

ACTS SUPPLEMENT

to The Uganda Gazette No. 57 Volume CIV dated 23rd September, 2011.

Printed by UPPC, Entebbe, by Order of the Government.

Act 14

*Insolvency Act*

2011

THE INSOLVENCY ACT, 2011.

ARRANGEMENT OF SECTIONS.

*Section.*

PART I—PRELIMINARY.

1. Commencement.
2. Interpretation.

PART II—INABILITY TO PAY DEBTS: CREDITORS' CLAIMS:  
VOIDABLE TRANSACTIONS.

3. Inability to pay debts.
4. Statutory demand.
5. Setting aside a statutory demand.  
*Creditor's claims.*
6. Ascertaining amount of claim and interest.
7. Fines and penalties.
8. Claim of an unascertained amount.
9. Mutual credit and set-off.
10. Claims by unsecured creditors.
11. Claims by secured creditors.
12. Preferential debts.
13. Non-preferential debts.
14. Surplus assets.

*Voidable transactions.*

15. Preferences.
16. Transactions at undervalue.
17. Voidable charges.
18. Insider dealings.
19. Procedure for setting aside voidable transactions.

PART III—INDIVIDUAL INSOLVENCY.

20. Petition for bankruptcy.
21. Statement of affairs.
22. Public examination of debtor.
23. Inquiry into debtor's dealings and property.

## Section.

24. Official receiver's notice of commencement of bankruptcy and creditor's first meeting.
25. Appointment of trustee.
26. Trustee's notice of bankruptcy and particulars.
27. Effect of bankruptcy order.
28. Special manager of bankrupt's estate.
29. Duties of a trustee.
30. Trustee's notice to creditors.

*Bankrupt's estate.*

31. Bankrupt's estate.
32. Property acquired after commencement of bankruptcy.

*General powers of trustees and conduct of bankruptcy.*

33. Trustee's power to obtain documents.
34. Trustee's power to allow bankrupt to manage property.
35. Trustee's power to disclaim onerous property.
36. Official name of trustee.
37. Vacation of office by trustee.
38. Duties of a bankrupt.
39. Compliance order.
40. Search and seizure.
41. Termination of bankruptcy.
42. Discharge.
43. Effect of discharge.
44. Annulment, revocation or setting aside of bankruptcy order.
45. Consequences of bankruptcy.

*Rights of creditors.*

46. Creditor's meetings during bankruptcy.
47. Committee of inspection.

*Declaration and distribution of bankrupt's estate.*

48. Declaration and distribution of dividends.
49. Final distribution.
50. Second bankruptcy.

*Supervision and enforcement by the court.*

51. Court supervision of trustee.
52. Enforcement of trustee's duties.

*Bankruptcy offences.*

53. Absconding.
54. Bankrupt not to obtain credit and engage in business without disclosing bankruptcy.
55. Failure to keep proper accounts of business.

PART IV—CORPORATE INSOLVENCY

*Liquidation.*

56. Application of liquidation provisions to foreign companies.
57. Modes of liquidation.

*Voluntary liquidation.*

58. Voluntary liquidation.
59. Notice of resolution for voluntary liquidation.

*Consequences of voluntary liquidation.*

60. Effect of voluntary liquidation on the business and status of company.
61. Transfers or alterations after commencement of voluntary liquidation are void.

*Members' voluntary liquidation.*

62. Power of a company to appoint and fix remuneration of liquidators.
63. Power to fill vacancy in office of liquidator.
64. Power of liquidator to accept shares or other interests as consideration for sale of property of company.
65. Duty of liquidator to call creditors' meeting in case of insolvency.

## Section.

66. Duty of liquidator to call general meeting at end of each year.
67. Final meeting and dissolution.
68. Alternative provisions as to annual and final meetings in case of insolvency.

