



## REPUBLIC OF VANUATU

### COMPANIES (INSOLVENCY AND RECEIVERSHIP) ACT NO. 3 OF 2013

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# REPUBLIC OF VANUATU

Assent: 14/10/2013  
Commencement: 31/08/2015

## COMPANIES (INSOLVENCY AND RECEIVERSHIP) ACT NO. 3 OF 2013

An Act to provide for the management and administration of insolvent companies and for related purposes.

Be it enacted by the President and Parliament as follows.

### PART 1—PRELIMINARY MATTERS

#### 1 Interpretation

(1) In this Act, unless the contrary intention appears:

**accounting period**, in relation to a company, means a year ending on a balance date of the company and, if as a result of the date of the registration of the company or a change of the balance date of the company, the period ending on that date is longer or shorter than a year, that longer or shorter period is an accounting period;

**arrangement** includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods;

**balance date**, in relation to a company, means the close of business on 31 March or of any other date that the directors of the company adopt as the company's balance date;

**board and board of directors**, in relation to a company, means:

- (a) directors of the company whose number is not less than the required quorum acting together as a board of directors; or
- (b) if the company has only 1 director, that director;

**broadcasting** means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for

reception by the public by means of broadcasting receiving apparatus; but does not include any such transmission of programmes:

- (a) made on the demand of a particular person for reception only by that person; or
- (b) made solely for performance or display in a public place;

**charge** includes any security or secured interest;

**Companies Act** means the Companies Act No. 25 of 2012;

**company** means a company registered or reregistered under the Companies Act and includes every other body corporate incorporated in Vanuatu;

**compromise** means a compromise between a company and its creditors, including a compromise:

- (a) to cancel all or part of a debt of the company; or
- (b) to vary the rights of its creditors or the terms of a debt; or
- (c) relating to an alteration of a company's rules that affects the likelihood of the company being able to pay a debt;

**Court** means the Supreme Court of Vanuatu;

**court officer** means the Registrar or other officer of the Court;

**creditor** includes a person to whom the grantor owes a debt or is under a liability, whether present or future, certain or contingent, and whether an ascertained debt or liability or a liability in damages;

**director**, in relation to a company includes a person:

- (i) occupying the position of a director of the company; or
- (ii) of an equivalent office held in the case of a body corporate that is not a company,

but does not include a receiver;

**directors** has the same meaning as the “board” and “board of directors”;

**distribution**, in relation to a distribution by a company to a shareholder, means:

- (a) the direct or indirect transfer of money or property, other than the company’s own shares, to or for the benefit of the shareholder; or
- (b) the incurring of a debt to or for the benefit of the shareholder,

in relation to shares held by that shareholder, whether by means of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or some other means;

**document**:

- (a) means information in written or electronic form, or both; and
- (b) includes anything from which information may be reproduced (with or without the aid of anything else);

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

**enforcement process**, in relation to property, means:

- (a) execution against that property; or
- (b) any other enforcement process in relation to that property that involves a court;

**essential service** means:

- (a) the retail supply of electricity; or
- (b) the retail supply of fuel and other similar consumable items necessary for the generation of electricity; or
- (c) the retail supply of gas; or

- (d) the supply of water; or
- (e) telecommunications services;

**financial statements**, in relation to a company and a balance date, means:

- (a) a statement of financial position for the company as at the balance date; and
- (b) in the case of:
  - (i) a company trading for profit- a statement of financial performance for the company in relation to the accounting period ending at the balance date; and
  - (ii) a company not trading for profit- an income and expenditure statement for the company in relation to the accounting period ending at the balance date; and
- (c) a statement of cash flows for the company in relation to the accounting period ending on the balance if required by regulations made under this Act; and
- (d) any other financial statements in relation to the company or any group of companies of which it is the holding company as may be required by regulations made under this Act; and
- (e) any notes or documents giving information relating to the statement of financial position and other statements;

**grantor** means the person in respect of whose property a receiver is, or may be, appointed;

**holding company** means a holding company defined under section 3 of the Companies Act ;

**information** includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;

**legal practitioner** has the same meaning as in the Legal Practitioners Act [CAP 119] ;



**liquidator** means a liquidator appointed under Division 2 of Part 2;

**major transaction** has the meaning set out in subsection 49(2) of the Companies Act ;

**Minister** means the Minister responsible for this Act;

**mortgagee** includes a person who derives title under the original mortgagee;

**onerous property** means:

- (a) an unprofitable contract; or
- (b) a property of the company that is unsaleable, or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act;

**overseas company** means a corporation that is incorporated outside Vanuatu;

**preferential claim** means a claim referred to in Part 3 of Schedule 7 (except clause 15 of that Schedule);

**prescribed form** means a form prescribed by regulations or, if no form is prescribed by regulations, a form approved by the Registrar or the Registrar of the Supreme Court;

**private company** means a company that is registered as a private company on the Vanuatu register;

**property** includes:

- (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

whether located within Vanuatu or elsewhere;

**property in receivership** means property in respect of which a receiver is appointed;

**proponent** means a person who proposed a compromise in accordance with Division 1 of Part 2;

**public company** means a company that is registered as a public company on the Vanuatu register;

**receiver** means a receiver, or a manager, or a receiver and manager in respect of any property appointed:

- (a) by or under any deed or agreement; or
- (b) by the Court in the exercise of a power conferred on that Court or in the exercise of its inherent jurisdiction,

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

- (i) a mortgagee who, whether personally or through an agent, exercises a power to:
  - (A) receive income from mortgaged property; or
  - (B) enter into possession or assume control of mortgaged property; or
  - (C) sell or otherwise dispose of mortgaged property; or
- (ii) an agent of any such mortgagee;

**registered document** means a document:

- (a) that forms part of the register referred to in subsection 188(1) of the Companies Act;
- (b) details of which have been entered in any device or facility referred to in subsection 188(2) of the Companies Act;

**registered office**, in relation to a company, has the meaning set out in section 17 of the Companies Act;

**Registrar** means the Registrar of Companies appointed under section 170 of the Companies Act;

**related company** means a related company as defined under section 4 of the Companies Act;

**relative**, in relation to any person means:

- (a) the person's parent, spouse, child, brother, or sister; or
- (b) the parent, child, brother, or sister of the person's spouse; or
- (c) a nominee or trustee for any of them

**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 either:

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

**solvency test** means the solvency test referred to under section 5 of the Companies Act;

**special resolution** means a resolution:

- (a) approved in accordance with section 51 of the Companies Act ; or

- (b) approved at a meeting of shareholders called to consider that resolution on not less than 10 working days' notice:
  - (i) by a majority of 75% (or such higher majority as may be specified in the rules) of the votes of shareholders entitled to vote and voting on the question; and
  - (ii) in accordance with any additional requirements specified in the rules in respect of such resolutions;

**spouse, in relation to a person**, includes a person who would ordinarily be regarded as the spouse or partner of that person, whether or not they are in a legal relationship

**subsidiary** means a subsidiary as defined under section 2 of the Companies Act ;

**telecommunications services** means:

- (a) the conveyance by electromagnetic means from 1 device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but
- (b) does not include any conveyance that constitutes broadcasting;

**Vanuatu register** means the register kept and maintained by the Registrar under section 188 of the Companies Act;

**working day** means a day of the week other than:

- (a) Saturday and Sunday; or
- (b) a day that is defined as, or declared to be, a public holiday under the Public Holidays Act [CAP 114];

**writing** includes representing or reproducing words, figures, or symbols in a visible and tangible form:

- (a) by any means and in any medium; or

- (b) in a visible form in any medium by electronic means,
- that enables them to be stored in permanent form and be retrieved and be read.
- (2) If, under this Act, public notice must be given, that notice must be published at least in 1 issue of a newspaper circulating widely in Vanuatu and:
- (a) in the case of a matter affecting a grantor that is not an overseas company- at least 2 issues of any newspaper circulating in the area in which is situated:
- (i) the grantor's place of business; or
- (ii) if the grantor has more than 1 place of business, the grantor's principal place of business; or
- (iii) if the grantor has no place of business or neither its place of business nor its principal place of business is known:
- (A) the grantor's registered office-in the case of a body corporate, or
- (B)\_ the residence of the grantor -in the case of an individual; or
- (b) in the case of a matter affecting a grantor that is an overseas company, at least 2 issues of any newspaper circulating in the area in which is situated:
- (i) the place of business in Vanuatu of the grantor; or
- (ii) if the grantor has more than 1 place of business in Vanuatu- the principal place of business in Vanuatu of the grantor.
- (3) This Act applies in conjunction with the Insolvency (Cross-Border) Act No. 3 of 2013 and, in the event of any conflict, overlap, or inconsistency, each Act is to be read and applied so as to extend and apply in addition to, rather than to the exclusion of, the other Act.

## **PART 2—INSOLVENT COMPANIES**

### **Division 1—Compromises with Creditors**

#### **2 Definition**

In this division:

**compromises with creditors** include:

- (a) a person who, in a liquidation, would be entitled to claim that a debt is owing to that person by the company; and
- (b) a secured creditor.

#### **3 Compromise proposal**

Any of the following persons may propose a compromise under this Division if that person has reason to believe that a company is or will be unable to pay its debts as they become due in the normal course of business:

- (a) the directors of the company; or
- (b) a receiver appointed in relation to the whole or substantially the whole of the assets and undertaking of the company; or
- (c) a liquidator of the company; or
- (d) any secured or unsecured creditor of the company that is owed a debt of more than VT120,000 or 25 percent of the estimated net assets of the company, whichever is the lesser.

#### **4 Notice of proposed compromise**

- (1) The proponent must compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out:
  - (a) the amount owing or estimated to be owing to each of them; and
  - (b) the number of votes that each of them is entitled to cast on a resolution to approve the compromise; and

- (c) if there are classes of creditors, the class or classes to which each creditor belongs.
- (2) The proponent must give to each known creditor, the company, any receiver or liquidator, and deliver to the Registrar for registration:
  - (a) notice in accordance with Schedule 1 of the intention to hold a meeting of creditors, or any 2 or more classes of creditors, for the purpose of voting on the resolution; and
  - (b) a statement:
    - (i) containing the name and address of the proponent and the capacity in which the proponent is acting; and
    - (ii) containing the address and telephone number to which inquiries may be directed during normal business hours; and
    - (iii) setting out the terms of the proposed compromise and the reasons for it and specifying (where applicable):
      - (A) the property of the company that is available to pay creditors' claims; and
      - (B) the duration of any proposed moratorium period; and
      - (C) the extent to the which the company is released from its debts; and
      - (D) the conditions (if any) of the compromise to commence, continue or terminate; and
      - (E) the order of distribution of proceeds amongst creditors; and
      - (F) the cut-off date for claims to be included; and
    - (iv) setting out the reasonably foreseeable consequences for creditors of the company of the compromise being approved; and

- (v) setting out the extent of any interest of a director in the proposed compromise known to the proponent; and
  - (vi) explaining that the proposed compromise and any amendment to it proposed at a meeting of creditors or any classes of creditors will be binding on all creditors, or on all creditors of that class, if approved in accordance with section 8; and
  - (vii) containing details of any procedure proposed as part of the proposed compromise for varying the compromise following its approval; and
- (c) a copy of the list or lists of creditors referred to in subsection (1).

**5 Effect of compromise**

- (1) A compromise, including any amendment proposed at the meeting, is approved by creditors, or a class of creditors, if, at a meeting of creditors or that class of creditors conducted in accordance with Schedule 1, the compromise, including any amendment, is adopted in accordance with that schedule.
- (2) A compromise, including any amendment, approved by creditors or a class of creditors of a company in accordance with this Division is binding:
- (a) on the company and on all creditors, or,
  - (b) if there is more than 1 class of creditors-on all creditors of that class, to whom notice of the proposal was given as if it were a contract between them,
- but does not bind any secured creditor who has given notice under subsection 5A(1) so long as that notice has not been withdrawn.
- (3) If a resolution proposing a compromise, including any amendment, is put to the vote of more than 1 class of creditors, it is to be presumed, unless the contrary is expressly stated in the resolution, that the approval of the compromise, including any amendment, by each class is conditional on the approval of the compromise, including any amendment, by every other class voting on the resolution.
- (4) The proponent must give written notice of the result of the voting to:



- (a) each known creditor; and
- (b) the company; and
- (c) any receiver or liquidator; and
- (d) the Registrar.

**5A Secured creditor may opt out of proposed compromise**

- (1) At any time before the commencement of the meeting of creditors required to be held under Schedule 1, any secured creditor that holds a charge or security interest over the whole or substantially the whole of the property of the company may give notice of non-participation to the address specified under subclause 4(c) of Schedule 1.
- (2) The effect of the notice is that the secured creditor elects that the proposed compromise, if approved, does not apply in respect of:
  - (a) the property of the company over which the secured creditor has a charge or security interest; and
  - (b) the secured creditor, and the secured creditors rights, in respect of that property.
- (3) Where a notice is given by a secured creditor under subsection (1), that secured creditor is nevertheless entitled to attend and participate in any meeting of creditors held under Schedule 1, but is not entitled to vote unless the creditor first withdraws the notice given under subsection (1).

**6 Variation or termination of compromise**

- (1) An approved compromise may be varied or terminated either:
  - (a) in accordance with any procedure for variation or termination incorporated in the compromise as approved; or
  - (b) by the approval of a proposal to vary or terminate the compromise in accordance with this Division that, for that purpose, applies, with all necessary modifications, as if any of the proposal were a proposed compromise.

- (2) To avoid doubt, this Division applies to any compromise that is varied in accordance with this section.

**7 Powers of Court**

- (1) On the application of the proponent, any secured creditor, or the company, the Court may:
- (a) give directions in relation to a procedural requirement imposed by this Division, or waive or vary any such requirement, if it is satisfied that it would be just to do so; or
  - (b) order that, during a period specified in the order, beginning not earlier than the date on which notice was given for the proposed compromise and ending not later than 10 working days after the date on which notice was given of the result of the voting on it:
    - (i) proceedings in relation to a debt owing by the company be stayed; or
    - (ii) a creditor is refrained from taking any other measure to enforce payment of a debt owing by the company; or
  - (c) order that a secured party is refrained from exercising all or any of the rights under Part 9 of the Personal Property Securities Act No.17 of 2008; or
  - (d) make an order to protect the interests of any or all secured creditors.
- (2) Unless the Court rules otherwise, or the secured creditor has given notice under subsection 5A(1) and that notice has not been withdrawn, paragraph (1)(b) applies to every secured creditor and all property of the company over which that creditor has a charge.
- (3) The Court may order that the creditor is not bound by the compromise or make any other order that it thinks fit if the Court is satisfied, on the application of a creditor of a company who is entitled to vote on a compromise, that:
- (a) not enough notice of the meeting or of the matter required to be notified under section 4 was given to that creditor; 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; or
  - (d) in the case of a secured creditor, the interests of the creditor would be materially prejudiced by the terms of the compromise.
- (4) An application under subsection (3) must be made not later than 10 working days after the date on which notice of the result of the voting was given to the creditor.

### **8 Effect of compromise in liquidation of company**

- (1) If a compromise is approved, the Court may, on the application of:
- (a) the company; or
  - (b) a receiver appointed in relation to the property of the company; or
  - (c) any creditor or shareholder of the company with the leave of the Court,

make such order as the Court 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 of the company.

- (2) If a compromise is approved and the company is later put into liquidation, the Court may, on the application of the liquidator or any person described in paragraph (1)(b) or (c), make any order that it thinks fit with respect to the extent, if any, to which the compromise will continue in effect and be binding on the liquidator of the company.

### **9 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.

## **Division 2—Liquidations**

### **Subdivision A Purpose**

#### **10 Purpose**

- (1) The purpose of this Division and Schedules 1 to 7 is to provide for a liquidator of a company:
  - (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, in accordance with section 48.
- (2) In this Division:

#### **Creditor** means:

- (a) a person who, in a liquidation, would be entitled to claim in accordance with clause 2 of Schedule 7 that a debt is owing to that person by the company; and
- (b) includes a secured creditor only:
  - (i) for the purposes of sections 15, 19, and 52 and clause 5 of Schedule 4; 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 Part 2 of Schedule 7 as an unsecured creditor.

### **Subdivision B—Beginning of Liquidation**

#### **11 When liquidation begins**

- (1) The liquidation of a company begins on the date on which, and at the time at which, the liquidator is appointed.
- (2) The liquidator must be a person other than those persons referred to under clause 1 of Schedule 3
- (3) If any question arises as to whether, on the date on which a liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time on which the liquidator was appointed.

### **Subdivision C—Restrictions on Appointment of Liquidator**

#### **12 Restrictions on appointment of liquidator**

- (1) Unless the Court orders otherwise, a person referred to in clause 1 of Schedule 3 must not be appointed or act as a liquidator of a company
- (2) The appointment of a person as a liquidator is of no effect unless that person has consented in writing to the appointment.
- (3) Every person who acts as a liquidator in contravention of subsection (1) commits an offence and is liable on conviction to a fine of VT25,000.

### **Subdivision D—Appointment of a Liquidator**

#### **13 Board may appoint liquidator**

- (1) A liquidator may be appointed by the resolution of the board of directors of the company on the occurrence of an event specified in the company's rules.
- (2) The board of directors of the company must record, in the document appointing the liquidator, the date and time for the appointment of the liquidator.

**14 Shareholders may appoint liquidator**

- (1) A liquidator may be appointed by special resolution of those shareholders entitled to vote and voting on the question.
- (2) The shareholders must record in the special resolution appointing the liquidator, the date and time at which, the special resolution was passed.

**15 Court may appoint liquidator**

- (1) A liquidator may be appointed by the Court on the application of:
  - (a) the company; or
  - (b) a director of the company; or
  - (c) a shareholder of the company; or
  - (d) a creditor of the company (including any contingent or prospective creditor); or
  - (e) the Registrar.
- (2) The Court may appoint a liquidator if it is satisfied that:
  - (a) the company is unable to pay its debts; or
  - (b) the company or the directors have persistently or seriously failed to comply with this Act; or
  - (c) it is just and equitable that the company be put into liquidation.
- (3) The Court must record in the order appointing the liquidator the date and time on which the order was made.

