of creditors, he or she may, in writing, nominate his or her business or professional partner (if the liquidator is a member of a partnership) or a person in his or her employment to use the proxy on his or her behalf and in such manner that the liquidator may direct.
- (2) Nothing in subclause (1) authorises the person nominated to vote in a manner that would be a contravention of clause 20 if the liquidator had acted under the proxy personally.

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Schedule 5—Liquidation of assets of overseas company

1. Modified application of Part 00

Part 3 applies to the liquidation of the assets of an overseas company, with the following modifications and exclusions—

- (a) references to a company must be taken as references to an overseas company;
- (b) references to removal from the Kiribati register must be taken as references to ceasing to carry on business in Kiribati;
- (c) the following provisions of Part 3 do not apply to the liquidation of an overseas company:
 - (i) [section 216(1)(d) to (g)];
 - (ii) [section 268];
- (d) [section 234] applies to the liquidation of an overseas company, but instead of making the statement required by [section 234(2)(b)(iii)], the liquidator must state that the company has ceased to carry on business in Kiribati and is ready to be removed from the Kiribati register.

2. Rights of action not affected

Nothing in this Act excludes the right of a creditor of an overseas company in relation to which a liquidator has been appointed—

- (a) to bring proceedings outside Kiribati against the overseas company in relation to a debt not claimed in the liquidation or the balance of a debt remaining unpaid after the completion of a liquidation; or
- (b) to bring an action in Kiribati in relation to the balance of a debt remaining unpaid after the completion of a liquidation.

Schedule 6—Requirements for receiver’s reports

1. Requirements for receiver’s reports

- (4) A receiver’s initial report must report on the state of affairs with respect to the property in receivership, including the following:
- (a) particulars of the assets comprising the property in receivership;
 - (b) particulars of the debts and liabilities to be satisfied from the property in receivership;
 - (c) the names and addresses of the creditors with an interest in the property in receivership;
 - (d) particulars of any security over the property in receivership held by any creditor, including the date on which it was created;
 - (e) particulars of any default by the company in making information available;
 - (f) any other prescribed information.
- (5) The initial report must also include details of the following:
- (a) the events leading up to the receiver’s appointment, so far as the receiver is aware of them;
 - (b) property disposed of and any proposal for the disposal of property in receivership;
 - (c) amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed;
 - (d) amounts owing, as at the date of appointment, to creditors of the company having preferential claims;
 - (e) amounts likely to be available for payment to creditors other than those referred to in paragraph (c) or (d).
- (6) A receiver may omit from the report details of any proposals for disposal of the property in receivership if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

2. Requirements for interim report

- (1) A receiver’s interim report must summarise—
- (a) the state of affairs with respect to the property in receivership as at the end of the relevant 6-month period; and
 - (b) the conduct of the receivership, including all amounts received and paid, during the relevant 6-month period.
- (2) The interim report must also include details of the following:
- (a) property disposed of since the date of any previous report and any proposal for the disposal of property in receivership;
 - (b) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;
 - (c) amounts owing, as at the date of the report, to creditors of the company having preferential claims;
 - (d) amounts likely to be available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or (c).

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- (3) A receiver may omit from the report details of any proposals for disposal of the property in receivership if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

3. Requirements for final report

- (1) A receiver's final report must summarise—
- (a) the state of affairs with respect to the property in receivership as at the end of the receivership; and
 - (b) the conduct of the receivership, including all amounts received and paid, since the date of any previous report.
- (2) The final report must also include details of the following—
- (a) property disposed of since the date of any previous report;
 - (b) amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed;
 - (c) amounts owing, as at the date of the report, to creditors of the company having preferential claims;
 - (d) amounts available as at the date of the report for payment to creditors other than those referred to in paragraph (b) or (c).

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