*Creditors' voluntary liquidation.*

69. Meeting of creditors.
70. Appointment of liquidator.
71. Appointment of committee of inspection.
72. Proceedings of committee of inspection.
73. Fixing of liquidator's remuneration and cessation of directors' powers.
74. Power to fill vacancy in office of liquidator.
75. Power of liquidator to accept shares etc in a creditors' voluntary liquidation.
76. Duty of liquidator to call meetings of company and of creditors at end of each year.
77. Final meeting and dissolution.

*Members' and creditors' voluntary liquidation.*

78. Members' and creditors' voluntary liquidation.
79. Distribution of the property of a company.
80. Powers and duties of liquidator in voluntary liquidation.
81. Power of court to appoint and remove liquidator in voluntary liquidation.
82. Notice by liquidator of his or her appointment.
83. Arrangement when binding on creditors.
84. Power to apply to court to have questions determined or powers exercised.
85. Costs of voluntary liquidation.
86. Saving for rights of creditors and contributories.

*Liquidation subject to supervision by court.*

87. Power to order liquidation subject to supervision.
88. Effect of petition for liquidation subject to supervision.
89. Power of court to appoint or remove liquidators.
90. Effect of supervision order.

*Liquidation by court.*

91. Jurisdiction.
92. Circumstances in which court may appoint liquidator.
93. Commencement of liquidation by court.
94. Provisional liquidator.
95. Notice of liquidation.
96. Notice of appointment and of liquidation.
97. Effect of liquidation.
98. Special manager of company.
99. Fundamental duties of a liquidator.
100. General duties of liquidator.

*General provisions relating to liquidation.*

101. General powers of liquidator.
102. Liquidator's preliminary report.
103. Liquidator's interim reports.
104. Liquidator's final report.
105. Liquidator's powers to obtain documents.
106. Liquidator's power to examine and obtain information.
107. Liquidator's power to disclaim onerous property.
108. Pooling of assets of associated companies.
109. Vacation of the office of liquidator.
110. Duties of directors, secretary and employees.
111. Compliance order.
112. Search and seizure.
113. Absconding, during or pending liquidation.
114. Completion of liquidation.

*Rights of creditors and shareholders.*

115. Creditors' or shareholders' meetings during liquidation.
116. Committee of inspection during liquidation.

*Supervision and enforcement by the court.*

117. Court supervision of liquidation.
118. Enforcement of liquidator's duties.

## PART V—ARRANGEMENT IN RESPECT OF INDIVIDUALS.

*Interim order*

119. Interim order.
120. Application for interim order.
121. Duration of interim order.
122. Duties of debtor.
123. Report to court.
124. Creditors' meeting to consider proposed arrangement.

*Arrangement*

125. Arrangement order.
126. Notice of arrangement.
127. Effect of arrangement.
128. Function of supervisor.
129. Creditors' meetings during arrangement.
130. Remuneration of supervisor.
131. Vacation of the office of supervisor.
132. Variation of arrangement.
133. Termination of arrangement.
134. Termination of arrangement by court.
135. Notice on termination of arrangement.

*Supervision and enforcement by the court.*

136. Court supervision of supervisor.
137. Enforcement of supervisor's duties.

## PART VI—ADMINISTRATION IN RESPECT OF COMPANIES.

138. Application of administration provisions to foreign companies.

*Provisional administration.*

139. Appointment of provisional administrator.
140. Fundamental duties of provisional administrator.
141. General duties of provisional administrator.
142. Commencement of provisional administration.
143. Effect of provisional administration.
144. Notice of provisional administration.

145. Duration of provisional administration.
146. Creditors' meeting to consider appointment of provisional administrator.
147. Provisional administrator's proposals.
148. Creditors' meeting to consider proposals.
149. Requirements of administration deed.
150. Execution of administration deed.
151. Notice of termination of provisional administration.
152. Transition to liquidation.