**16 Interim liquidator**

- (1) If an application has been made to the Court for an order that a company be put into liquidation, the Court may, if it is satisfied that it is necessary or expedient for the purpose of maintaining the value of assets owned or managed by the company, appoint a person as an interim liquidator.

- (2) Subject to subsection (3), 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.
- (3) The Court may limit the rights and powers of an interim liquidator in the manner that it thinks fit.
- (4) The appointment of an interim liquidator takes effect on the date on which, and at the time at which, the order appointing that interim liquidator is made.
- (5) The Court must record in the order appointing the interim liquidator the date and time on which, the order was made.
- (6) If any question arises as to whether, on the date on which an interim liquidator was appointed, an act was done or a transaction was entered into or effected before or after the time at which the interim liquidator was appointed, that act or transaction is, in the absence of proof to the contrary, deemed to have been done or entered into or effected, as the case may be, after that time on which the interim liquidators was appointed.

**17 Meaning of unable to pay its debts**

- (1) Unless the contrary is proved, and subject to section 18, a company is presumed to be unable to pay its debts if:
  - (a) the company has failed to comply with a statutory demand; or
  - (b) an execution issued against the company in respect of a judgment debt has been returned unsatisfied in whole or in part; or
  - (c) a person entitled to a charge over all or substantially all of the property of the company has appointed a receiver under the document creating the charge; or
  - (d) a compromise between a company and its creditors has been put to a vote in accordance with Division 1.

**18 Evidence and other matters**

- (1) On an application made to the Court for an order that a company be put into liquidation, evidence of failure to comply with a statutory demand referred to under section 19 is not admissible as evidence that a company

is unable to pay its debts unless the application is made within 30 working days after the last date for compliance with the demand.

- (2) To avoid doubt, section 17 does not prevent proof by other means that a company is unable to pay its debts.
- (3) Information or records acquired under section 56, 58, or 61 of the Companies Act or, if the Court so orders, under section 62 of the Companies Act, may be received as evidence that a company is unable to pay its debts.
- (4) In determining whether a company is unable to pay its debts, contingent or prospective liabilities may be taken into account.
- (5) An application to the Court for an order that a company be put into liquidation on the ground that it is unable to pay its debts may be made by a contingent or prospective creditor only with the leave of the Court; and the Court may give such leave, with or without conditions, only if it is satisfied that a prima facie case has been made out that the company is unable to pay its debts.

## **19 Statutory demand**

- (1) A statutory demand is a demand by a creditor in respect of a debt owing by a company made in accordance with this section.
- (2) A statutory demand must:
  - (a) be in respect of a debt that is due and payable and is not less than VT120,000 (one hundred and twenty thousand) , or such greater amount as may be prescribed; 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 15 working days of the date of service, or any longer period that the Court may order:
    - (i) pay the debt; or



- (ii) enter into a compromise under Division 1; or
- (iii) otherwise compound with the creditor; or
- (iv) give a charge over its property to secure payment of the debt.

**20 Court may set aside statutory demand**

- (1) A company may apply to the Court to set aside a statutory demand.
- (2) The application must be:
  - (a) made within 10 working days of the date of service of the demand; and
  - (b) served on the creditor within 10 working days of the date of service of the demand.
- (3) No extension of time may be given for making or serving an application to have a statutory demand set aside, however, at the hearing of the application, the Court may extend the time for compliance with the statutory demand.
- (4) The Court may grant an application to set aside a statutory demand if it is satisfied that:
  - (a) there is a substantial dispute as to whether or not the debt is owing or is due; or
  - (b) the company appears to have a counterclaim, set-off, or cross-demand and the amount specified in the counterclaim, set-off, or cross-demand is less than the prescribed amount; or
  - (c) the demand ought to be set aside on other grounds.
- (5) A demand must not be set aside by reason only of a defect or irregularity unless the Court considers that substantial injustice would be caused if it were not set aside.

- (6) In subsection (5), “defect” includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.
- (7) An order under this section may be made subject to conditions.

## **21 Additional powers of Court**

- (1) If, on the application of a creditor whose statutory demand has not been met or who establishes that a company has not complied with an approved compromise, the Court is satisfied that,
  - (a) there is a debt due by the company to the creditor that is not the subject of a substantial dispute, or
  - (b) there is a debt due by the company that is not subject to a counterclaim, set-off, or cross-demand,

the Court may, on the ground that the company is unable to pay its debts make an order under subsection (2).

- (2) The Court may:
  - (a) order the company to pay the debt within a specified period and that, in default of payment, the creditor may make an application to put the company into liquidation; or
  - (b) immediately make an order putting the company into liquidation.
- (3) For the purposes of the hearing of an application to put the company into liquidation under an order made under subsection (1)(a), the company is presumed to be unable to pay its debts if it failed to pay the debt within the specified period under the order.

## **Subdivision E—Notices**

### **22 Notices given by liquidator**

- (1) A liquidator must, immediately after being appointed or being notified of his or her appointment, give public notice of:
  - (a) his or her appointment; and

- (b) the date and time of the commencement of the liquidation; and
  - (c) the contact details of the liquidator that may be used by a creditor or shareholder, during normal business hours..
- (2) A liquidator must, within 10 working days of being appointed or being notified of his or her appointment, deliver to the Registrar for registration a notice of the liquidator's appointment.

### **23 Documents to state company in liquidation**

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

### **Subdivision F—Obligations to Liquidators**

#### **24 Directors, etc, to identify and deliver company property**

- (1) A present or former director or employee of a company in liquidation must:
- (a) immediately after the company is put into liquidation, give the liquidator details of property of the company in his or her possession or under his or her control; and
  - (b) on being required to do so by the liquidator, immediately or within any time that may be specified by the liquidator, deliver the property to the liquidator or any other person that the liquidator may direct, or dispose of the property in any manner that the liquidator may direct.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT125, 000 or to imprisonment for a term not exceeding 2 years, or both.

#### **25 Obligations of suppliers of essential services**

- (1) Despite any other written law or any contract, a supplier of an essential service must not:
- (a) refuse to supply the service to a liquidator, or to a company in liquidation, by reason of the company's default in paying charges

- due for the service in relation to a period before the commencement of the liquidation; or
- (b) make it a condition of the supply of the service to a liquidator, or to a company in liquidation, that payment be made of outstanding charges due for the service in relation to a period before the commencement of the liquidation; or
  - (c) make it a condition of the supply of the service to a company in liquidation that the liquidator personally guarantees payment of the charges that would be incurred for the supply of the service.
- (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 15(a) of Schedule 7.

### **Subdivision G—Liquidators’ Rights to Company’s Documents**

#### **26 Liquidator may require director, etc, to deliver documents**

- (1) 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 records or documents of the company in that person’s possession or under that person’s control as the liquidator requires.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding VT125,000 or to imprisonment for a term not exceeding 2 years, or both

#### **27 Liquidator may require director, etc, to provide information**

- (1) A liquidator may, from time to time, by notice in writing, require the following persons to do any of the things specified in subsection (2):
  - (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 person who is, or has been, an employee of the company;

- (e) a receiver, accountant, auditor, bank officer, or other person having knowledge of the affairs of the company;
  - (f) a person who is acting, or who has at any time acted, as legal practitioner for the company.
- (2) A person referred to in subsection (1) may be required to:
- (a) attend to the liquidator at such reasonable time or times and at such place as may be specified in the notice; or
  - (b) provide the liquidator with such information about the business, accounts, or affairs of the company as the liquidator requests; or
  - (c) be examined on oath or affirmation by the liquidator or by a barrister or solicitor acting on behalf of the liquidator on any matter relating to the business, accounts, or affairs of the company; or
  - (d) assist in the liquidation to the best of the person's ability.
- (3) Without limiting paragraph (2)(a), a person may be required to attend on the liquidator under that subsection at a meeting of creditors of the company.

## **28 Reasonable expenses may be paid**

- (1) Without limiting subsection (2), the liquidator may pay to a person referred to in paragraph 27 (1)(d), (e), or (f), who is not an employee of the company, reasonable travelling and other expenses in complying with a requirement of the liquidator under that section.
- (2) The Court may, on the application of the liquidator or a person referred to in paragraph 27 (1)(d), (e), or (f), who is not an employee of the company, order that that person is entitled to receive reasonable remuneration and travelling and other expenses in complying with a requirement of the liquidator under that section.
- (3) A person referred to in paragraph 27 (1)(d), (e), or (f) must not refuse to comply with a requirement of the liquidator under that section if:
- (a) an application to the Court to be paid remuneration or travelling and other expenses has not been made or determined; or

- (b) remuneration or travelling and other expenses to which that person is entitled to has not been paid in advance; or
- (c) the liquidator has not paid that person travelling or other expenses.

**29 Examination by liquidator**

- (1) A liquidator, or legal practitioner acting on behalf of the liquidator, may administer an oath to, or take the affirmation of, a person required to be examined under section 27.
- (2) A person required to be examined under section 27 is entitled to be represented by a barrister or solicitor.
- (3) A liquidator, or legal practitioner acting on behalf of the liquidator, who conducts an examination under section 27 must ensure that the examination is recorded in writing or by means of a sound recording, video and sound recording, or other similar means.

**30 Court may order person to comply with section 27**

- (1) The Court may, on the application of the liquidator, order a person who has failed to comply with a requirement of the liquidator under section 27 to comply with that requirement.
- (2) The Court may, on the application of the liquidator, order a person to whom section 27 applies to:
  - (a) attend before the Court and be examined on oath or affirmation by the Court or the liquidator, or legal practitioner acting on behalf of the liquidator, on any matter relating to the business, accounts, or affairs of the company; or
  - (b) produce any documents relating to the business, accounts, or affairs of the company in that person's possession or under that person's control.
- (3) If a person is examined under paragraph (2)(a),:
  - (a) the examination must be recorded in writing; and
  - (b) the person examined must sign the record.

- (4) Subject to any directions by the Court, a record of an examination under this section is admissible in evidence in any proceedings under section 77 of the Companies Act or under this Division.

**31 Self-incrimination not an excuse**

- (1) A person is not excused from answering a question in the course of being examined under section 27 or 30 on the ground that the answer may incriminate or tend to incriminate that person.
- (2) The testimony of the person examined is not admissible as evidence in criminal proceedings against that person except on a charge of perjury in relation to that testimony.

**32 Restriction on enforcement of lien over company's documents**

- (1) A person is not entitled, as against the liquidator of a company, to claim or enforce a lien over 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 section 47 in the amount of VT30,000 or such greater amount as may be prescribed at the commencement of the liquidation.
- (3) To avoid doubt, nothing in this section applies to a company that was put into liquidation under section 13 or 14 if:
- (a) the directors of the company have passed a resolution of the kind referred to in section 39; and
  - (b) where section 40 does not apply in relation to the company.

**33 Delivery of document held by secured creditor**

- (1) A person is required to deliver a document to a liquidator under section 26 even though possession of the document creates a charge over property of a company.
- (2) Production of the document to the liquidator under subsection (1) does not prejudice the existence or priority of the charge, and the liquidator must make the document available to the person entitled to it for the purpose of dealing with, or realising the charge over, the secured property.

**34 Documents held by receiver**

- (1) A receiver is not required to deliver to a liquidator any documents that the receiver requires for the purpose of exercising any powers or functions as the receiver in relation to property of a company in liquidation.
- (2) The liquidator may, from time to time, by notice in writing, require the receiver:
  - (a) to make any records and documents available for inspection by the liquidator at any reasonable time or times; and
  - (b) to provide the liquidator with copies of any records and documents or extracts from them.
- (3) The liquidator may take copies of any records and documents made available for inspection or extracts from them.
- (4) The liquidator must pay the reasonable expenses of the receiver in complying with a requirement of the liquidator under subsection (2).

**Subdivision H—Meetings**

**35 Notice of first creditors' meeting**

- (1) A liquidator must give to every known creditor a notice in writing of a meeting of creditors, and:
  - (a) if subsection 44(1) applies, the notice must be given together with the report and notice referred to in that subsection; and
  - (b) if the liquidator receives a notice under subparagraph 41(1) (b) (iii) requiring a meeting of creditors to be called, the notice must be given within 10 working days after receiving the notice.
- (2) Not less than 5 working days before the creditors' meeting, a liquidator must also give public notice of the meeting.

**36 Timing of first creditors' meeting**

- (1) Except if subparagraph 41(1)(b)(iii) applies, a meeting of creditors must be held:



- (a) in the case of a liquidator appointed under section 13 or 14 - within 10 working days of the liquidator's appointment; or
  - (b) in the case of a liquidator appointed under section 15, within 30 working days of the liquidator's appointment; or
  - (c) in either case- within such longer period as the Court may allow.
- (2) If paragraph 41(1)(b)(iii) applies, a meeting of creditors must be held within 15 working days after the liquidator receives a notice under paragraph 41(1)(c) requiring a meeting of creditors to be called.

### **37 Purpose of first creditors' meeting**

- (1) Subject to sections 39 and 41, the liquidator of a company must call a meeting of the creditors of the company for the following purposes:
- (a) in the case of a liquidator appointed under section 13 or 14- of resolving whether to confirm the appointment of that liquidator or to appoint another liquidator in place of the liquidator so appointed; or
  - (b) in the case of a liquidator appointed under section 15- of resolving whether to confirm the appointment of that liquidator or to make an application to the Court for the appointment of a liquidator in place of the liquidator so appointed; or
  - (c) in either case, of determining whether to pass a resolution for the purposes of paragraph 43(1)(c).
- (2) If the appointment of a liquidator under section 13 or 14 is not confirmed at a meeting of creditors and another liquidator is not appointed in place of that liquidator, the appointment of the liquidator under either of those sections continues until another liquidator is appointed.

### **38 Replacement liquidator**

- (1) If at a meeting of creditors it is resolved to appoint a person as liquidator of the company in place of the liquidator appointed under section 13 or 14, the person who is resolved to be appointed as liquidator is, subject to section 12, appointed as the liquidator of the company.

- (2) If at a meeting of creditors it is resolved to apply to the Court for the appointment of a person as liquidator in place of the liquidator appointed under section 15:
- (a) the liquidator of the company must immediately apply to the Court for the appointment of that person as liquidator; and
  - (b) the Court may appoint that person as the liquidator of the company.

**39 Effect of directors’ resolving company able to pay its debts**

Nothing in sections 35 to 38 applies to the liquidator of a company appointed under section 13 or 14 if, within 20 working days before the appointment of the liquidator, the directors of the company resolved that the company would, on the appointment of a liquidator under either of those sections, be able to pay its debts in full and a copy of the resolution is delivered to the Registrar for registration.

**40 Other creditors’ meetings**

- (1) Subject to section 41, the liquidator of a company who was not, by reason of section 35, required to call a meeting of creditors of the company, must immediately call a meeting of the creditors of the company for the purpose specified in paragraph 37(1)(a) or (b), if the liquidator is satisfied that:
- (a) the directors who voted in favour of a resolution referred to in paragraph 37 (1)(a) or (b) did not have reasonable grounds to believe that the company would, on the appointment of a liquidator under section 13 or 14, be able to pay its debts; or
  - (b) the company is not able to pay its debts.
- (2) Section 37 applies in this section.

**41 Liquidator may dispense with meetings of creditors**

- (1) A liquidator is not required to call a meeting of creditors under section 35 or 40, as the case may be, if:
- (a) the liquidator considers that no such meeting should be held, having regard to:
    - (i) the assets and liabilities of the company; and

- (ii) the likely result of the liquidation of the company; and
    - (iii) any other relevant matters; and
  - (b) the liquidator gives notice in writing to the creditors stating:
    - (i) that the liquidator does not consider that a meeting should be held; and
    - (ii) the reasons for the liquidator's view; and
    - (iii) that no such meeting will be called unless a creditor gives notice in writing to the liquidator, within 10 working days after receiving the notice, requesting a meeting and giving reasons why a meeting should be held ; and
  - (c) no notice requesting a meeting to be called is received by the liquidator within that period or, if a notice requesting a meeting to be called is received within that period, the Court directs the liquidator that, having regard to the reasons given in the notice and the circumstances of the company considered by the liquidator under paragraph (a), it is not necessary for the liquidator to call a meeting.
- (2) Notice under paragraph (1)(b) must be given to every known creditor if subsection 42(1) applies, together with the report and notice referred to in that section.

#### **42 Meetings of creditors or shareholders**

- (1) At any time in the course of the liquidation, the liquidator may, at the request in writing of any creditor or shareholder or on the liquidator's own motion, call a meeting of creditors or shareholders:
- (a) to vote on a proposal that a liquidation committee be appointed to act with the liquidator in accordance with Schedule 5; and
  - (b) if it is so decided, to choose the members of the committee.
- (2) A liquidator may decline a request by a creditor or shareholder to call a meeting on the ground that:

- (a) the request is frivolous or vexatious; or
  - (b) the request was not made in good faith; or
  - (c) except if a creditor or shareholder agrees to meet the costs, the costs of calling a meeting would be out of all proportion to the value of the company's assets.
- (3) The decision of a liquidator to decline the request may be reviewed by the Court on the application of any creditor or shareholder, as the case may be.
- (4) Subject to subsections (2) and (3), a liquidator who receives a request to call:
- (a) a meeting of creditors must immediately call a meeting in accordance with Schedule 1; or
  - (b) a meeting of shareholders, must immediately call a meeting in accordance with the company's rules, except the liquidator has power to give notice of a meeting of shareholders and to act as, or appoint, the chairperson of the meeting.
- (5) The sole shareholder of a company may present to the liquidator a view on any matter that could have been decided at a meeting of shareholders under this section, and that view must, for all purposes, be treated as though it were a decision taken at a meeting of shareholders.

**43 Views of creditors and shareholders at meetings to be considered**

- (1) The liquidator must consider the views of the following persons:
- (a) the shareholders by whom any special resolution was passed at a meeting held for the purposes of section 14 ;
  - (b) the creditors set out in any resolution passed at a meeting held for the purposes of section 37;
  - (c) the creditors or shareholders set out in a resolution passed at a meeting called in accordance with subsection (2);
  - (d) any liquidation committee given in writing to the liquidator.