*Conduct of provisional administration.*

153. Powers of provisional administrator.
154. Provisional administrator's relationship with third parties.
155. Role of director's and secretary during provisional administration.
156. Compliance order.
157. Disposal of charged property during provisional administration.
158. Liabilities of provisional administrator.
159. Provisional administrator's right to indemnity.
160. Relief from liability for provisional administrator.
161. Provisional administrator's reports to the official receiver.

*Administration.*

162. Commencement of administration.
163. Notice of administration.
164. Effect of administration.
165. Function of administrator.
166. Creditors' meetings during administration.
167. Variation of administration deed by creditors.
168. Termination of administration.
169. Termination of administration by court.
170. Notice on termination of administration.

*Provisional administrators and administrators.*

171. Remuneration of provisional administrator or administrator.
172. Vacation of the office of provisional administrator or administrator.

## Section.

- 173. Court supervision of provisional administrator or administrator.
- 174. Enforcement of provisional administrator's or administrator's duties.

## PART VII—CORPORATE AND INDIVIDUAL RECEIVERSHIP.

- 175. Application of receivership provisions to foreign companies.
- 176. Commencement of receivership.
- 177. Liability for invalid appointment of receiver.
- 178. Notice of receivership.
- 179. Fundamental duty of receiver.
- 180. General duties of receiver.
- 181. Powers of receiver.
- 182. Receiver's relationship with third parties.
- 183. Role of grantor in receivership.
- 184. Rights and obligations of a grantor in receivership.
- 185. Compliance order.
- 186. Liabilities of receiver.
- 187. Receiver's right to indemnity.
- 188. Relief from liability for receiver.
- 189. Receiver's preliminary report.
- 190. Receiver's other reports.
- 191. General provisions on reports.
- 192. Priorities for application of proceeds of receivership.
- 193. Vacation in office of receiver.
- 194. Powers of receiver on liquidation or bankruptcy.
- 195. Court supervision of receiver.
- 196. Enforcement of receiver's duties.
- 197. Termination of receivership by court.

PART VIII—OFFICIAL RECEIVER AND REGULATION OF  
INSOLVENCY PRACTITIONERS.*Official receiver.*

- 198. Appointment of official receiver.
- 199. Powers of the official receiver.
- 200. Official receiver's seal.

*Companies liquidation account.*

201. Companies liquidation account.
202. Investment of surplus funds.
203. Meaning of “insolvency practitioner”.
204. Qualifications to act as insolvency practitioners.
205. Acting as insolvent practitioner without qualification.
206. Persons disqualified from acting as liquidator, provisional liquidator, administrator or provisional administrator.
207. Persons disqualified from acting as receiver.
208. Persons disqualified from acting as trustee or supervisor.
209. Prohibition order.

*Other provisions regarding insolvency practitioners.*

210. Appointment of two or more insolvency practitioners.
211. Qualified privilege in respect of proceedings for defamation.

PART IX—CROSS-BORDER INSOLVENCY.

*Reciprocity with other states or territories.*

212. Declaration of reciprocating states or territories and courts.
213. Effect of order of reciprocating against property owner in Uganda.
214. Vesting of bankrupt’s property in Uganda, in trustee appointed in reciprocating territory.
215. Local powers of official receiver, appointed in a reciprocating state.
216. Official receiver in Uganda to act as agent of reciprocating state in insolvency matters.
217. Mode of requesting official receiver to act as agent for debts in Uganda.
218. Duties of the official receiver acting as agent to remit proceeds.
219. Transmission of proofs of debts in Uganda.
220. Power of courts in Uganda to make orders.
221. Enforcement of warrant or order of reciprocating court in Uganda.
222. Limitation on the powers of the courts.
223. Concurrent bankruptcy proceedings.

*Section.*

- 224. Power of official receiver of Uganda to require receiver in reciprocating state or territory.
- 225. Power of Chief Justice to make rules for this Part.

*General provisions*

- 226. Interpretation of sections 227 to 252.
- 227. Application of sections 228 to 252.
- 228. Conflicting international obligations.
- 229. Authorisation to act in a foreign state.
- 230. Additional assistance under other laws.