- (2) For the purposes of subsection (1), a liquidator:
- (a) must summon meetings of shareholders at such times as may be specified by any resolution of shareholders passed at a meeting held for the purposes of section 14; or
  - (b) must summon meetings of creditors at such times as may be specified by any resolution of creditors passed at a meeting held for the purposes of section 37; or
  - (c) must summon a meeting of shareholders immediately when required to do so by notice in writing given by shareholders holding not less than 10% of all shares issued by the company; or
  - (d) must summon a meeting of creditors immediately when required to do so by notice in writing given by creditors to whom is owed not less than 10% of the total amount owed to all creditors of the company; or
  - (e) may summon a meeting of shareholders or creditors of the company.
- (3) A liquidator who calls a meeting of creditors or shareholders as required under subsection (2) must call a meeting:
- (a) in accordance with the rules of the company- in the case of a meeting of shareholders; or
  - (b) in accordance with Schedule 1- in the case of a meeting of creditors.
- (4) For the purposes of holding a meeting of shareholders under paragraph subsection (3)(a), the liquidator is deemed to have power under the company's rules to call a meeting of shareholders despite anything in the company's rules, and references in the company's rules to chairman or chairperson must be read as references to the liquidator.
- (5) 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.

### **Subdivision I—Reports**

#### **44 First report**

- (1) A liquidator must, within the applicable period:
- (a) prepare a list of every known creditor of the company; and
  - (b) prepare and send to every known creditor, every shareholder, and the Registrar for registration:
    - (i) a report containing a statement of the company’s affairs, proposals for conducting the liquidation, and, if practicable, the estimated date of its completion; and
    - (ii) a notice explaining the right of a creditor or shareholder to require the liquidator to call a meeting of creditors or shareholders (as the case may be) under section 42.
- (2) For the purposes of subsection (1), “**applicable period**” means:
- (a) in the case of a liquidator appointed under section 13, or 14- 45 working days after the liquidator’s appointment; or
  - (b) in the case of a liquidator appointed under section 15- 25 working days after the liquidator’s appointment; or
  - (c) in either case- any longer period as may be specified by the Court.

#### **45 Six-monthly report**

- (1) A liquidator must, within 2 months of the end of each period of 6 months following the date of commencement of the liquidation, prepare and send to every known creditor and every shareholder, a report:
- (a) on the conduct of the liquidation during the preceding 6 months; and
  - (b) of any further proposals that the liquidator has for completing the liquidation.
- (2) The liquidator must provide a copy of the report referred to under subsection (1) to the Registrar,

**46 Exemption from reporting requirements**

- (1) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit:
  - (a) exempt the liquidator from complying with section 44 or 45; or
  - (b) modify the application of those sections in relation to the liquidator.
- (2) The liquidator is not required to comply with section 44 or 45 if he or she is satisfied that the value of the assets of the company available for distribution to unsecured creditors who are not preferential creditors is not likely to exceed 20 percent of the amount owed to those creditors.
- (3) If subsection (2) applies, and the liquidator does not intend to comply with section 44 or 45, the liquidator must give notice to the Registrar that he or she does not intend to comply with those sections.

**Subdivision J—Creditors’ Claims**

**47 Preferential claims**

- (1) The liquidator must pay out of the assets of the company the expenses, fees, and claims set out in Part 3 of Schedule 7 to the extent and in the order of priority specified in that schedule.
- (2) Subsection (1) is subject to clause 4 of Schedule 7 and any other law which may apply.
- (3) Without limiting clause 18 of Schedule 7, the term “**assets**” in subsection (1) does not include assets subject to a charge unless the charge is surrendered or taken to be surrendered or redeemed under Part 2 of that Schedule.

**48 Claims of other creditors and distribution of surplus assets**

- (1) The liquidator must apply the assets of the company in satisfaction of all other claims after paying preferential claims in accordance with section 47.
- (2) The claims referred to in subsection (1) ranked equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case payment abates rateably among all claims.

- (3) If, before the commencement of a liquidation, a creditor agrees to accept a lower priority in respect of a debt than that which it would otherwise have under this section, nothing in this section prevents the agreement from having effect according to its terms.
- (4) A person:
- (a) whose shares have been repurchased by the company; or
  - (b) whose shares have been redeemed by the company,
- but who has not received payment in full of the repurchase price or redemption price (as the case may be), is taken to have agreed to subordinate his or her claim for any unpaid balance of the repurchase price or redemption price (as the case may be) to the rights of other creditors of the company.
- (5) Subject to section 55 and to clause 25 of Schedule 7, after paying the claims referred to in subsections (1) and (3), the liquidator must distribute the company's surplus assets:
- (a) in accordance with the company's rules; or
  - (b) if the company's rules do not provide for the distribution of surplus assets, in accordance with paragraph 22(1)(c) of the Companies Act and any preferential rights as to distributions of capital attached to shares issued by the company in accordance with paragraph 22(3)(b) of the Companies Act

### **Subdivision K—End of Liquidation**

#### **49 Completion of liquidation**

The liquidation of a company is completed when the liquidator:

- (a) complies with subsection 50(2); or
- (b) delivers to the Registrar for registration:
  - (i) a copy of any order made by the Court under paragraph 50(3)(a);  
or



- (ii) a copy of any order made by the Court under paragraph 50(3)(b) together with any documents required to comply with the order.

**50 Final report and accounts**

- (1) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must prepare and send to every creditor whose claim has been admitted and to every shareholder:
  - (a) the final report and statement of realisation and distribution in respect of the liquidation; and
  - (b) a statement that:
    - (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 Vanuatu register; and
  - (c) a summary of the applicable grounds on which the creditor or shareholder may object to the removal of the company from the Vanuatu register under section 144 of the Companies Act .
- (2) As soon as practicable after completing his or her duties in relation to the liquidation, the liquidator of a company must send or deliver copies of the documents referred to in subsection (1) to the Registrar for registration.
- (3) The Court may, on the application of a liquidator and on any conditions that the Court thinks fit:
  - (a) exempt the liquidator from complying with subsection (1) or (2); or
  - (b) modify the application of those provisions in relation to the liquidator.

**51 Liquidation surplus account**

- (1) Money representing unclaimed assets of a company standing to the credit of a liquidator must, after completion of the liquidation, be paid to the Registrar to be held on trust and dealt with in accordance with this section.
- (2) At the expiration of a period of 12 months after the date on which the money is paid, the Registrar must, after deduction of any amount required to meet the claim of any person that is established within that period, pay the balance into an account known as the “Liquidation Surplus Account” for distribution in accordance with this section.
- (3) Money held in the Liquidation Surplus Account may be invested in accordance with the law regulating the investment of trust funds by trustees and interest paid on any investment must be distributed in accordance with this section.
- (4) Money held in the Liquidation Surplus Account may be:
  - (a) paid or distributed to any person entitled to payment or distribution in the liquidation of a company and to any money representing the surplus assets of which has been credited to the Liquidation Surplus Account; or
  - (b) paid, subject to such conditions as the Registrar may impose, in meeting costs incurred in the course of liquidation of a company:
    - (i) for the purpose of proceedings brought by the company; or
    - (ii) for legal or other expert advice, or the costs of any expert witness,  
  
if the Registrar is satisfied that it is fair and reasonable for those costs to be met out of the Liquidation Surplus Account.
- (5) In making a payment under this section, the Registrar is not required to ascertain that money or sufficient money was received on account of any company to which the claim for payment relates.

**52 Termination of liquidation by Court**

- (1) A person specified under this subsection may apply to the Court for an order to revoke the appointment of the liquidator:
  - (a) the liquidator of the company; or
  - (b) a director of the company; or
  - (c) a shareholder of the company; or
  - (d) a creditor of the company; or
  - (e) the Registrar.
- (2) The Court may, at any time after the appointment of a liquidator of a company, if it is satisfied that it is just and equitable to do so, make an order terminating the liquidation of the company.
- (3) The Court may require the liquidator of the company to give a report to the Court with respect to 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, or at any time after, making an order, make any other order that it thinks fit in connection with the termination of the liquidation.

**53 Notice of termination of liquidation**

- (1) The person who applied for a Court order terminating the liquidation or the liquidator, in the case of the creditors terminating the liquidation, must, within 10 working days after the order was made, or the resolution was passed, (as the case may be), deliver a notice of the order, or the passing of the resolution, to 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 VT25, 000.

**54 Liquidation of assets in Vanuatu of overseas company**

- (1) An application may be made to the Court for the liquidation of the assets in Vanuatu of an overseas company in accordance with this Part subject to the modifications and exclusions set out in Schedule 8.
- (2) An application may be made under subsection (1) whether or not the overseas company:
  - (a) is registered under the Companies Act; or
  - (b) has given public notice of an intention to cease to carry on business in Vanuatu; or
  - (c) has given notice to the Registrar of the date on which it will cease to carry on business in Vanuatu; or
  - (d) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

**55 Liquidation of assets of community company**

- (1) If the company is a community company and any surplus assets remain after all creditors have been paid, the liquidator must make an application to the Court for an order as to the distribution of the surplus assets.
- (2) On an application under subsection (1) the Court may:
  - (a) order that the surplus assets be transferred to another community company that has as its objective the promotion of the same or a materially similar community interest;
  - (b) order that the surplus assets be transferred to any person or entity that has agreed to accept and manage them; with the management to be on such terms as the Court directs; and
  - (c) make such other order as to distribution as the Court thinks fit having regard to the nature and value of the surplus assets.

## **PART 3—RECEIVERSHIPS**

### **Division 1—Application**

#### **56 Application of this Part to receivers after commencement of Act**

- (1) This Part applies:
- (a) to a receiver appointed after the commencement of this Act; and
  - (b) with the exceptions and modifications specified in section 57, to a receiver holding office on the commencement of this Act.
- (2) Except as expressly provided in this Act, Schedules 9 and 10 apply to receivers.

#### **57 Application of this Part to receivers on commencement of Act**

In the application of this Part to a receiver holding office on the commencement of this Act:

- (a) Clause 1 of Schedule 10 does not apply;
- (b) Section 65 applies as if the reference in that section to the receivers appointment were a reference to the commencement of this Act unless the receiver has under subsection 345(2) of the Companies Act [CAP 191] already prepared a statement, in which case section 65 does not apply;
- (c) Section 67 applies as if the reference in that section to the receiver's appointment were a reference to the commencement of this Act;
- (d) Subsection 67(2) does not apply to a receivership that ended before the commencement of this Act, in which case the provisions of Part VII of the Companies Act [CAP 191] continue to apply notwithstanding the repeal of that Act by subsection 82(1) of this Act;
- (e) Section 75 does not apply to a receivership that ended before the commencement of this Act;
- (f) Clauses 20(1)(b) and (c) and 21 (1) and (2) of Schedule 9 do not apply.

## **Division 2—Appointment of Receivers**

### **58 Restrictions on appointment of receiver**

- (1) The following persons must not be appointed as a receiver:
  - (a) a person who must not be appointed as a receiver under clause 1 of Schedule 10, unless the Court orders otherwise; and
  - (b) a person who has not consented in writing to their appointment as a receiver.
- (2) Every person who fails to comply with paragraph subsection (1)(a) commits an offence and is liable on conviction to a fine of VT25,000.

### **59 Appointment of receiver under document**

- (1) A receiver may be appointed in respect of the property of a person by, or in the exercise of a power conferred by, a document to which the person is a party.
- (2) The appointment of a receiver in the exercise of a power conferred by a document must be in writing.
- (3) The power conferred by subsection (1) is in addition to the power conferred on the Court to appoint a receiver.

### **60 Extent of power to appoint receiver under document**

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; or
- (b) a receiver additional to 1 or more presently in office; or
- (c) a receiver to succeed a receiver whose office has become vacant.

## **Division 3—Notices**

### **61 Notices given by receiver**

- (1) Not later than 5 working days after being appointed, a receiver must:

- (a) give written notice of their appointment to the grantor; and
- (b) give public notice of his or her appointment, including:
  - (i) the receiver's full name; and
  - (ii) the date of the appointment; and
  - (iii) the receiver's office address; and
  - (iv) a brief description of the property in receivership.
- (2) The receiver must, within 5 working days after being appointed, send a copy of the public notice to the Registrar for registration.
- (3) If the appointment of the receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, as the case may be, every notice under this section must state that fact.
- (4) A receiver who fails to comply with this section commits an offence and is liable on conviction to a fine of VT25,000.

## **62 Notice of receivership**

- (1) Any document provided by or on behalf of a grantor or a receiver in the course of a receivership must clearly state that a receiver has been appointed in respect of the property that is in receivership.
- (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 VT 12500.

## **Division 4—Obligations to Receivers**

### **63 Obligations of grantor**

- (1) Every director of the grantor must:

- (a) make available to the receiver all documents and information relating to the property in receivership in the grantor's possession or under the grantor's control;
  - (b) if required to do so by the receiver, verify by statutory declaration that the documents and information are complete and correct;
  - (c) give the receiver any assistance that the receiver may reasonably require;
  - (d) if the grantor has a common seal, make the common seal available for use by the receiver.
- (2) On the application of the receiver, the Court may make an order requiring the grantor or a director of the grantor to comply with subsection (1).

**64 Obligations of suppliers of essential services**

- (1) Despite any other Act or any contract, a supplier of an essential service must not:
- (a) refuse to supply the service to a receiver or to the owner of property in receivership by reason of the grantor's default in paying charges due for the service in relation to 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 owner of property in receivership that payment be made of outstanding charges due for the service in relation to a period before the date of the appointment of the receiver; or
  - (c) make it a condition of the supply of the service to a receiver or the owner of property in receivership that the receiver or owner personally guarantees payment of the charges that would be incurred for the supply of the service.
- (2) The charges incurred by a receiver for the supply of an essential service are an expense of the receiver for the purposes of paragraph 73(2)(a).



## **Division 5—Reports of Receivers**

### **65 First report of receiver**

- (1) Not later than 3 months after the receiver's appointment, a receiver must:
  - (a) prepare a report on the state of affairs with respect to the property in receivership; and
  - (b) send a copy of the report to the grantor and every person in whose interests the receiver was appointed; and
  - (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
  - (d) send a copy of the report to the Registrar.
- (2) A receiver who fails to comply with this section or section 66 commits an offence and is liable on conviction to a fine not exceeding VT25,000.

### **66 Contents of first report**

- (1) A receiver's first report must include details of:
  - (a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them; and
  - (b) any property disposed of and any proposals for the disposal of property in receivership; and
  - (c) any amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed; and
  - (d) any amounts owing, as at the date of appointment, to creditors of the grantor having preferential claims; and
  - (e) the receiver's expenses and remuneration or likely expenses and remuneration; and
  - (f) any amounts likely to be available for payment to creditors other than those referred to in paragraph (c) or (d); and

- (g) the assets comprising the property in receivership; and
- (h) the debts and liabilities to be satisfied from the property in receivership; and
- (i) the names and addresses of the creditors with an interest in the property in receivership; and
- (j) any encumbrance over the property in receivership held by any creditor including the date on which it was created; and
- (k) any default by the grantor in making relevant information available.

**67 Further reports of receiver**

- (1) Not later than 2 months after the end of each period of 6 months after the receiver's appointment, a receiver must:
  - (a) prepare a further report summarising:
    - (i) the state of affairs with respect to the property in receivership as at that date; and
    - (ii) the conduct of the receivership, including all amounts received and paid, during the period to which the report relates; and
  - (b) send a copy of the report to the grantor and every person in whose interests the receiver was appointed; and
  - (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
  - (d) send a copy of the report to the Registrar.
- (2) Not later than 2 months after the date on which the receivership ends, a person who was a receiver at the end of the receivership must:
  - (a) prepare a further report summarising:

- (i) the state of affairs with respect to the property in receivership as at that date; and
  - (ii) the conduct of the receivership, including all amounts received and paid, during the period to which the report relates; and
- (b) send a copy of the report to the grantor and every person in whose interests the receiver was appointed; and
  - (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
  - (d) send a copy of the report to the Registrar.
- (3) A person who fails to comply with this section or section 68 commits an offence and is liable on conviction to a fine not exceeding VT25,000.

**68 Contents of further reports**

Any report under section 67 must include details of:

- (a) any property disposed of since the date of any previous report and any proposals for the disposal of property in receivership; and
- (b) any amounts owing, as at the date of the report, to any person in whose interests the receiver was appointed; and
- (c) any amounts owing, as at the date of the report, to creditors of the grantor having preferential claims; and
- (d) the receiver's expenses and remuneration or likely expenses and remuneration; and
- (e) any 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).

**69 What may be omitted from reports**

A receiver may omit from any report under this Part details of any proposals for disposal of property in receivership that the receiver considers would materially prejudice the carrying out of the receivership by the receiver.

**70 Extension of time for preparing reports**

A period of time within which a receiver is required to prepare a report under this Part may be extended, on the application of that person, by:

- (a) the Court, if the person was appointed as a receiver by the Court; or
- (b) the Registrar, if the person was appointed as a receiver by or under a document.

**71 Persons entitled to receive reports**

(1) A receiver who is requested in writing by a person referred to in subsection (2) to provide a copy of a report under this Part must, not later than 5 working days after receiving the request, send a copy of the report to that person.

(2) The persons referred to in subsection (1) are:

- (a) a creditor,
- (b) a director, or
- (c) a guarantor of the grantor, or
- (d) any other person,

who has an interest in any of the property in receivership and has paid the reasonable costs of making and sending a copy of the requested report.

(3) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding VT25,000.

**72 Persons entitled to inspect reports**

A person referred to under subsection 71(2) may inspect the report during the normal office hours at the office of the receiver.