*Access of foreign representative and creditors to High Court.*

- 231. Right of direct access.
- 232. Participation of a foreign representative in proceedings under this Act.
- 233. Access of foreign creditors to a proceeding under this Act.
- 234. Notification to foreign creditors of a proceeding under this Act.

*Recognition of a foreign proceeding and relief.*

- 235. Application for recognition of foreign proceedings.
- 236. Presumptions concerning recognition.
- 237. Decision to recognise foreign proceedings.
- 238. Subsequent information.
- 239. Relief that may be granted upon application for recognition of a foreign proceeding.
- 240. Effects of recognition of a foreign main proceeding.
- 241. Relief that may be granted upon recognition of a foreign proceeding.
- 242. Protection of creditors and other interested persons.
- 243. Actions to avoid acts detrimental to creditors.
- 244. Intervention by a foreign representative in proceedings in Uganda.

*Cooperation with foreign courts and foreign representatives.*

- 245. Cooperation and direct communication between courts of Uganda and foreign courts and foreign representatives.
- 246. Cooperation and direct communication between the trustee or liquidator and foreign courts and foreign representatives.
- 247. Forms of cooperation.

*Concurrent proceedings.*

- 248. Commencement of a proceeding under this Act after recognition of a foreign main proceeding.
- 249. Coordination of a proceeding under this Act and a foreign proceeding.
- 250. Coordination of more than one foreign proceeding.
- 251. Presumption of insolvency based on recognition of a foreign main proceeding.
- 252. Rule of payment in concurrent proceedings

PART X—GENERAL

- 253. Application of fines.
- 254. Jurisdiction.
- 255. Validity of action notwithstanding defect in appointment or qualification.
- 256. Public notices.
- 257. Disposition of property after commencement of liquidation by court is void.
- 258. Listed company under insolvency proceedings to notify Capital Markets Authority.
- 259. General penalty.
- 260. Regulations.
- 261. Minister's power to amend Schedules.
- 262. Repeal.
- 263. Transitional provisions.
- 264. Saving of rules of equity and common law.

**SCHEDULES.**

First Schedule—Currency point.

Second Schedule—Prescribed amount.

Third Schedule—Proceedings at meetings of creditors.

Fourth Schedule—Liquidation of assets of foreign company.

**THE INSOLVENCY ACT, 2011**

**An Act to provide for receivership, administration, liquidation, arrangements, bankruptcy, the regulation of insolvency practitioners and cross border insolvency; to amend and consolidate the law relating to receiverships, administration, liquidation, arrangements and bankruptcy; and to provide for other related matters.**

DATE OF ASSENT: 8th August, 2011.

*Date of Commencement:* See section 1.

BE IT ENACTED by Parliament as follows:

**PART I—PRELIMINARY.****1. Commencement.**

This Act shall come into force on a date appointed by the Minister by statutory instrument and different dates may be appointed for different provisions.

**2. Interpretation.**

In this Act, unless the context otherwise requires—

“administrative receiver” means—

- (a) a receiver appointed over the whole or substantially the whole of the property and undertaking of a grantor; or

- (b) a person who would be a receiver but for the appointment of some other person as the receiver of part of a grantor's property;

“administrator” means a person specified as administrator in an administration deed under section 162;

“admissible” with respect to a claim, means a claim that may be admitted in liquidation or bankruptcy;

“appointing document” means the writing by or under which an appointment is made and includes a court order;

“arrangement” means a composition in satisfaction of an individual's debts or a scheme of arrangement of an individual's affairs or other arrangement in respect of which an arrangement order is made under section 125;

“arrangement order” means an order made to give effect to an arrangement;

“asset” means an asset of a company in liquidation or in the estate of a bankrupt;

“associated company” means a company or other business organisation in which the insolvent company holds majority or controlling shares ;

“bankrupt” means an individual in respect of whom a bankruptcy order has been made under section 20;