## **Division 6—Preferential Claims**

### **73 Preferential claims**

- (1) This section applies to a receiver of the property of a grantor that is a company, other than a company in liquidation at the time of the receiver's appointment, and who was appointed under a security agreement that created or provided for a security interest that:
  - (a) is over all of any part of the company's accounts receivable and inventory or all or any part of either of them; and
  - (b) is not a purchase money security interest that has been perfected at the time specified in section 27 of the Personal Property Securities Act No. 17 of 2008; and
  - (c) is not a security interest:
    - (i) that has been perfected under the Personal Property Securities Act No. 17 of 2008 at the time of the receiver's appointment; and
    - (ii) that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- (2) A receiver to whom this section applies must apply accounts receivable and inventory that are subject to the security interest or their proceeds in the following manner:
  - (a) reimburse the receiver for his or her expenses and remuneration; and
  - (b) pay preferential claims to the extent and the order of priority specified in Schedule 7.
- (3) The receiver must apply the accounts receivable and inventory as set out in subsection (2) before paying the claims of any person under a security interest.
- (4) In the application of Schedule 7 in accordance with subsection (2):

- (a) references to a liquidator are to be read as references to a receiver;
- (b) references to the commencement of the liquidation are to be read as references to the appointment of the receiver;
- (c) reference to a company being put into or being in liquidation are to be read as references to the company being put into or being in receivership.

**74 Receiver appointed under floating charge: ranking of preferential claims**

The provisions of section 73 do not apply in relation to a grantor in respect of whose property a receiver was appointed under a floating charge before the commencement of this Act and the provisions of the Companies Act [CAP 191] shall continue to apply in relation to that grantor notwithstanding the repeal of that Act by this Act.

**Division 7—End of Receivership**

**75 Notice of end of receivership**

- (1) The person who held office as receiver at the end of the receivership must, not later than 5 working days after the receivership ends, send or deliver to the Registrar for registration notice in writing of the fact that the receivership has ended.
- (2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT25,000.

**76 Court may terminate or limit receivership**

- (1) The Court may, on the application of the grantor or a liquidator of the grantor:
  - (a) order that a receiver cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership; or
  - (b) order that a receiver, as from a specified date, act only in respect of specified assets forming part of the property in receivership.
- (2) An order may be made only if the Court is satisfied that:

- (a) the purpose of the receivership has been satisfied so far as possible;  
or
  - (b) circumstances no longer justify continuation of the receivership.
- (3) Unless the Court orders otherwise:
- (a) a copy of an application under this section must be served on the receiver not less than 5 working days before the hearing of the application; and
  - (b) the receiver may appear and be heard at the hearing.
- (4) An order under subsection (1) may be made on any conditions that the Court thinks fit.
- (5) An order under this section does not affect a security or charge over the property in respect of which the order is made.
- (6) The Court may, on the application of any person who applied for or is affected by the order, rescind, or amend an order made under this section.

## **PART 4 — MICELLANEOUS PROVISIONS**

### **77 Proceedings for offences**

- (1) Despite any other Act, information for an offence under this Act may be laid at any time within 3 years after the date of the offence.
- (2) Nothing in this Act affects the liability of any person under any other Act, however a person must not be convicted of an offence under this Act and in respect of the same conduct under any other Act.

### **78 False statements on documents**

- (1) A person commits an offence, with respect to a document required by or for the purposes of this Act, if the person:
  - (a) makes, or authorises the making of, a statement in it that is false or misleading in a material particular knowing it to be false or misleading; or
  - (b) omits, or authorises the omission from it of, any matter knowing that the omission makes the document false or misleading in a material particular.
- (2) A person who commits an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years or to a fine not exceeding VT5,000,000, or both.

### **79 Privileged communications**

- (1) Nothing in this Act requires a legal practitioner to disclose a privileged communication.
- (2) For the purposes of this Act, a communication is a privileged communication if:
  - (a) it is a confidential communication, whether oral or written, passing between:
    - (i) a legal practitioner in his or her professional capacity and another legal practitioner in that capacity; or



- (ii) a legal practitioner in his or her professional capacity and his or her client,  
  
whether made directly or indirectly through an agent; and
  - (b) it is made or created for the purpose of obtaining or giving legal advice or assistance; and
  - (c) it is not made or created for the purpose of committing or furthering the commission of an illegal or wrongful act.
- (3) If the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it is not a privileged communication if it is contained in, or comprises the whole or part of, a book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner.
- (4) The Supreme Court may of its own volition, or on the application of any person, determine whether or not a claim of privilege is valid and may, for that purpose, require the information or document to be produced.

## **80 Regulations**

- (1) The Minister 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 fees or other amounts payable to the Registrar in respect of any matter under this Act;
  - (b) prescribing fees or other amounts payable to the Registrar of the Supreme Court in respect of any Court proceedings under this Act;
  - (c) prescribing forms (including Court forms) for the purposes of this Act; and those regulations may require:
    - (i) the inclusion in, or attachment to, forms of specified information or documents;
    - (ii) forms to be signed by specified persons;
  - (d) providing for and regulating any Court proceedings under this Act;

- (e) prescribing transitional and savings provisions relating to the coming into force of this Act and amending Schedule 11;
  - (f) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Registrar or the Registrar of the Supreme Court, as the case may require, may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.
  - (3) Any regulations made under subsection (1) may authorise the Registrar or the Registrar of the Supreme Court, as the case may require, to waive, in whole or in part and on any conditions that may be prescribed, payment of any amount referred to in paragraphs (a) or (b) of that subsection.
  - (4) Any fee or amount payable to the Registrar or to the Registrar of the Supreme Court, as the case may require, is recoverable by the Registrar or the Registrar of the Supreme Court, as the case may require, in any court of competent jurisdiction as a debt due to the State.

## **81 Forms**

- (1) Where any form may be prescribed by the Minister (other than a Court form), and no form is prescribed, the Registrar may prescribe the form, or accept the information that would otherwise be in the prescribed form in any document or format that the Registrar considers appropriate.
- (2) Where any Court form may be prescribed by the Minister, and no form is prescribed, the Registrar of the Supreme Court may prescribe the form or accept the information that would otherwise be in the prescribed form in any document or format that the Registrar considers appropriate.
- (3) Where any information is required to be given in a prescribed form to any party, the Registrar or the Registrar of the Supreme Court, the recipient of the form may not reject or challenge the validity of the form if it is not as prescribed, but does contain all the required information in a readily identifiable format.

## **82 Repeal and Transitional Provisions**

- (1) The Companies Act [CAP 191] including all regulations and rules made under that Act are repealed and ceases to have effect in Vanuatu in respect

of corporate insolvency on the commencement of this Act except to the extent specifically provided in this Act.

- (2) Despite subsection (1), those corporate insolvencies specified in Schedule 11 must be dealt with in accordance with that Schedule.
- (2A) To avoid doubt, the Schedule referred to under subsection (2) including the table and notice in it form part of the law of Vanuatu.
- (3) Where a corporate insolvency that is in process under the Companies Act [CAP 191] is not listed in Schedule 11, any person with a claim against the company, the liquidator, or the Official Receiver may make an application to the Court in respect of the claim.
- (4) The Court may make such order as it thinks appropriate in the circumstances, having due regard to the general laws and principles of insolvency.

### **83 Consequential amendments**

- (1) Any reference under any other Act to liquidation under the Companies Act [CAP 191] must be read as liquidation under the Companies (Insolvency and Receivership's) Act No. of 2012.
- (2) Any reference under any Act to winding up or dissolution proceedings in accordance with the Companies Act must be read as winding up or dissolution proceedings under the Companies (Insolvency and Receivership's) Act No of 2012

### **84 Commencement**

This Act commences on the date on which it is published in the Gazette.

## **SCHEDULE 1 MEETINGS OF CREDITORS**

### **PART 1 GENERAL PROVISIONS**

#### **1 General Procedure**

Except as provided in this Schedule and in any regulations made under this Act, creditors may regulate their own meeting procedures.

#### **2 Effect of irregularity or defect**

- (1) An irregularity or defect in the proceedings at a meeting of creditors does not invalidate anything done during such 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 2 METHODS OF HOLDING MEETINGS**

#### **3 Methods of holding meetings**

A meeting of creditors may be held:

- (a) by assembling together those creditors entitled to take part and who choose to attend at the place, date, and time appointed for the meeting by the person convening the meeting; or
- (b) by means of audio, or audio and visual, communication by which all creditors participating may simultaneously hear each other throughout the meeting; or
- (c) by conducting a postal ballot, in accordance with clauses 19 to 24, of those creditors entitled to take part.

### **PART 3 NOTICE OF MEETING**

#### **4 Notice of meeting**

At least 5 working days before a creditors meeting, written notice must be sent to every creditor entitled to attend the meeting of:

- (a) the time and place of every meeting to be held under clause 3(a); or
- (b) the time and method of communication for every meeting to be held under clause 3(b); or
- (c) the time and address for the return of voting papers for every meeting to be held under clause 3(a), (b), or (c).

#### **5 Contents of notice**

The notice 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 such 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.

#### **6 Effect of irregularity, etc, in notice**

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

- (a) the irregularity or failure is not material; or

- (b) all the creditors entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or failure; or
- (c) all such creditors agree to waive the irregularity or failure.

#### **PART 4 MEETING**

##### **7 Adjournment of meeting**

- (1) The chairperson may, with the prior agreements of the creditors, 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 under clause 3(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 is adjourned.

##### **8 Chairperson**

- (1) If a liquidator has been appointed and is present, or if the liquidator has appointed a nominee and the nominee is present, he or she must act as the chairperson of a meeting held in accordance with clause 3(a) or (b).
- (2) At any meeting of creditors, if the liquidator or any nominee of the liquidator, as the case may be, is not present, or if there is no liquidator holding office for the time being, the creditors participating must choose 1 among them to act as the chairperson of the meeting.
- (3) The person convening a meeting under clause 3(c) must do everything necessary that would otherwise be done by the person chairing a meeting.

##### **9 Quorum**

- (1) A quorum for a meeting of creditors is present if:
  - (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 does not exceed 3, 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 taken to be the quorum.

## **10 Corporations may act by representatives**

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

## **11 Keeping of record of attendance and minutes**

- (1) The chairperson of a meeting of creditors, or in the case of a meeting held under clause 3(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
      - (A) the class or classes to which each creditor belongs;
    - (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 of all proceedings are kept.
- (2) Records of attendance or minutes that have been signed correct by the chairperson or the person convening the meeting are prima facie evidence of the details recorded and proceedings of the meeting.

## **PART 5 PROXIES**

### **12 Proxies**

- (1) A creditor may exercise the right to vote by proxy.
- (2) A proxy for a creditor is entitled to attend and be heard at a meeting of creditors.
- (3) 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 not exceeding 12 months.
- (4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is delivered to the liquidator, or if no liquidator is acting in respect of a company in liquidation, to the person by whom the notice convening the meeting was given, not less than 2 working days before the start of the meeting.

### **13 Liquidator may act as proxy**

- (1) A creditor may appoint any person, including the liquidator or, if there is no liquidator, the chairperson of a meeting, to act as his or her proxy.
- (2) Subject to a direction of a meeting of creditors, a liquidator must not solicit for proxies.
- (3) Without limiting the orders that a Court may make, if a liquidator has not complied with subclause (2), the Court may:
  - (a) order that the liquidator is not entitled to his or her remuneration;  
or
  - (b) make an order removing the liquidator from office; or
  - (c) make an order declaring any transaction entered into by the liquidator to be void or overturning any vote, and granting such consequential relief as the Court thinks fit.

### **14 Irregularity in notice of proxy**

If a notice of proxy contains an irregularity that 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.

**15 Limits on holder of proxy**

- (1) Subject to subclause (2), no person acting under a proxy may vote in favour of or against any resolution that would place him or her, 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.
- (3) If a liquidator who holds a proxy cannot attend a meeting of creditors called under this Act, he or she may, in writing, nominate his or her 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 as he or she may direct.
- (4) Nothing in subclause (3) authorises the person nominated to vote in a manner that would be in contravention of subclauses (1) and (2) if the liquidator had acted under the proxy personally.

**PART 6 VOTING**

**16 Entitlement to vote, etc, determined by chairperson**

- (1) For the purpose of determining whether a person is allowed to vote at a meeting and the value of the person's claim, the chairperson has the power to determine, for the purpose of the meeting, :
  - (a) that the person is a creditor of the company, and if there are classes of creditors the class or classes to which each creditor belongs; and
  - (b) the value of a creditor's claim against the company.
- (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 chairperson must allow the person to vote subject to the vote being subsequently declared invalid in whole or in part by the chairperson.

- (3) A creditor who is not entitled to vote, may, with the leave of the liquidator, attend and speak at a meeting of creditors.
- (4) A creditor chairing the meeting does not have a casting vote.

### **17 Voting by secured creditors**

- (1) In the case of a meeting of creditors held under Division 2 of Part 2 of this Act (liquidations), a secured creditor is entitled to vote:
  - (a) for the whole debt if he or she surrenders the charge to the liquidator for the general benefit of creditors; or
  - (b) in respect of the balance of the debt if he or she values the charge and claims as an unsecured creditor for the balance due; or
  - (c) in respect of the balance of the debt if he or she realises property subject to a charge and claims as an unsecured creditor for any balance due after deducting the net amount realised.
- (2) Subject to this Act, if a secured creditor votes in respect of the creditor's whole debt, the creditor is taken to have surrendered his or her charge.
- (3) A creditor who is not entitled to vote may, with the leave of the liquidator, attend and speak at the meeting.

### **18 When resolution adopted**

At any meeting of creditors or a class of creditors, a resolution is taken to have been adopted if a majority in number and value of the creditors or the class of creditors voting in person or by proxy or by postal vote, vote in favour of the resolution.

## **PART 7 POSTAL VOTING**

### **19 Who may cast postal vote**

A creditor entitled to vote at a meeting of creditors held in accordance with clause 3(a), (b), or (c) may exercise the right to vote by casting a postal vote in relation to a matter to be decided at that meeting.

**20 Postal vote cast in respect of different resolution**

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; and
- (b) the creditor may vote, in respect of that different resolution, either by being present in person or by proxy.

**21 Person authorised to receive and count postal votes**

- (1) The notice of meeting must state the name of the person authorised to receive and count postal votes in relation to that meeting.
- (2) If no person has been authorised to receive and count postal votes in relation to a meeting, the liquidator is deemed to be so authorised.

**22 How to cast postal vote**

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, :

- (a) so as to reach that person not less than 2 working days before the start of the meeting; or
- (b) if the meeting is held under clause 3(c), not later than the date named for the return of the voting paper.

**23 Duty of person authorised to receive and count postal votes**

- (1) It is the duty of a person authorised to receive and count postal votes in relation to a meeting:
  - (a) to collect together all postal votes received by him or her; and
  - (b) in relation to each resolution to be voted on:
    - (i) to 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) to 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) to sign a certificate:
- (i) that he or she has carried out the duties set out in paragraphs (a) and (b); and
  - (ii) stating the results of the counts and determinations required by paragraph (b); and
- (d) to 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) in relation to the postal votes cast in respect of a meeting of creditors must be annexed to the minutes of the meeting.

## **24 Duty of chairperson**

If a vote is taken at a meeting held under clause 3(a) or (b) on a resolution on which postal votes have been cast, the person chairing the meeting must include the results of voting by all creditors who have sent in a voting paper duly marked as for or against the resolution.

## **SCHEDULE 2 POWERS, FUNCTIONS AND LIABILITIES OF LIQUIDATORS**

### **PART 1      PRELIMINARY PROVISIONS**

#### **1      Power to appoint 2 or more liquidators**

For the purposes of this Act, the power to appoint a liquidator of a company includes the power to appoint 2 or more persons as liquidators of a company.

#### **2      Liquidators to act jointly**

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

#### **3      When liquidator not required to act**

Despite anything in this Act, except if the charge is surrendered or taken to be surrendered or redeemed, 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.

### **PART 2      POWERS OF LIQUIDATORS**

#### **4      Liquidator controls company's assets**

With effect from the commencement of the liquidation of a company, the liquidator has custody and control of the company's assets.

#### **5      General powers**

A liquidator has the powers:

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

#### **6      Specific powers**

In addition to clause 5, a liquidator of a company has the power to:

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- (a) commence, continue, discontinue, and defend legal proceedings;
- (b) carry on the business of the company, to the extent necessary for the liquidation;
- (c) appoint a legal practitioner;
- (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 :
  - (i) calls and liabilities for calls;
  - (ii) debts and liabilities capable of resulting in debts;
  - (iii) claims, present or future, actual or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and
  - (iv) 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 the other separate creditors;

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- (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 of 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;
  - (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.

**7 Liquidator may enforce liability of shareholders**

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

**8 Liquidator may disclaim onerous property**

- (1) Subject to clause 9, 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 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.
- (3) A liquidator who disclaims onerous property must, within 10 working days of the disclaimer, give notice in writing of the disclaimer to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.
- (4) A person suffering loss or damage as a result of a disclaimer under this clause may:
  - (a) claim, as a creditor of the company, for the amount of the loss or damage, taking account of the effect of an 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.
- (5) The Court may make an order under subclause (4)(b) if it is satisfied that it is just that the property should be vested in the applicant.

**9 Liquidator may be required to elect whether to disclaim onerous property**

A liquidator is not entitled to disclaim onerous property if:

- (a) a person whose rights would be affected by the disclaimer of onerous property gives the liquidator notice in writing requiring the liquidator to elect whether to disclaim the onerous property before the close of a date specified in the notice, which must be at least 20 working days after the date on which the notice is received by the liquidator; and
- (b) the liquidator does not disclaim the onerous property before the close of that date.

**PART 3—DUTIES OF LIQUIDATORS**



### **10 Principal duties of liquidator**

The principal duties of a liquidator of a company are, in a reasonable and efficient manner:

- (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, in accordance with section 48.

### **11 Restriction on purchase of company's assets by liquidator**

- (1) Subject to the leave of the Court, a liquidator must not, either directly or indirectly, become a purchaser of any part of the company's assets.
- (2) The Court may set aside any purchase made contrary to this clause, and grant any consequential relief that it thinks fit.
- (3) The Court may give its leave on any conditions that it thinks fit.