“bankruptcy debt”, means any of the following—

- (a) a debt or liability to which the bankrupt is subject after the commencement of the bankruptcy;
- (b) a debt or liability to which the bankrupt may become subject after the commencement of the bankruptcy by reason of any obligation incurred before the commencement of the bankruptcy and includes after-discharge from bankruptcy; or

(c) any interest that may be claimed in the bankruptcy;

and in determining for the purposes of this Act, whether a liability in tort is a bankruptcy debt, the bankrupt is deemed to become subject to that liability by reason of an obligation incurred at the time when the cause of action arose;

“bankruptcy’s estate” has the meaning under section 31;

“bankruptcy order” means an order adjudicating an individual bankrupt;

“charge” means an interest in—

- (a) a chattel paper;
- (b) a document of title;
- (c) goods;
- (d) an intangible;
- (e) money;
- (f) a negotiable instrument; or
- (g) a security,

created or provided by a transaction that in substance secures payment or performance of an obligation, without regard to the form of the transaction or the identity of the person who has title to the collateral and includes a mortgage or lien;

“claim” means a claim in a liquidation or bankruptcy;

“committee of inspection” means a committee of inspection appointed under sections 47, 71 or 116;

“company” has the meaning assigned to it in the Companies Act;

“court” means the High Court or a court presided over by a chief magistrate;

“currency point” has the value assigned to it in the First Schedule;

“debt” means a debt or liability, present or future, certain or contingent and includes an ascertained debt or liability for damages;

“director” means—

- (a) in relation to a company, any person occupying the position of director under any title;
- (b) in respect of a foreign company, includes an agent, officer or employee responsible for the business of the foreign company in Uganda; or
- (c) in respect of any other body corporate, means a person with functions similar to those of a director, but does not include a receiver, provisional administrator or administrator;

“document” includes an invoice, order, letter, record, summons, notice, order other legal process, register, index, report, certificate or accounts, in any form, including any writing, material and information stored by means of any mechanical or electronic device and any material derived from the device;

“foreign company” means a foreign company registered under the Companies Act;

“grantor” means a person in respect of whose property a receiver is or may be appointed;

“individual” with respect to Parts II, III and V, means a debtor in respect of whom a bankruptcy order is subsequently made;

“insolvency” includes bankruptcy;

“insolvency practitioner” means a person who is not an official receiver who is qualified to act as an insolvency practitioner within the meaning of section 203;

“instrument of incorporation” means the documents used to incorporate a company under the Companies Act;

“lifting the veil” means the power which the court has where the shareholders or directors of the company in question or a person in a similar position have used their business to defraud creditors of the business or to do some other wrongful or illegal act, and the court ignores the protection from liability offered by the corporation or limited liability status of the business and makes the shareholders or directors or other person personally liable for debts, liabilities and obligations of the company;

“liquidator” means a liquidator of a company appointed under sections 62 or 70; and includes a provisional liquidator;

“Minister” means the Minister responsible for Justice;

“official receiver” means a person appointed under section 198;

“preferential debts” means the debts referred to in section 12 (4), (5) and (6) ;

“prescribed amount” means the amount specified in the Second Schedule;

“property” includes money, goods, things in action, proceeds, land and includes every description of property wherever situated, obligations, interest, whether present, future,, vested or contingent, arising out of or incidental to property;

“proceeds” means identifiable or traceable personal property in any form derived directly or indirectly from any dealing with the collateral or proceeds of the collateral, and includes—

- (a) a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds; and
- (b) a payment made in total or partial discharge or redemption of an intangible, a negotiable instrument, a security or chattel paper;

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

“provisional administrator” means a provisional administrator appointed under section 139;

“provisional liquidator” means a provisional liquidator appointed under section 94;

“public notice” means notice given in accordance with section 256;

“receiver” means a receiver or a manager and includes a receiver and manager or administrative receiver in respect of any property and any person appointed as receiver—

- (a) by or under any document; or
- (b) by the court in the exercise of a power to make such an appointment given by any Act or any rule of 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;