### **12 Restriction on purchase of goods or services from persons connected with liquidator**

- (1) Subject to the leave of the Court, a liquidator must not purchase goods or services for the purposes of the liquidation from any person whose connection with him or her would result in the liquidator directly or indirectly obtaining any benefit arising out of the transaction.
- (2) The Court may disallow or recover any benefit made contrary to this clause.
- (3) The Court may give its leave on any conditions that it thinks fit.

### **13 Deposit of company funds**

A liquidator must deposit the funds of a company under his or her administration in a bank account to the credit of the company or in a trust account at a bank on trust for the benefit of the company.

**14 Investment of funds**

- (1) Despite clause 13, in any liquidation all or any part of the balance standing to the credit of the company in any bank account or trust account kept by the liquidator, and not required for the time being to meet claims made against the company, may be invested in any bank or in any Government securities or, if authorised by the Court, any other securities.
- (2) All dividends, interest, and other profits from investments must immediately on being received be paid into the bank account or trust account kept by the liquidator under clause 13.

**15 Duties in relation to accounts**

- (1) Subject to subclause (2), the liquidator of a company must:
  - (a) keep accounts and records of the liquidation and permit those accounts and records, and the accounts and records in the company, to be inspected by:
    - (i) any appointed liquidation committee, unless the liquidator believes on reasonable grounds that inspection would be prejudicial to the liquidation; and
    - (ii) if the Court so orders, a creditor or shareholder; and
  - (b) retain the accounts and records of the liquidation and of the company for not less than 1 year after completion of the liquidation; and
  - (c) if a liquidator carries on the business of the company, keep accounting records for the carrying on of the business of the company that comply with section 124 of the Companies Act No. of 2012 to the extent that that section is applicable.
- (2) The Registrar may, 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 a period of more than 12 months after the completion of the liquidation.

**16 Meaning of failure to comply**

In clauses 17 to 19, failure to comply means a failure of a liquidator to comply with a relevant duty arising:

- (a) under this Act or other written laws or other law; or
- (b) under any order or direction of a Court other than an order to comply made under clause 17.

**17 Failure to comply**

If the Court is satisfied that there is, or has been, a failure to comply, the Court may:

- (a) relieve the liquidator of the duty to comply wholly or in part; or
- (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the liquidator, order the liquidator to comply to the extent specified in the order.

**18 Consequences of non-compliance with Court order**

A Court may, in relation to a person who fails to comply with an order made under clause 17, or is or becomes disqualified to become or remain a liquidator:

- (a) remove the liquidator from office; or
- (b) order that the person may be appointed and act, or may continue to act, as liquidator, despite being disqualified to act as liquidator.

**19 Prohibition order**

(1) The Court must make, in relation to a person, a prohibition order for a period not exceeding 5 years if it is shown to the satisfaction of the Court that the person is unfit to act as liquidator by reason of:

- (a) persistent failures to comply; or
- (b) the seriousness of a failure to comply.

(2) A person to whom a prohibition order applies must not:

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- (a) act as a liquidator in a current or other liquidation; or
  - (b) act as a receiver in a current or other receivership.
- (3) The following is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this clause:
- (a) evidence that on 2 or more occasions within the preceding 5 years, a Court has made an order to comply under this clause in respect of the same person;
  - (b) evidence that on 2 or more occasions within the preceding 5 years, an application for an order to comply under this clause has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing.
- (4) A copy of every prohibition order must, within 10 working days of the order being made, be delivered by the applicant to the Registrar, who must keep it on a file indexed by reference to the name of the liquidator concerned.

**20 Who may apply for orders under clauses 17 to 19**

- (1) An application for an order under this Part may be made by:
- (a) a liquidator; or
  - (b) a person seeking appointment as a liquidator; or
  - (c) a liquidation committee; or
  - (d) a creditor, shareholder or a director of the company in liquidation;  
or
  - (e) a receiver appointed in relation to property of the company in liquidation; or
  - (f) the Registrar.

- (2) No person other than the liquidator can make an application to the Court in relation to a failure to comply unless he or she has served a notice of the failure to comply with the liquidator not less than 5 working days before the date of the application and, as at the date of the application, there is a continuing failure to comply.

**21 Court orders under clauses 17 to 19: general**

In making an order under this clause, a Court may:

- (a) extend the time for compliance; or
- (b) impose terms or conditions; or
- (c) make an ancillary order.

**PART 4 COURT SUPERVISION OF LIQUIDATIONS**

**22 Court orders**

On the application of the liquidator, a liquidation committee, or, with the leave of the Court, a creditor, shareholder, or director of a company in liquidation, the Court may:

- (a) give directions in relation to any matter arising in connection with the liquidation; or
- (b) confirm, reverse, or modify an act or decision of the liquidator; or
- (c) order an audit of the accounts of the liquidation; or
- (d) order the liquidator to produce the accounts and records of the liquidation for audit and to provide the auditor with the information concerning the conduct of the liquidation that the auditor requests; or
- (e) in respect of any period, review or fix the remuneration of the liquidator at a level that is reasonable in the circumstances; or
- (f) to the extent that an amount retained by the liquidator as remuneration is found by the Court to be unreasonable in the circumstances, order the liquidator to refund the amount; or

- (g) declare whether or not the liquidator was validly appointed or validly assumed custody or control of property; or
- (h) make an order concerning the retention or the disposition of the accounts and records of the liquidation or of the company.

**23 Court orders are additional to other Court powers**

The powers given by clause 22:

- (a) are in addition to any other powers a Court may exercise in its jurisdiction relating to liquidators under this Act; and
- (b) may be exercised:
  - (i) in relation to a matter occurring either before or after the commencement of the liquidation or the removal of the company from the Vanuatu register; and
  - (ii) whether or not the liquidator has ceased to act as liquidator when the application or the order is made.

**24 Defence to act in accordance with Court direction**

- (1) Subject to subclause (2), a liquidator is entitled to rely on having so acted as a defence to a claim in relation to anything done or not done in accordance with the direction if the liquidator has:
  - (a) obtained a direction of a Court with respect to a matter connected with the exercise of the powers or functions of liquidator; and
  - (b) acted in accordance with the direction.
- (2) A Court may, on the application of any person, order that, by reason of the circumstances in which a direction by the Court was obtained, the liquidator does not have the protection given by subclause (1).

## SCHEDULE 3 OFFICE OF LIQUIDATOR

### **PART 1      RESTRICTIONS ON APPOINTMENT OF LIQUIDATORS**

#### **1      Who may not be appointed or act as liquidator**

None of the following may be appointed or act as a 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 before the beginning of the liquidation, been a shareholder, employee, director, auditor, or receiver of the company or of a related company;
- (e) an undischarged bankrupt;
- (f) a person who is mentally incapacitated;
- (g) a person who is prohibited from being a director or promoter, or being concerned or taking part in the management, of a company under this Act.

#### **2      Validity of acts of liquidators**

- (1) The acts of a person as a liquidator are valid even though that person may not be qualified to act as a liquidator.
- (2) No defect or irregularity in the appointment of a liquidator invalidates any act done by him or her in good faith.

#### **3      Person must consent to being appointed liquidator**

A person must not be appointed as liquidator of a company unless:

- (a) the person has consented in writing to the appointment; and

- (b) as at the time of the appointment, the person has not withdrawn the consent.

**4 Court may declare whether liquidator validly appointed**

- (1) If there is doubt on a specific ground on the validity of the appointment of a person as liquidator of a company, the person, the company, or any of the company's creditors may apply to the Court for an order under subclause (2).
- (2) The Court may, on application, make an order declaring whether or not the appointment was valid on the ground specified in the application or on some other ground.

**PART 2 VACANCY IN OFFICE OF LIQUIDATOR**

**5 Vacancy in office of liquidator**

The office of liquidator becomes vacant if the person holding office resigns, dies, or is or becomes disqualified to act as liquidator.

**6 Resignation of liquidator**

A person may resign from the office of liquidator by appointing another person as his or her successor and sending or delivering notice in writing of the appointment of his or her successor to the Registrar for registration.

**7 Review of appointment of new liquidator by the Court**

The Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, review the appointment of a successor to a liquidator and may appoint any person who could be appointed as liquidator under section 13, 14, or 15, as the case may be, to be the liquidator of the company.

**8 Vacancy not caused by resignation**

If a person vacates the office of liquidator, for any reason other than resignation, he or she must deliver a written notice stating his or her reasons for vacating the office immediately to the Registrar.



**9 Person to act as liquidator until another liquidator is appointed**

If a liquidator vacates the office and no person is acting as liquidator, the Registrar may appoint a person to act as liquidator until another liquidator is appointed under this clause.

**10 Appointment of a liquidator by Court**

If the office of the liquidator is vacant, or a liquidator has been appointed under clause 9, as the case may be, the Court may, on the application of the company, or a shareholder or other entitled person, or a director or creditor of the company, or the Registrar, appoint any person who could be appointed as liquidator under section 13, 14, or 15, as the case may be, to be the liquidator of the company.

**11 Notice of appointment given by successor**

A liquidator appointed under clause 10 must, within 10 working days of being appointed or being notified of his or her appointment, deliver a notice of his or her appointment to the Registrar for registration.

**12 Assisting the liquidator**

- (1) A person vacating the office of liquidator must, if practicable, provide such information and give such assistance to that person's successor as he or she reasonably requires in taking over the duties of liquidator.
- (2) A person vacating the office of liquidator must immediately, or within any reasonable time that may be specified by the liquidator, deliver to the liquidator the following things that are in his or her possession or under his or her control:
  - (a) any records or documents of the company;
  - (b) other property of the company;
  - (c) all claims;
  - (d) accounts and records of the liquidation.

**13 Liquidator ceases to hold office on completion of liquidation**

- (1) A liquidator ceases to hold office on the completion of the liquidation.

- (2) Subclause (1) does not limit Part 3 or 4 of Schedule 2.

### **PART 3 LIQUIDATORS' REMUNERATION**

#### **14 Remuneration of liquidators**

- (1) Subject to paragraph 22(f) of Schedule 2, a liquidator appointed under section 16 or 17 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 otherwise orders, a liquidator appointed under section 15 may charge remuneration :
- (a) of an amount no greater than the amount prescribed by regulations;  
or
  - (b) at or less than such rate or rates as may be prescribed by regulations.

#### **15 Expenses and remuneration payable out of assets of company**

The expenses and remuneration of the liquidator are payable out of the assets of the company.

## **SCHEDULE 4 EFFECT OF LIQUIDATION**

### **PART 1      PRELIMINARY PROVISION**

#### **1      Company's rules not to be altered**

With effect from the commencement of the liquidation of a company, the rules of the company cannot be altered.

### **PART 2      EFFECT ON COMPANY'S OFFICERS AND SHAREHOLDERS, ETC**

#### **2      Functions and powers of company's directors suspended**

With effect from the commencement of the liquidation of a company, the directors remain in office but cease to have powers, functions, or duties other than those required or permitted to be exercised by this Act.

#### **3      Effect on company's shareholders**

With effect from the commencement of the liquidation of a company,:

- (a) unless the Court orders otherwise, a share in the company must not be transferred; or
- (b) an alteration must not be made to the rights or liabilities of a shareholder or former shareholder of the company; or
- (c) a shareholder must not exercise a power under the rules of the company or this Act, except for the purposes of this Act.

### **PART 3      EFFECT ON PROCEEDINGS**

#### **4      Legal proceedings not to be commenced or continued**

Except where subclause 6(2) applies, with effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Supreme Court orders otherwise, commence or continue legal proceedings against the company or in relation to its property.

**5 Effect on proceedings commenced before commencement of liquidation**

- (1) At any time after the making of an application to the Supreme Court to appoint a liquidator of a company and before a liquidator is appointed, the company or any creditor or shareholder of the company may,:
- (a) in the case of any application or proceeding against the company that is pending in the Supreme Court or Court of Appeal, apply to the Supreme Court or Court of Appeal, as the case may be, for a stay of the application or proceeding; or
  - (b) in the case of any other application or proceeding pending against the company in any Court or tribunal, apply to the Supreme Court to restrain the application or proceeding.
- (2) The Supreme Court or Court of Appeal, as the case may be, may stay or restrain the application or proceedings on any terms that it thinks fit.

**6 No enforcement of rights over company's property**

- (1) With effect from the commencement of the liquidation of a company, a person must not, unless the liquidator agrees or the Supreme Court orders otherwise, exercise or enforce, or continue to exercise or enforce, a right or remedy over or against a property of the company.
- (2) Nothing in subclause (1) or clause 4 affects the right of a secured creditor to take possession of, realise or otherwise deal with, property of the company over which that creditor has a charge.

**7 Restriction on rights of creditors to complete execution, distraint, or attachment**

- (1) Subject to subclauses (2) and (3), a creditor is not entitled to retain the benefit of any execution process, distress, or attachment over or against the property of a company unless the execution process, distress, or attachment is completed before:
- (a) the passing of a special resolution appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or

- (b) the passing of a resolution by the directors of a company appointing a liquidator of the company, or the date on which the creditor had notice of the calling of a meeting at which such a resolution was proposed, whichever occurs first; or
  - (c) the making of an application to the Court to appoint a liquidator of the company.
- (2) Despite subclause (1):
  - (a) a person who, in good faith, purchases property of a company from a court officer charged with 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.
- (3) The Court may set aside the application of subclause (1) to the extent and on any conditions that the Court thinks fit.
- (4) For the purposes of this clause:
  - (a) an execution or distraint against personal property is completed by seizure and sale; or
  - (b) an attachment of a debt is completed by receipt of the debt; or
  - (c) an execution against land is completed by sale, and, in the case of an equitable interest, by the appointment of a receiver.
- (5) Nothing in this section limits or affects Part 2 of Schedule 6.

## **8 Duties of court officer in execution process**

- (1) A court officer must, on being required by a liquidator of a company to do so, deliver or transfer the company's property and any money received in satisfaction or partial satisfaction of an execution or paid to avoid a sale of the property, as the case may be, to the liquidator if:
  - (a) the property has been taken in an execution process; and

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EFFECT OF LIQUIDATION

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- (b) before completion of the execution process, the court officer charged with the execution process receives notice that the liquidator of the company has been appointed.
- (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.
- (3) The court officer must retain the proceeds of sale or the money paid for 10 working days if:
  - (a) property of a company is sold in an execution process in respect of a judgment for a sum exceeding VT30,000; or
  - (b) money is paid to the court officer charged with the execution process to avoid a sale of the property.
- (4) The court officer must deduct from the amount the costs of the execution process and pay the balance to the liquidator if,:
  - (a) within the period of 10 working days, the court officer has notice of:
    - (i) the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or
    - (ii) the calling of a meeting of the directors at which a resolution is proposed to appoint a liquidator or of a meeting of the directors at which the appointment of a liquidator is to be considered; or
    - (iii) the making of an application to the Court to appoint a liquidator; and
  - (b) The company is put into liquidation.
- (5) A liquidator to whom money is paid under subclause (4) is entitled to retain it as against the execution creditor.
- (6) The Court may set aside the application of this section to the extent, and on any conditions, that it thinks fit.

**PART 4 EFFECT ON CERTAIN CONDUCT**

**9 Certain conduct prohibited**

- (1) If a company is in liquidation, or an application has been made to the Court for an order that a company be put into liquidation, as the case may be, no person may:
- (a) leave Vanuatu with the intention of:
    - (i) avoiding payment of money due to the company; or
    - (ii) avoiding examination in relation to the affairs of the company; or
    - (iii) avoiding compliance with an order of the Court or some other obligation under this Part in relation to the affairs of the company; or
  - (b) conceal or remove property of the company with the intention of preventing or delaying the liquidator taking custody or control of it; or
  - (c) destroy, conceal, or remove records or other documents of the company.
- (2) A person who does not comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding VT10,000 or to imprisonment for a term not exceeding 7 years, or both.

## SCHEDULE 5 LIQUIDATION COMMITTEES

### PART 1 LIQUIDATION COMMITTEE

#### 1 Appointment of members

- (1) The creditors or shareholders are to appoint members of a liquidation committee.
- (2) The liquidator must refer the matter to the Court, and the Court may make any decision that it thinks fit, if there is a difference between the decisions of meetings of creditors and meetings of shareholders on:
  - (a) the question of appointing a liquidation committee; or
  - (b) the membership of a liquidation committee.

#### 2 Membership

A liquidation committee must consist of not fewer than 3 persons who are:

- (a) creditors or shareholders; or
- (b) persons holding general powers of attorney from creditors or shareholders;  
or
- (c) authorised directors or representatives of companies that are creditors or shareholders of the company in liquidation.

#### 3 Powers

A liquidation committee has the power to:

- (a) call for reports from the liquidator on the progress of the liquidation; and
- (b) call a meeting of creditors or of shareholders; and
- (c) apply to the Court under Part 3 or 4 of Schedule 2; and
- (d) assist the liquidator, as appropriate, in the conduct of the liquidation.



#### **4 Application of company's rules**

A meeting of shareholders called under paragraph 3(b) must be held in accordance with the company's rules (except that the liquidator has power to give notice of a meeting of shareholders and to act as, or appoint, the chairperson of the meeting).

#### **5 Inability to act**

If, by reason of vacancies in a liquidation committee, the committee is unable to act, the liquidator must call attention to the situation in the next six-monthly report required to be prepared and sent under section 45.

#### **6 Restriction on purchase of company's assets by liquidation committee**

- (1) Subject to the leave of the Court, a member of a liquidation committee of a company must not, either directly or indirectly, become a purchaser of any part of the company's assets.
- (2) The Court may set aside any purchase made contrary to this clause, and grant any consequential relief that it thinks fit.
- (3) The Court may give its leave on any conditions that it thinks fit.

#### **7 Members not entitled to benefit from dealings with company's assets**

- (1) Subject to the leave of the Court, no member of a liquidation committee may directly or indirectly be entitled to:
  - (a) derive any benefit from any transaction arising out of the assets of the company; or
  - (b) receive out of the assets of the company any payment for services rendered by him or her in connection with the administration of the assets, or for any goods supplied by him or her to the liquidator for, or on account of, the company; or
  - (c) directly or indirectly become the purchaser of any part of the company's assets.
- (2) If the leave of the Court is sought under subclause (1) in respect of any payment for services, the leave may be given only if the services

performed are of a special nature and the order must specify the nature of the services for which leave is given.

### **8 No remuneration**

Except by the leave of the Court, no remuneration may, under any circumstances, be paid to a member of a liquidation committee for services rendered by him or her in the discharge of the duties attaching to his or her office as a member of the committee.

### **9 Disallowance or recovery of benefits or payments**

- (1) The Court may disallow or recover any benefit or payment made contrary to clause 7 or 8.
- (2) The Court may give leave under clauses 7 or 8 on any conditions that it thinks fit.

## **PART 2 PROCEEDINGS AT MEETINGS**

### **10 Frequency of meetings**

- (1) The committee must meet at the times as it from time to time appoints.
- (2) The liquidator or a member of the committee may also call a meeting of the committee as and when necessary.

### **11 Majorities**

The committee may act by a majority of its members present at a meeting.

### **12 Resignation**

A member of the committee may resign by submitting a written notice signed by that member and delivered to the liquidator.

### **13 Office becoming vacant**

The office of a member of the committee becomes vacant if the member:

- (a) becomes bankrupt; or
- (b) compounds or arranges with his or her creditors; or

- (c) is absent from 3 consecutive meetings of the committee without the leave of those members who together with that member represent the creditors or shareholders, as the case may be.

**14 Removal of member**

- (1) A member of the committee may be removed by a resolution:
- (a) carried at a meeting of creditors if the member represents creditors;  
or
  - (b) carried at a meeting of shareholders if the member represents shareholders.
- (2) At least 5 working days' notice of the meeting must be given, which states the object of the meeting.

**15 Vacancy filled**

A vacancy in the committee may be filled by the appointment to the committee of:

- (a) a creditor or shareholder, as the case may be; or
- (b) a person holding a general power of attorney from, or being an authorised director or representative of, a company that is a creditor or shareholder, as the case may be.

**16 Committee with vacancy may act**

The continuing members of the committee, if not less than 2, may act even though a vacancy exists in the committee.

**SCHEDULE 6**  
**VOIDABLE TRANSACTIONS AND CHARGES AND**  
**RECOVERIES IN OTHER CASES**

**PART 1 VOIDABLE TRANSACTIONS AND CHARGES**

**Division 1—Voidable Transactions**

**1 Definitions**

In clause 2:

**restricted period** means:

- (a) the period of 6 months before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made;
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14;

**specified period** means:

- (a) the period of 2 years before the date of commencement of the liquidation; and

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VOIDABLE TRANSACTIONS AND CHARGES AND RECOVERIES IN OTHER CASES

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- (b) in the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order was made; and
- (c) the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14;

**transaction**, in relation to a company, means:

- (a) a conveyance or transfer of property by the company; or
- (b) the giving of a security or charge over the property of the company; or
- (c) the incurring of an obligation by the company; or
- (d) the acceptance by the company of execution under a judicial proceeding; or
- (e) the payment of money by the company, including the payment of money under a judgment or order of a court;

whether occurring in Vanuatu or elsewhere.

## **2 Voidable transactions**

- (1) A transaction by a company is voidable on the application of the liquidator if the transaction:
  - (a) was made:

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VOIDABLE TRANSACTIONS AND CHARGES AND RECOVERIES IN OTHER CASES

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- (i) at a time when the company was unable to pay its due debts; and
    - (ii) within the specified period; and
  - (b) enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.
- (2) Subclause (1) does not apply if the transaction took place in the ordinary course of business.
- (3) Unless the contrary is proved, a transaction that took place within the restricted period is presumed to have been made:
- (a) at a time when the company was unable to pay its debts; and
  - (b) otherwise than in the ordinary course of business.
- (4) In determining whether a transaction took place in the ordinary course of business, no account is, unless that other person knew that that was the intent or purpose of the company, to be taken of any intent or purpose on the part of a company:
- (a) to enable another person to receive more towards satisfaction of a debt than the person would otherwise receive or be likely to receive in the liquidation; or
  - (b) to reduce or cancel the liability, whether in whole or in part, of another person in respect of a debt incurred by the company; or
  - (c) to contribute towards the satisfaction of the liability, whether in whole or in part, of another person in respect of a debt incurred by the company.

## **Division 2—Voidable Charges**

### **3 Definitions**

In clause 4:

**restricted period** means:

- (a) the period of 6 months before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14;

**specified period** means:

- (a) the period of 1 year before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and

- (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14.

#### **4 Voidable charges**

- (1) A charge over any property or undertaking of a company is voidable on the application of the liquidator if the charge was given within the specified period, unless:
  - (a) the charge secures:
    - (i) money actually advanced or paid; or
    - (ii) the actual price or value of property sold or supplied to the company; or
    - (iii) any other valuable consideration given in good faith by the grantee of the charge at the time of, or at any time after, the giving of the charge; or
  - (b) immediately after the charge was given, the company was able to pay its due debts; or
  - (c) the charge is in substitution for a charge given before the specified period.
- (2) Unless the contrary is proved, a company giving a charge within the restricted period is presumed to have been unable to pay its due debts immediately after giving the charge.

#### **5 Exception: certain kinds of substituted charges**

Paragraph 4(1)(c) does not apply to the extent that:

- (a) the amount secured by the substituted charge exceeds the amount secured by the existing charge; or
- (b) the value of the property subject to the substituted charge at the date of the substitution exceeds the value of the property subject to the existing charge at that date.



**6 Exception: charge that secures unpaid purchase price**

Nothing in clause 4 applies to a charge given by a company that secures the unpaid purchase price of property, whether or not the charge is given over that property, if:

- (a) the charge document is executed not later than 30 days after the sale of the property; or
- (b) in the case of the sale of an estate or interest in land, the charge document is executed not later than 30 days after the final settlement of the sale.

**7 Payments received by secured party**

For the purposes of paragraph 4(1)(a) and clause 6, if a charge was payments received by the secured party entitled to the charge after it was given are deemed to have been appropriated so far as may be necessary:

- (a) towards repayment of money actually advanced or paid by the secured party to the company on or after the giving of the charge; or
- (b) towards payment of the actual price or value of property sold by the secured party to the company on or after the giving of the charge; or
- (c) towards payment of any other liability of the company to the secured party in respect of any other valuable consideration given in good faith on or after the giving of the charge.

**Division 3—Procedure for Setting Aside Voidable Transactions and Charges**

**8 Procedure**

- (1) A liquidator who wishes to have a transaction that is voidable or a charge that is voidable set aside must:
  - (a) file in the Court a notice to that effect specifying the transaction or charge to be set aside and, in the case of a transaction, the property or value which the liquidator wishes to recover, and also the effect of subclauses (2), (3), and (4); and

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- (b) serve a copy of the notice on the other party to the transaction or the secured creditor entitled to the charge and on every other person from whom the liquidator wishes to recover.
- (2) A person:
  - (a) who would be affected by the setting aside of the transaction or charge specified in the liquidator's notice; and
  - (b) who considers that the transaction or charge is not voidable,:

may file in the Court a notice objecting to the transaction or charge being set aside, and serve a copy of that notice on the liquidator, within 20 working days after the service of the liquidator's notice.
- (3) Unless a person on whom the liquidator's notice was served has given notice under subclause (2), the transaction or charge is set aside on the 20th working day after the date of service of the notice.
- (4) If 1 or more persons have given notice under subclause (2), the liquidator may apply to the Court for an order that the transaction or charge be set aside. That application must be served on every person referred to in paragraph (1)(b), whether or not that person gave a notice under subclause (2).

## **9 Other orders**

If a transaction or charge is set aside, the Court may make 1 or more of the following orders:

- (a) an order requiring a person to pay to the liquidator, in respect of benefits received by that person as a result of the transaction or charge, such sums as fairly represent those benefits;
- (b) an order requiring property transferred as part of the transaction to be restored to the company;
- (c) an order requiring property to be vested in the company if it represents in a person's hands the application, either of the proceeds of sale of property, or of money, so transferred;
- (d) an order releasing, in whole or in part, a charge given by the company;

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- (e) an order requiring security to be given for the discharge of an order made under this clause;
- (f) an order specifying the extent to which a person affected by the setting aside of a transaction or by an order made under this clause is entitled to claim as a creditor in the liquidation.

**10 Additional provisions relating to setting aside transactions and charges**

- (1) The setting aside of a transaction or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired:
  - (a) from a person other than the company; and
  - (b) for valuable consideration; and
  - (c) without knowledge of the circumstances under which the property was acquired from the company.
- (2) The setting aside of a charge or an order made under clause 9 does not affect the title or interest of a person in property that the person has acquired:
  - (a) as the result of the exercise of a power of sale by the secured creditor entitled to the charge; and
  - (b) for valuable consideration; and
  - (c) without knowledge of the circumstances relating to the giving of the charge.
- (3) Recovery by the liquidator of property or its equivalent value, whether under clause 9 or any other provision of this Act, or under any other enactment, or in equity or otherwise, may be denied wholly or in part if:
  - (a) the person, from whom recovery is sought, received the property in good faith and has altered his or her position in the reasonably held belief that the transfer to that person was validly made and would not be set aside; and

- (b) in the opinion of the Court, it is inequitable to order recovery or recovery in full.
- (4) Nothing in the Land Leases Act [CAP 163] restricts the operation of this clause or clauses 4 to 9.

## **PART 2 RECOVERY IN OTHER CASES**

### **Division 1—Transactions at Undervalue**

#### **11 Definitions**

In clause 12:

**specified period** means:

- (a) the period of 1 year before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 1 year before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14;

transaction includes the giving of a guarantee by a company.

#### **12 Transactions at undervalue**

- (1) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the consideration or benefit

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provided by the company exceeded the value of the consideration or benefit received by the company if:

- (a) the transaction was entered into by a company within the specified period; and
  - (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
  - (c) when the transaction was entered into, the company:
    - (i) was unable to pay its due debts; or
    - (ii) was engaged, or about to engage, in business for which its financial resources were unreasonably small; or
    - (iii) incurred an obligation knowing that the company would not be able to perform the obligation when required to do so; and
  - (d) when the transaction was entered into, the other party to the transaction knew or ought to have known of the matter referred to in paragraph (c).
- (2) A liquidator of a company may recover from any other party to a transaction any amount by which the value of the consideration or benefit provided by the company exceeded the value of the consideration or benefit received by the company if:
- (a) the transaction was entered into by a company within the specified period; and
  - (b) the value of the consideration or benefit received by the company was less than the value of the consideration provided by the company, or the company received no consideration or benefit; and
  - (c) the company became unable to pay its due debts as a result of the transaction; and

- (d) when the transaction was entered into, the other party to the transaction knew or ought to have known that the company would become unable to pay its due debts as a result of the transaction.

## **Division 2 Transactions for Inadequate or Excessive Consideration with Directors, etc**

### **13 Definitions**

- (1) For the purpose of clause 14,

**specified period** means:

- (a) the period of 3 years before the date of commencement of the liquidation; or
- (b) in the case of a company that was put into liquidation by the Court, the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of the application and ending on the date on which, and at the time at which, the order of the Court was made; or
- (c) the period of 3 years before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) an application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under sections 13 or 14; and

value of a business or property includes the value of any goodwill attaching to the business or property; and

- (b) without limiting the circumstances in which a company may be taken to be controlled by a person, a company is controlled by a person, if that person may, by exercising a power exercisable by that person (whether with or without the consent or concurrence of any other person), appoint or remove all the directors of the

company, or any number of directors as together hold a majority of voting rights at a meeting of directors.

**14 Transactions for excessive consideration with directors, etc**

A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the consideration given for the acquisition of the business, property, or services exceeded the value of the business, property, or services at the time of the acquisition if, within the specified period, the company has acquired a business or property from, or the services of,:

- (a) a person who was, at the time of the acquisition, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (b) a person, or a relative of a person, who, at the time of the acquisition, had control of the company; or
- (c) another company that was, at the time of the acquisition, controlled by a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) another company that was, at the time of the acquisition, a related company.

**15 Transactions for inadequate consideration with directors, etc**

A liquidator of a company may recover from the person, relative, company, or related company, as the case may be, any amount by which the value of the business, property, or services, or the value of the shares, at the time of the disposition, provision, or issue exceeded the value of any consideration received by the company if, within the specified period, a company has disposed of a business or property, or provided services, or issued shares, to:

- (a) a person who was, at the time of the disposition, provision, or issue, a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (b) a person, or a relative of a person, who, at the time of the disposition, provision, or issue, had control of the company; or

- (c) another company that was, at the time of the disposition, provision, or issue, controlled by a director of the company, or a nominee or relative of or a trustee for, or a trustee for a relative of, a director of the company; or
- (d) another company that, at the time of the disposition, provision, or issue, was a related company.

### **Division 3 Court May Set Aside Certain Securities and Charges**

#### **16 Court may set aside certain securities and charges**

- (1) The Court may, on the application of the liquidator of a company, order that a security or charge, or part of it, created by the company over any of its property in favour of any of the persons referred to in subclause (2) must, so far as any security on the property is conferred, be set aside as against the liquidator if:
  - (a) the company is unable to meet all its debts; and
  - (b) the Court considers that, having regard to the circumstances in which the security or charge was created, the conduct of the person, relative, company, or related company, as the case may be, in relation to the affairs of the company, and any other relevant circumstances, it is just and equitable to make the order.
- (2) The persons referred to in subclause (1) are as follows:
  - (a) a person who was, at the time the security or charge was created, a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
  - (b) a person, or a relative of a person, who, at the time when the security or charge was created, had control of the company; or
  - (c) another company that was, when the security or charge was created, controlled by a director of the company, or a nominee or relative of, or a trustee for, or a trustee for a relative of, a director of the company; or
  - (d) another company, that at the time when the security or charge was created, was a related company.



**17 Certain securities exempted**

Clause 16 does not apply to a security or charge that has been transferred by a person in whose favour it was originally created and has been purchased by another person if:

- (a) at the time of the purchase, the purchaser was not a person specified in that clause; and
- (b) the purchase was made in good faith and for valuable consideration.

**18 Other orders, etc**

- (1) The Court may make any other orders that it thinks proper for the purpose of giving effect to an order under this clause.
- (2) Nothing in the Land Leases Act [CAP 163] restricts the operation of this clause or clauses 16 and 17.

**Division 4 Contribution for Not Keeping Proper Accounting Records**

**19 Contribution for not keeping proper accounting records**

- (1) The Court, on the application of the liquidator, may, if it thinks it proper to do so, declare that any 1 or more of the directors and former directors of a company is, or are, personally responsible, without limitation of liability, for all or any part of the debts and other liabilities of the company that the Court may direct if:
  - (a) the company that is in liquidation and is unable to pay all its debts has failed to comply with—
    - (i) section 124 of the Companies Act 2010 (which relates to the keeping of accounting records); or
    - (ii) section 125 of the Companies Act 2010 (which relates to the preparation of financial statements); and
  - (b) the Court considers that
    - (i) the failure to comply has contributed to the company's inability to pay all its debts, or has resulted in substantial

uncertainty as to the assets and liabilities of the company,  
or has substantially impeded the orderly liquidation; or

- (ii) for any other reason it is proper to make a declaration.
- (2) The Court may give any direction it thinks fit for the purpose of giving effect to the declaration.
- (3) The Court may make a declaration under this clause even though the person concerned is liable to be convicted of an offence.

## **20 When Court may not make declaration under clause 19**

The Court must not make a declaration under clause 19 in relation to a person if the Court considers that the person:

- (a) took all reasonable steps to secure compliance by the company with clause 19(1)(a); or
- (b) had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

## **Division 5 Court May Require Persons to Repay Money or Return Property**

### **21 Court may require persons to repay money or return property**

- (1) The Court may, on the application of the liquidator or a creditor or shareholder, do any of the things set out in subclause (2) if, in the course of the liquidation of a company, it appears to the Court that a person who has taken part in the formation or promotion of the company, or a past or present director, manager, liquidator, receiver, or officer of the company, has:
- (a) misapplied, or retained, or become liable or accountable for, money or property of the company; or
  - (b) been guilty of negligence, default, or breach of duty or trust in relation to the company.
- (2) The Court may:

- (a) inquire into the conduct of the promoter, director, manager, liquidator, receiver, or officer; and
  - (b) order that person:
    - (i) to repay or restore the money or property or any part of it with interest at a rate the Court thinks just; or
    - (ii) to 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 the money or property or any part of it, with interest at a rate the Court thinks just, to the creditor.
- (3) This clause has effect even though the conduct may constitute an offence.

## **Division 6 Pooling of Assets**

### **22 Pooling of assets of related companies**

- (1) On the application of the liquidator, or a creditor or shareholder, the Court, if satisfied that it is just and equitable to do so, may 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 so orders and subject to such terms and conditions as the Court may impose.
- (2) The Court may make any other order or give any directions to facilitate giving effect to an order under subclause (1) that it thinks fit.

### **23 Guidelines for orders**

- (1) In deciding whether it is just and equitable to make an order under clause 22(1)(a), the Court must consider the following matters:

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- (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 as the Court thinks fit.
- (2) In deciding whether it is just and equitable to make an order under clause 22(1)(b), the Court must consider the following matters:
- (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 thinks fit.
- (3) The fact that creditors of a company in liquidation relied on the fact that another company is, or was, related to it is not a ground for making an order under clause 22.

## SCHEDULE 7 CREDITORS' CLAIMS

### **PART 1      PRELIMINARY PROVISIONS**

#### **1      Admissible claims**

- (1) Subject to subclause (2), a debt or liability, present or future, certain or contingent, whether it is an ascertained debt or a liability for damages, may be admitted as a claim against a company in liquidation.
  
- (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 a claim based on a debt or liability denominated in a currency other than the currency of Vanuatu must be converted into the currency of Vanuatu at the mid-market rate in Vanuatu on the date of commencement of the liquidation or the date on which the obligation was incurred if that is a later date. If no such rate is readily ascertainable by the liquidator, or if the rate is disputed by the creditor, then the rate is to be determined by the Court.

#### **3      Claim not of ascertained amount**

- (1) If a claim is subject to a contingency, or is for damages, or, if for some other reason the amount of the claim is not certain, 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.
  