“registrar” has the meaning assigned to it in the Companies Act;

“secretary” in relation to a company means a person appointed to perform the duties of secretary under the Companies Act;

“secured creditor” means a creditor who holds in respect of a debt or obligation a charge over property;

“security interest” means a right that is enforceable against persons generally, arising out of an interest in a chattel paper, a document of title, goods, an intangible, money, or a negotiable instrument and includes—

- (a) a fixed charge;
- (b) a floating charge;
- (c) an interest created or provided for by—
  - (i) a chattel mortgage;
  - (ii) a conditional sale agreement including an agreement to sell subject to retention of title;
  - (iii) a hire purchase agreement;
  - (iv) a pledge;
  - (v) a security trust deed;
  - (vi) a trust receipt;
  - (vii) an assignment;
  - (viii) a consignment;
  - (ix) a lease; or
  - (x) a transfer of chattel paper,

which secures payment or performance of an obligation; without regard to the form of the transaction and without regard to the identity of the person who has title to the collateral, including where title to the collateral is in the secured party.

“shareholder” has the meaning assigned to it in the Companies Act;

“special resolution” has the same meaning as in the Companies Act;

“statutory demand” means a demand made in accordance with section.4;

“transaction” includes a gift, settlement, agreement or arrangement and references to entering into a transaction are construed accordingly;

“transferee company” means a company to which a transfer is being made;

“transferor company” means the company effecting a transfer;

“trustee”, in relation to bankruptcy means the trustee of the bankrupt’s estate;

“working day” means any day other than a Saturday, Sunday or a public holiday;

## PART II—INABILITY TO PAY DEBTS, CREDITORS’ CLAIMS AND VOIDABLE TRANSACTIONS.

### 3. Inability to pay debts.

(1) Subject to subsection (2) and unless the contrary is proved, a debtor is presumed to be unable to pay the debtor’s debts if—

- (a) the debtor has failed to comply with a statutory demand;
- (b) the execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- (c) all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property.

(2) On a petition to the court for the liquidation of a company or bankruptcy order, evidence of failure to comply with a statutory demand by the creditor, shall not be admissible as evidence of inability to pay debts unless the application is made within 30 working days after the last date for compliance with the demand.

(3) Subsection (1) does not prevent proof of inability to pay debts by other means.

(4) In determining whether a debtor is unable to pay the debtor's debts, contingent or prospective debts may be taken into account.

(5) A petition to the court for the liquidation of a company or bankruptcy order on the ground of inability to pay 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 of inability to pay debts has been made out.

#### 4. Statutory demand.

(1) A demand by a creditor in respect of a debt made in accordance with this section, shall be a demand notice and shall constitute a statutory demand.

(2) A statutory demand shall—

- (a) be made in respect of a debt that is not less than the prescribed amount and in the case of a debt owed by—
  - (i) an individual is a judgement debtor; or
  - (ii) a company is an ascertained debt, but need not be a judgement debt;
- (b) be in the prescribed form;
- (c) except where the debt is a judgement debt, be verified by a statutory declaration attached to the demand;
- (d) be served on the debtor; and
- (e) require the debtor, to pay the debt or compound with the creditor or give a charge over property to secure payment of the debt, to the reasonable satisfaction of the creditor, within twenty working days after the date of service or a longer period as the court may order.

**6. Setting aside a statutory demand.**

(1) The court may, on the application of the debtor, set aside a statutory demand.

(2) An application under subsection (1) shall—

- (a) be made within ten working days after the date of service of the demand;
- (b) be supported by an affidavit; and
- (c) be served on the creditor with the affidavit, within ten working days after the date of service of the demand.