- (2) 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 the liquidation of the company, for the commission of an offence; or
- (b) a monetary penalty payable to the Government imposed on a company by a Court, whether before or after the commencement of the liquidation of the company, for the breach of any written law; or
- (c) costs ordered to be paid by the company in relation to proceedings for the offence or 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 later than 6 months, after the date of commencement of the liquidation is to be treated, for the purposes of this Part, as a claim for the present value of the debt.
- (2) For the purposes of subclause (1), the present value of a debt is to be determined by deducting from the amount of the debt interest at an appropriate rate for the period from the date on which the company is put into liquidation to the date when the debt is due.

#### **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) The liquidator may require the production of a document referred to in subclause (1)(b).
- (3) The liquidator:
  - (a) must, as soon as practicable, either admit or reject a claim in whole or in part; and

- (b) if the liquidator later considers that a claim has been wrongly admitted or rejected in whole or in part, may revoke or amend that decision; 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 immediately give notice in writing of the rejection to the creditor.
- (5) The costs of making a claim under subclause (1) or producing a document under subclause (2) must be met by the creditor making the claim.
- (6) A person commits an offence and is liable on conviction to a fine not exceeding VT250,000 or to imprisonment for a term not exceeding 2 years, or both, if the person:
  - (a) makes, or authorises the making of, a claim under this clause that is false or misleading in a material particular knowing it to be false or misleading; or
  - (b) omits, or authorises the omission, from a claim under this clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

## **PART 2 SECURED CLAIMS**

### **7 Powers of secured creditors**

- (1) A secured creditor may:
  - (a) realise property subject to a charge, if entitled to do so; or
  - (b) value the property subject to the charge and claim in the liquidation as an unsecured creditor for the balance due, if any; or
  - (c) surrender the charge to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole debt;
  - (d) exercise powers under Part 9 of the Personal Property Securities Act 2008 (No 17).

- (2) A secured creditor may exercise the power referred to in subclause (1)(a) whether or not the secured creditor has exercised the power referred to in subclause (1)(b).
- (3) A secured creditor may not exercise any power referred to in subclause (1) if to do so would be a breach of any compromise that binds the creditor or a breach of any order of the Court.

## **8 Realising secured property**

A secured creditor who realises secured property:

- (a) may, unless the liquidator has accepted a valuation and claim by the secured creditor under clause 10, 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 any proper payments to the holder of any other charge over the property subject to the charge.

## **9 Valuation of security**

- (1) If a secured creditor values the security and claims as an unsecured creditor for the balance due, if any, 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 including the date on which it was given; and
  - (c) identify any documents that substantiate the claim and the charge.
- (2) The liquidator may require production of any document referred to in subclause (1)(c).

## **10 Liquidator's duties on receipt of claim by secured creditor**

If a claim is made by a secured creditor under clause 9, the liquidator must:



- (a) accept the valuation and claim; or
- (b) reject the valuation and claim, in whole or in part, but:
  - (i) if a valuation and claim is rejected in whole or in part, the creditor may make a revised valuation and claim within 10 working days of receiving notice of the rejection; and
  - (ii) the liquidator may, if he or she later considers that a valuation and claim was wrongly rejected, in whole or in part, revoke or amend that decision; and
- (c) record in writing any decision made by the liquidator under this clause.

#### **11 Liquidator may redeem security**

The liquidator may, unless the secured creditor has realised the property, at any time, redeem the security on payment of the assessed value if the liquidator:

- (a) accepts a valuation and claim under clause 10(a); or
- (b) accepts a revised valuation and claim under clause 10(b)(i); or
- (c) accepts a valuation and claim on revoking or amending a decision to reject a claim under clause 10(b)(ii).

#### **12 Liquidator may require secured creditor to exercise powers**

- (1) The liquidator may at any time, by notice in writing, require a secured creditor, within 20 working days after receipt of the notice, to:
  - (a) elect which of the powers referred to in clause 7 the creditor wishes to exercise; and
  - (b) if the creditor elects to exercise the power referred to in clause 7(1)(b) or (c), exercise the power within that period.
- (2) A secured creditor on whom notice has been served under subclause (1) who fails to comply with the notice, is to be taken as having surrendered the charge to the liquidator under clause 7(1)(c) for the general benefit of

creditors, and may claim in the liquidation as an unsecured creditor for the whole debt.

- (3) A secured creditor who has surrendered a charge under clause 7(1)(c) or who is taken as having surrendered a charge under subclause (2) may, with the leave of the Court or the liquidator and subject to any conditions that the Court or the liquidator thinks fit, at any time before the liquidator has realised the property charged:
- (a) withdraw the surrender and rely on the charge; or
  - (b) submit a new claim under this clause.

### **13 Offence to make false or misleading claim**

Every person commits an offence and is liable on conviction to a fine not exceeding VT10,000 or to imprisonment for a term not exceeding 7 years, or both if the person:

- (a) makes, or authorises the making of, a claim under clause 9 that is false or misleading in a material particular knowing it to be false or misleading; or
- (b) omits, or authorises the omission, from a claim under that clause of any matter knowing that the omission makes the claim false or misleading in a material particular.

## **Part 3 Preferential Claims**

### **14 Definitions**

For the purposes of this Part,:

**paid annual leave**, in relation to a person, means all sums payable to that person by the company that by or under any Act or any award, agreement, or contract of service are payable to that person by the company as holiday pay.

**wages or salary**, includes remuneration in respect of a period of holiday or of absence from work through sickness or other good cause.

### **15 First priority claims**

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

- (a) the fees and expenses properly incurred by the liquidator in carrying out the duties and exercising the powers of the liquidator and the remuneration of the liquidator;
- (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 of a person appearing on the application whose costs are allowed by the Court;
- (c) the actual out-of-pocket expenses necessarily incurred by a liquidation committee.

**16 Second priority claims**

- (1) After paying the claims referred to in clause 15, the liquidator must next pay the following claims:

**Employees' wages or salary**

- (a) subject to subclause (2), all wages or salary of any employee, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the company during the 4 months before the commencement of the liquidation including any severance allowance;

**Employees' annual leave**

- (b) subject to subclause (2), paid annual leave becoming payable to an employee (or if the employee has died, to any other person in the employee's right) on the termination of the employment before or by reason of the commencement of the liquidation;

**Workers compensation**

- (c) amounts due in respect of any compensation or liability for compensation payable to an employee or to the dependents of an employee that accrued before the commencement of the liquidation;

**Amounts deducted by company from employees' wages or salary**

- (d) subject to subclause (2), amounts deducted by the company from the wages or salary of an employee in order to satisfy obligations of the employee;

**Preferential claims under section 32**

- (e) amounts that are preferential claims under section 32(2);

**Superannuation Provident fund contributions**

- (f) any contributions payable by the company to a superannuation scheme or provident fund of an employee;

**Priority payments under other enactments**

- (g) all sums that by any other enactment are required to 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), (b), (d), (e), or (f) must not, in the case of any 1 employee, exceed VT1,000,000 or any greater amount that is prescribed at the commencement of the liquidation.
- (3) If a payment has been made to the following persons out of money advanced by some person for that purpose, the person by whom the money was advanced has, in a liquidation, the same right of priority in respect of the money advanced as the employee, or other person receiving the payment in right of the employee, would have if the payment had not been made:
- (a) an employee of a company on account of wages or salary;
  - (b) any such employee or, if the employee has died, to any other person in the employee's right, on account of holiday pay.

**17 Third priority claims**

After paying the sums referred to in clause 16, the liquidator must next pay to the extent that the amount is for the time being unpaid any tax, import duty, export duty or charges, excise duty or other similar impost payable by or deducted by the company.

**18 Ranking of claims in clauses 16 and 17**

- (1) The claims listed in each of clauses 16 and 17:
- (a) rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
  - (b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of persons in respect of assets that are subject to a floating charge and must be paid accordingly out of those assets.
- (2) To the extent that the claims to which subclause (1) applies are paid out of assets referred to in paragraph (b) of that subclause, the amount so paid is an unsecured debt due by the company to the secured party.

**19 When landlord or other person has distrained on goods, etc**

If a landlord or other person has distrained on goods or effects of the company within the month before the commencement of the liquidation,:

- (a) the claims to which priority is given by this Part are a first charge on the goods or effects so distrained on, or the proceeds from their sale; but
- (b) if any money is paid to a claimant under any such charge, the landlord or other person has the same rights of priority as that claimant.

**PART 4 MUTUAL CREDIT AND SET-OFF**

**20 Definitions**

In this Part:

**related person** includes a related company and includes a director of the company in liquidation;

**restricted period** means:

- (a) the period of 2 years before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 2 years before the making of the application to the Court together

with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and

- (c) the period of 2 years before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) the application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under section 13 or 14;

**specified period** means:

- (a) the period of 6 months before the date of commencement of the liquidation; and
- (b) in the case of a company that was put into liquidation by the Court, the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the Court was made; and
- (c) the period of 6 months before the making of the application to the Court together with the period commencing on the date of the making of an application and ending on the date and at the time of the commencement of the liquidation if:
  - (i) the application was made to the Court to put a company into liquidation; and
  - (ii) after the making of the application to the Court a liquidator was appointed under section 13 or 14.

## **21 Mutual credit and set-off**

If there have been mutual credits, mutual debts, or other mutual dealings between a company and a person who seeks or, but for the operation of this clause, would seek to have a claim admitted in the liquidation of the company,:

- (a) an account must be taken of what is due from the one party to the other in respect of those credits, debts, or dealings; and
- (b) an amount due from one party must be 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.

## **22 Proof for person who is not related person**

Unless the person proves that, at the time of the transaction or assignment, the person did not have reason to suspect that the company was unable to pay its debts as they became due, a person who is not a related person is not entitled to claim the benefit of a set-off arising from:

- (a) a transaction made within the specified period, being a transaction by which the person gave credit to the company or the company gave credit to the person; or
- (b) the assignment within the specified period to that person of a debt owed by the company to another person.

## **23 Proof for person who is related person**

Unless the related person proves that, at the time of the transaction or assignment, the related person did not have reason to suspect that the company was unable to pay its debts as they became due, the related person is not entitled to claim the benefit of a set-off arising from:

- (a) a transaction made within the restricted period, being a transaction by which the related person gave credit to the company or the company gave credit to the related person; or
- (b) the assignment within the restricted period to that person of a debt owed by the company to another person.

## **24 Exception for amounts paid or payable by shareholder**

Clauses 21 to 23 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 by the liquidator.

## **PART 5 MISCELLANEOUS**

### **25 Interest on claims**

- (1) The amount of a claim may include interest up to the date of commencement of the liquidation:
  - (a) at such rate as may be 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 such rate as is payable on the judgment debt.
- (2) If any surplus assets remain after the payment of all admitted claims, 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, and if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.
- (3) If any surplus assets remain after the payment of interest in accordance with subclause (2), 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), as the case may be, and, if the amount of the surplus assets is insufficient to pay interest in full on all claims, payment must abate rateably among all claims.
- (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.

### **26 Conversion of currency claims**

If a claim is made based on a debt or liability denominated in a currency other than Vanuatu currency, it must be converted into Vanuatu currency at the mid-market rate in Vanuatu on the date of commencement of the liquidation; or, if no such rate is readily ascertainable by the liquidator, or if the rate is disputed by the creditor, then at a rate determined by the Court.



**27 Trade discounts**

A creditor making his or her claim must deduct all trade discounts that he or she would otherwise have given if the company had not gone into liquidation.

**28 Periodical payments**

- (1) When any payment (including rent) falls due at stated periods, and liquidation commences at any time other than at the beginning of 1 of those periods, the persons entitled to the 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 the property to claim rent that accrues on or after the commencement of liquidation.

**29 Employees' claims**

- (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) Any claim made in compliance with this regulation has the same effect as if separate claims had been made by each of the employees.

**30 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 day, which must not be less than 10 working days from the date of the notice, on or before which the creditors of the company are to make their claims, and to establish any priority their claims may have under Part 3 of this Schedule.
- (2) The liquidator must give public notice of the day fixed in accordance with subclause (1).

**31 Failure to claim by day fixed for claims**

- (1) Subject to subclause (2), any creditor who fails to make a claim on or before the day fixed in accordance with clause 30 will be excluded from the benefit of any distribution made before his or her claim is made.

- (2) A creditor who makes a claim after the day fixed in accordance with clause 30 and whose 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 opinion of the liquidator, are likely to remain, available for distribution.

**32 Failure to establish priority by day fixed for claims**

- (1) Subject to subclause (2), any creditor who fails to establish any priority that the creditor's claim may have on or before the day fixed in accordance with clause 30 must be excluded from objecting to any distribution made before the priority of that 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 establishes the priority of the creditor's claim after the day fixed in accordance with clause 30 is entitled to receive the benefit of any distribution from which the creditor was previously excluded (if any) if any assets remain, or, in the opinion of the liquidator, are likely to remain, available for distribution.

**33 Dividends in respect of rejected claims**

- (1) If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the liquidator may in any such case 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 no notice of an application has been given within the time specified in this Act or in regulations made under this Act 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.

**34 Costs of proceedings relating to liquidator's decision on claim**

If any creditor applies to the Court for an order reversing or modifying the decision of a liquidator to reject the creditor's claim, the Court may, if it thinks fit,:

- (a) allow any costs of any creditor to be added to the creditor's claim;

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- (b) allow any costs of any party to be paid out of the assets of the company, such costs being deemed to be expenses of the liquidator;
- (c) order any costs to be paid by any party to the proceedings other than the liquidator.

## SCHEDULE 8 LIQUIDATION OF ASSETS IN VANUATU OF OVERSEAS COMPANY

### **1 Modified application of subpart 2 of Part 1 of this Act**

Division 2 of Part 1 of this Act applies to the liquidation of the assets in Vanuatu of an overseas company, with the following modifications and exclusions:

- (a) references to assets are to be taken as references to assets in Vanuatu;
- (b) references to a company are to be taken as references to an overseas company;
- (c) references to removal from the Vanuatu register are to be taken as references to ceasing to carry on business in Vanuatu;
- (d) the following provisions do not apply to such a liquidation:
  - (i) clause 6 of Schedule 2;
  - (ii) clauses 1 and 3 of Schedule 4;
- (e) clause 2 of Schedule 4 does not affect the tenure of directors of an overseas company, but the overseas company and its directors cease to have any powers, functions, or duties in relation to the company's assets in Vanuatu, other than those required or permitted to be exercised by Division 2 of Part 2;
- (f) section 50 applies to such a liquidation, but instead of making the statement required by subsection (1)(b)(iii) of that section, the liquidator must state that the company has ceased to carry on business in Vanuatu and is ready to be removed from the overseas register.

### **2 Rights of action not affected**

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

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- (a) to bring proceedings outside Vanuatu 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 Vanuatu in relation to the balance of a debt remaining unpaid after the completion of a liquidation.

## **SCHEDULE 9 POWERS, DUTIES AND LIABILITIES OF RECEIVERS**

### **PART 1      PRELIMINARY PROVISIONS**

#### **1      Receiver is grantor's agent**

A receiver appointed by, or under a power conferred by, a document is the agent of the grantor unless it is expressly provided otherwise in the document by or under which the receiver was appointed.

#### **2      Exercise of powers by 2 or more receivers**

Two or more receivers may act jointly or severally to the extent that they have the same powers unless the document under which, or the order of the Court by which, they are appointed expressly provides otherwise.

### **PART 2      POWERS OF RECEIVERS**

#### **3      General powers of receivers**

Subject to the document or the order of the Court appointing the receiver, a receiver may exercise the following powers:

- (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 that are in the possession or under the control of the grantor;
- (g) exercise, on behalf of the grantor, 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 grantor;

- (h) if the receiver is appointed in respect of all or substantially all of the property of a grantor, change the registered office of the grantor or address at which the documents of the grantor are kept;
- (i) buy and sell the property in receivership in the ordinary course of business.

#### **4 Receiver may execute documents**

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

#### **5 Power to claim amounts unpaid on shares**

- (1) A receiver has the same powers as the directors of a grantor that is a company or, if the grantor is being wound up or in liquidation, as the directors would have if it was not being wound up or in liquidation, to:
  - (a) make claims against the shareholders, or former shareholders, of the company in respect of any uncalled capital that is, or any unpaid amount in respect of any shares issued by the grantor that are, charged under the document by or under which the receiver was appointed; and
  - (b) charge interest on, and enforce payment of, any uncalled capital or unpaid amount.
- (2) The exercise of a power under subclause (1) is, as between the shareholders, or former shareholders, of the grantor affected and the grantor, deemed to be a power properly exercised by the directors of the grantor.

#### **6 Receiver may apply for Court order authorising sale of property**

- (1) If the consent of a mortgagee is required to the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorising the sale of the property, either by itself or together with other assets.

- (2) The Court may make any order that it thinks fit authorising the sale of the property by the receiver if it 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 grantor and the grantor's creditors; and
    - (ii) will not substantially prejudice the interests of the mortgagee.
- (3) An order under this clause may be made on any conditions that the Court thinks fit.

## **7 Powers of receiver on liquidation**

- (1) Subject to subclause (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 has been put into liquidation.
- (2) A receiver holding office in respect of property referred to in subclause (1) may act as the agent of the grantor only:
- (a) with the approval of the Court; or
  - (b) with the written consent of the liquidator as the case may be.
- (3) A receiver who, by reason of subclause (2), is not able to act as the agent of the grantor does not, by reason only of that fact, become the agent of a person by whom or in whose interests the receiver was appointed.
- (4) A debt or liability incurred by a grantor through the acts of a receiver who is acting as the agent of the grantor in accordance with subclause (2) is not a cost, charge, or expense of the liquidation.

## **PART 3 DUTIES OF RECEIVERS**



## **Division 1—Duties**

### **8 Principal duties of receivers**

- (1) A receiver must exercise their powers in:
  - (a) good faith and for a proper purpose; and
  - (b) a manner they believe on reasonable grounds to be in the interests of the person in whose interests they were appointed.
- (2) If a receiver appointed under a document acts or does not act in accordance with any directions given by the person in whose interests they were appointed, the receiver:
  - (a) is not in breach of the duty referred to in subclause (1)(b); but
  - (b) is still liable for any breach of the duty referred to in subclause (1)(a) or the duty referred to in clause 9.
- (2) Nothing in this clause or clause 9 limits or affects clause 10.

### **9 Other interests receiver must consider**

To the extent consistent with clause 8, a receiver must exercise their powers with reasonable regard to the interests of:

- (a) the grantor; and
- (b) persons claiming, through the grantor, interests in the property in receivership; and
- (c) unsecured creditors of the grantor; and
- (d) guarantors who may be called on to fulfil obligations of the grantor.

### **10 Duty of receiver selling property**

A receiver who exercises a power of sale of property in receivership owes a duty to obtain the best price reasonably obtainable as at the time of sale to:

- (a) the grantor; and

- (b) persons claiming, through the grantor, interests in the property in receivership; and
- (c) unsecured creditors of the grantor; and
- (d) guarantors who may be called on to fulfil obligations of the grantor.

### **11 Liability for breach of duty imposed by clause 10**

Despite any written law or other law or anything contained in the document appointing the receiver:

- (a) a receiver is still liable for a breach of the duty imposed by clause 10 even though the receiver was acting as the grantor's agent or under a power of attorney from the grantor; and
- (b) the receiver is not entitled to compensation or indemnity from the property in receivership or the grantor in respect of any liability incurred by the receiver arising from a breach of the duty imposed by clause 10.

### **12 Duty in relation to money**

A receiver must keep money for the property in receivership separate from:

- (a) 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.

### **13 Accounting records**

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

**14 Duty to notify breaches of Acts**

- (1) A receiver of a grantor that is a company who considers that the company or any director or officer of the company has committed an offence against this Act, or the Companies Act must report that fact to the Registrar.
- (2) A report made under subclause (1), and any communications between the receiver and Registrar relating to that report, are protected by absolute privilege.
- (3) Nothing in subclause (1) imposes a duty on a receiver to investigate whether any offence of the kind referred to in that subclause has been committed.
- (4) Every receiver who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding VT25,000.

**Division 2 Failure to Comply with Duties**

**15 Court may grant relief to Receiver**

- (1) If the Court is satisfied that there is, or has been, a failure by a receiver to comply with any duty imposed under this Part, the Court may:
  - (a) relieve the receiver of the duty to comply, wholly or in part; or
  - (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply to the extent specified in the order.
- (2) No application may be made to the Court in relation to a failure to comply unless:
  - (a) notice of the failure to comply has been served on the receiver not less than 5 working days before the date of the application; and
  - (b) as at the date of the application, there is a continuing failure to comply.

**16 Prohibition order**

- (1) The Court must make an order prohibiting a person from acting as a receiver for a period not exceeding 5 years if the Court is satisfied that the person is unfit to act as a receiver by reason of:
  - (a) persistent failures to comply; or
  - (b) the seriousness of a failure to comply.
- (2) A person to whom a prohibition order applies must not:
  - (a) act as a receiver in any receivership;
  - (b) act as a liquidator in any liquidation.
- (3) In the absence of special reasons to the contrary, evidence of the following is evidence of persistent failures to comply:
  - (a) that on 2 or more occasions within the preceding 5 years, a Court has made an order to comply in respect of the same person; or
  - (b) that on 2 or more occasions within the preceding 5 years, an application for an order to comply has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing.

**17 Who may apply for orders**

An application for an order under clause 15 or 16 or both may be made by:

- (a) the Registrar; or
- (b) a receiver; or
- (c) a person seeking appointment as a receiver; or
- (d) the grantor; or
- (e) a person with an interest in the property in receivership; or

- (f) a creditor of the grantor; or
- (g) a guarantor of an obligation of the grantor; or
- (h) if the grantor is a company, a liquidator of the grantor; or
- (i) if the grantor is a person who has been adjudged bankrupt, the Official Receiver of the estate of the grantor.

**18 Court orders: general**

- (1) In making an order under clause 15 or 16 or both, the Court may:
  - (a) extend the time for compliance; or
  - (b) impose any conditions; or
  - (c) make any ancillary orders.
- (2) A copy of every order made under clause 15 or 16 must, within 10 working days of the order being made, be delivered by the applicant to the Registrar of the Court who must keep it on a public file indexed by reference to the name of the receiver concerned.

**PART 4 LIABILITY OF RECEIVERS**

**Division 1 Liability**

**19 General liability of receiver**

- (1) Subject to subclauses (2) and (3), a receiver is personally liable:
  - (a) on a contract entered into by the receiver in the exercise of any of the receiver's powers; and
  - (b) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before the appointment of the receiver if notice of the termination of the contract is not lawfully given within 10 working days after the date of appointment; and

- (c) for the payment of remuneration under any contract with a director of a grantor if the receiver has expressly confirmed the contract.
- (2) A contract referred to in subclause (1)(a) may exclude or limit the personal liability of a receiver who is not appointed by the Court.
- (3) The Court may, on the application of a receiver and on any conditions that the Court thinks fit, extend the period within which notice of the termination of a contract is required to be given under subclause (1)(b).
- (4) Every application must be made before the expiry of the 10-day working period.

## **20 Liability for rent and other payments**

- (1) Subject to subclauses (2) and (3), a receiver is personally liable, to the extent specified in subclause (2), for rent and any other payments becoming due under an agreement subsisting at the date of the receiver's appointment relating to the use, possession, or occupation by the grantor of property in receivership.
- (2) The liability of a receiver under subclause (1) is limited to that portion of the rent or other payments which is attributable to the period commencing 10 working days after the date of the appointment of the receiver and ending on whichever is the earlier of:
  - (a) the date on which the receivership ends; or
  - (b) the date on which the grantor ceases to use, possess, or occupy the property.
- (3) The Court may, on the application of a receiver:
  - (a) limit the liability of the receiver to a greater extent than that specified in subclause (2); or
  - (b) excuse the receiver from liability under subclause (1).
- (4) Nothing in subclauses (1) or (2):

- (a) must be taken as giving rise to an adoption by a receiver of an agreement referred to in subclause (1); or
- (b) renders a receiver liable to perform any other obligation under the agreement.

## **Division 2 Relief from Liability**

### **21 Receiver is entitled to indemnity**

- (1) A receiver is entitled to an indemnity out of the property in receivership in respect of their personal liability under clauses 19 or 20.
- (2) Nothing in this clause or clauses 19 or 20:
  - (a) limits any other right of indemnity to which a receiver may be entitled; or
  - (b) limits the liability of a receiver on a contract entered into without authority; or
  - (c) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

### **22 Court may relieve receiver from personal liability**

- (1) The Court may relieve a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if it is satisfied that:
  - (a) the liability was incurred solely by reason of a defect in the appointment of the receiver or in the document or order of the Court by or 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 exercise its powers under subclause (1) on any conditions that it thinks fit.

- (3) A person in whose interests a receiver was appointed is liable, on any conditions that the Court thinks fit, to the extent to which the receiver is relieved from liability by the Court.

## **PART 5 COURT SUPERVISION OF RECEIVERS**

### **23 Court directions**

- (1) The Court may, on the application of a receiver:
- (a) give directions in relation to any matter arising in connection with the carrying out of the receivership by the receiver; or
  - (b) revoke or vary those directions.
- (2) Subject to subclause (3), it is a defence to a claim against a receiver in relation to any act or omission by the receiver that the receiver acted or omitted to act in accordance with a direction given under subclause (1).
- (3) The Court may, on the application of a person referred to in clause 18, order that, by reason of the circumstances in which a direction was obtained under subclause (1), a receiver is not entitled to the protection given by subclause (2).

### **24 Court orders: receiver's remuneration and validity of appointment**

- (1) The Court may, on the application of a person referred to in subclause (2):
- (a) in respect of any period, review or fix the remuneration of a receiver at a level which is reasonable in the circumstances; or
  - (b) to the extent that an amount retained by a receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount; or
  - (c) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.
- (2) Any of the following persons may apply to the Court:
- (a) the receiver;



- (b) the grantor;
  - (c) a creditor of the grantor;
  - (d) a person claiming, through the grantor, an interest in the property in receivership;
  - (e) the directors of the grantor or, in the case of a grantor that is in liquidation, the directors of the grantor at the time the liquidator was appointed;
  - (f) if the grantor is a company, a liquidator;
  - (g) if the grantor is a person who has been adjudged bankrupt, the Official Receiver of the estate of the grantor.
- (3) The Court may, on the application of a person referred to in subclause (2), revoke or vary an order made under subclause (1).

**25 Court orders are additional to other Court powers**

The powers given by clauses 23 and 24:

- (a) are in addition to any other powers the Court may exercise under this Act or any other Act; and
- (b) may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

**SCHEDULE 10**  
**OFFICE OF RECEIVER**

(Section 59(3))

**1 Persons not to be appointed receiver**

The following persons must not be appointed or act as a receiver:

- (a) a body corporate;
- (b) a person who is under 21 years of age;
- (c) a creditor of the grantor;
- (d) a person who is, or who has within the period of 2 years immediately before the commencement of the receivership been:
  - (i) a director or employee of the grantor; or
  - (ii) a director or employee of a mortgagee of the property in receivership;
- (e) a person who has, or who has had within the period of 2 years before the commencement of the receivership, an interest, whether direct or indirect, in a share issued by the grantor;
- (f) a person who is an undischarged bankrupt;
- (g) a person who is mentally incapacitated;
- (h) a person in respect of whom an order has been made under clause 16 of Schedule 9;
- (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under, 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 Validity of acts of receivers**

- (1) Subject to subclause (2), no act of a receiver is invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorised to do the act.
- (2) No transaction entered into by a receiver is invalid merely because the receiver was not validly appointed or is not authorised to enter into the transaction unless the person who deals with the receiver knows, or ought to know, that the receiver was not validly appointed or did not have authority to enter into the transaction.

## **3 Court may declare whether receiver validly appointed**

The Court may, in respect of a person who is disqualified under clause 1 to become or remain a receiver, or fails to comply with an order made under clause 16 of Schedule 9:

- (a) order that the person may be appointed and act or may continue to act as a receiver, despite clause 1; or
- (b) remove the person from office.

## **4 Court orders for protecting property on removal of receiver**

The Court may, on making an order that removes, or has the effect of removing, a receiver from office, make any orders that the Court 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 the possession or under the control of the receiver.

## **5 Vacancy in office of receiver**

The office of receiver becomes vacant if the person holding office resigns, dies, or is or becomes disqualified under clause 1.

**6 How receiver may resign**

- (1) A receiver appointed under a power conferred by a document may resign office by giving not less than 5 working days' written notice of their intention to resign to the person who appointed the receiver.
- (2) A receiver appointed by the Court must not resign office without first obtaining the leave of the Court to do so.

**7 Notice of vacancy**

- (1) Every person who vacates office as receiver (or if that person is unable to act, that person's legal representative) must:
  - (a) if the vacancy arose because of the disqualification of the person holding office as receiver, immediately notify the person who appointed the receiver; and
  - (b) if the receiver held office in relation to the property of a company, within 5 working days of the vacancy occurring, give written notice of the vacancy to the Registrar for registration in the register of charges kept by the Registrar; and
  - (c) in all cases, immediately give public notice of the vacancy.
- (2) A person who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding VT 25,000.

**8 Vacating receiver's successor to be helped**

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

## SCHEDULE 11 TRANSITIONAL PROVISIONS

- (1) The companies shown in the table below are in the process of being wound up in Vanuatu under the Companies Act [CAP 191] which ceases to apply in Vanuatu in respect of insolvencies on the commencement of this Act.
- (2) Against the name of each company in the table is shown the approximate amount held by the Official Receiver in respect of that company, and the claimants known to the Official Receiver.
- (3) The Official Receiver must publish the table and notice to claimants below within 3 months after the commencement of this Act.
- (4) The Official Receiver must notify each claimant identified in the table of the amount the Official Receiver believes the claimant is claiming, and give the claimant an opportunity to vary or withdraw the claim within 6 months after giving the notice.
- (5) No person is entitled to claim in liquidation against the Official Receiver in respect of any company named in the table unless that person is named in the table as a claimant, or notifies the Official Receiver of the person's claim within 6 months after the first publication of the notice under clause 3.
- (6) The Official Receiver may exclude any person as a claimant if so ordered by the Supreme Court or if the Official Receiver is satisfied that the person does not qualify as a claimant under the Companies Act No. 25 of 2012
- (7) The Supreme Court may make an order that this Schedule does not apply in respect of any particular company if an application is made by any creditor of the company or the Official Receiver, and the Court is satisfied that the liquidation should continue to be administered under the Companies Act No. 25 of 2012.
- (8) The Official Receiver must make pro rata payments to claimants within 12 months after the commencement of this Act.
- (9) The making of the payments referred to in clause 8 terminates the liquidation of the company concerned.

SCHEDULE 11  
TRANSITIONAL PROVISIONS

- (10) If any claimants cannot be located, or any payments are returned to the Official Receiver, the Official Receiver must pay the money concerned to the State to be held and administered as unclaimed money.
- (11) In publishing the table and notice to claimants below, the Official Receiver may also publish as many of the foregoing clauses of this Schedule as he or she considers appropriate.

No	Name	Type	Commenced	Status	Liquidator
1	New Hebrides Rural Development Ltd	LC	23-Apr-75	Open	OR
2	Development And Commercial Bank Ltd	LC	30-Apr-76	Open	OR
3	South Seas Lands (NH)	LC	22-Dec-76	Open	OR
4	Efate Construction Co. Ltd	LC	22-Dec-76	Open	OR
5	Lakeview Limited	LC	16-Dec-77	Open	OR
6	Mendana Developments Limited	LC	24-May-78	Open	OR
7	Clairefontaine Limited	LC	29-Nov-78	Open	OR
8	Planar Estate Limited	LC	4-Jul-79	Open	OR
9	Scaf	LC	22-Sep-81	Open	OR
10	Highpost Holdings Limited	LC	6-Oct-81	Open	OR
11	Vanuatu Home Furnishing Centre Limited	LC	22-Feb-84	Open	OR
12	Gailway Investment Management Limited	LC	14-Aug-85	Open	OR
13	Banks & Torres Shipping Co. Limited	LC	12-Mar-86	Open	OR
14	Whiteleigh Holdings (Vanuatu) Limited	LC	20-Jun-86	Open	OR
15	Issachar Dennis & Co Limited	LC	25-Mar-87	Open	OR
16	Societe Des Abbatoir De Santo Et Des Iles	LC	7-Oct-87	Open	OR
17	World Management (Pacific) Limited	LC	20-Nov-89	Open	OR
18	Societe D'elevage Du Sud Pacifique	LC	17-Aug-90	Open	OR
19	Vanuatu Trade Union	Un	5-Oct-90	Open	OR
20	Maldevco Limited	LC	27-Aug-91	Open	OR
21	Property & General Limited	LC	18-Dec-91	Open	OR
22	Societe Civil Du Titre 2.402	LC	3-Feb-92	Open	OR
23	Jet Services Limited	LC	14-Sep-92	Open	OR
24	Consolidated Services Limited	LC	1-Jul-94	Open	OR
25	Mccullen & Suarez Limited	LC	1-Jul-94	Open	OR
26	Buchanna Weir Limited	LC	1-Jul-94	Open	OR
27	Olilian Bank Limited	LC	30-Sep-96	Open	OR
28	South Pacific Stores Limited	LC	12-Aug-97	Open	OR

SCHEDULE 11  
TRANSITIONAL PROVISIONS

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29	Pacific Plumbing & Hardware Limited	LC	22-Sep-97	Open	OR
30	Tour Vanuatu Limited	LC	4-Aug-98	Open	OR
31	Port Vila Fisheries Limited	LC	17-Aug-99	Open	OR
32	South Pacific Fishing Company Limited	LC	17-Aug-99	Open	OR
33	Malogu Company Limited	LC	28-May-01	Open	OR
34	Clubinvest Limited	LC	21-Mar-06	Open	Neil Armstrong
35	Jasmine Holdings Limited	LC	22-Jun-06	Open	OR
36	Global Digital Transfers Inc	ICA	19-Sep-08	Open	OR
37	Vanuatu Indigenous Development Alliance Limited	LC	14-Oct-08	Open	Jonathan Law
38	Coconut Oil Production (Vanuatu) Limited	LC	18-Dec-08	Open	Roger Jenkins
39	Teouma Prawns Limited	LC	6 Sept 10	Open	OR
40	Laho Limited	LC	8Apr 11	Open	OR

**TABLE OF INSOLVENT COMPANIES UNDER THE  
COMPANIES ACT [CAP 191]**

**Date of First Publication:**

<b>Name of Company</b>	<b>Approximate amount held by Official Receiver</b>	<b>Names of Known Claimants</b>
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**NOTICE TO KNOWN CLAIMANTS AND OTHERS**

- (1) This is an important notice, and affects rights and entitlements under the liquidation of the above companies. If you are unsure of its effects on you, please contact the Official Receiver or seek legal advice.
- (2) If you have a claim against the Official Receiver in respect of any of the companies against which you are not shown as a claimant, you must notify the Official Receiver within 6 months of the Date of First Publication shown above. If you do not do this, your claim will not be valid and will be rejected.
- (3) If you are shown as a Known Claimant, you should hear from the Official Receiver within the next 2 months. If you do not, then please contact the Official Receiver (address details) with details of your address.
- (4) The amounts shown as held by the Official Receiver in respect of each company are approximate, and will vary because of a number of factors including:
  - (a) Investment performance;
  - (b) Official Receiver's costs; including a distribution of unallocated costs across all companies affected;
  - (c) Verification and audit of accounts and records of liquidations; and
  - (e) Any further recovery of assets or identification of claims by the Official Receiver.
- (5) Distributions will be made towards the end of the 12 month period that began with the commencement of the Companies (Insolvency and Receivership) Act No. 2 of 2013.



SCHEDULE 11  
TRANSITIONAL PROVISIONS

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(6) All enquiries regarding these liquidations should be directed to:

[Address and contact details for Official Receiver]