(3) The court may, for sufficient cause, extend the time for making or serving an application to set aside a statutory demand and at the hearing of the application, 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 whether the debt is owing or is due;
- (b) the debtor appears to have a counterclaim, set-off or cross-demand and the amount specified in the demand less the amount of the counterclaim, set-off or cross-demand is less than the prescribed amount;
- (c) that the creditor holds some property in respect of the debt claimed by the debtor and that the value of the security is equivalent to or exceeds the full amount of the debt; or
- (d) the demand ought to be set aside on such grounds as it deems fit.

(5) On the hearing of the application, where the court is satisfied that there is a debt due by the debtor to the creditor, that is not the subject of a substantial dispute or is not subject to a counterclaim, set-off or cross-demand, the court may—

- (a) order that the debtor pay the debt within a specified period and that, in default of payment, the creditor may immediately petition for a liquidation or bankruptcy order; or
- (b) dismiss the application and immediately make an order under section 20 or 92, on the ground of inability to pay debts.

(6) Where the court makes a liquidation or bankruptcy order under subsection (5) (a), failure by the debtor to pay the debt within the specified period shall, be presumed to be inability to pay debts.

(7) A statutory demand shall 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.

(8) For the purposes of subsection (7), ‘defect’ includes a material misstatement of the amount due to the creditor and a material misdescription of the debt referred to in the demand.

(9) An order under this section, may be made subject to conditions set by court.

*Creditor's claims.*

**6. Ascertaining amount of claim and interest.**

(1) The amount of a claim shall be ascertained as at the date of commencement of the liquidation or bankruptcy.

(2) Where a claim bears interest, the interest payable in respect of any period after the commencement of the liquidation or bankruptcy shall be suspended.

(3) The amount of a claim based on a debt denominated in a currency other than Uganda Shillings, shall be converted into Uganda Shillings at the rate of exchange on the date of commencement of the liquidation or bankruptcy or if there is more than one rate of exchange on that date, at the average of those rates.

## **7. Fines and penalties.**

A fine or other monetary penalty imposed, whether before or after the commencement of the liquidation or bankruptcy, in respect of an offence committed before the commencement of the liquidation or bankruptcy and costs ordered to be paid with respect to proceedings for the offence, is admissible in liquidation or bankruptcy.

## **8. Claim of an unascertained amount.**

(1) Where a claim is subject to a contingency, is for damages or for some other reason the amount of the claim is not certain, the liquidator or trustee shall—

- (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, trustee or any claimant who is aggrieved by an estimate made by the liquidator or trustee, the court shall determine the amount of the claim as it deems fit.

## **9. Mutual credit and set-off.**

(1) Subject to section 17, where there have been mutual credits, mutual debts or other mutual dealings between a company or an individual and a person who, but for the operation of this section, would seek to have a claim admitted—

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

- (b) an amount due from one party shall be set off against any amount due from the other party; and
- (c) only the balance of the account may be claimed in liquidation or bankruptcy or is payable to the company or the bankrupt's estate.

(2) A person shall not be entitled, under this section, to claim the benefit of any set-off against the property of a debtor in any case where the person is reasonably expected to have foreseen that the debtor would be likely to be unable to pay his or her debts at the time of giving credit to the debtor.

### **10. Claims by unsecured creditors.**

(1) Unless otherwise required by the liquidator or trustee, an unsecured creditor may make a dated claim informally in writing.

(2) Where the liquidator or trustee requires a claim to be made formally, the claimant shall submit a claim verified by a statutory declaration—

- (a) setting out in full the particulars of the claim; and
- (b) identifying documents, if any, that evidence or substantiate the claim.

(3) The liquidator or trustee may require the production of any document referred to in subsection (2) (b).

(4) The liquidator or trustee may admit or reject any claim in whole or in part and if the liquidator or trustee subsequently considers that a claim was wrongly admitted or rejected in whole or in part, he or she may revoke or amend the decision.

### **11. Claims by secured creditors.**

(1) A secured creditor shall, as soon as practicable after public notice has been given of the liquidation or bankruptcy, deliver to the liquidator or trustee written notice of any debt secured by a charge over any asset, including particulars of the asset subject to the charge and the amount secured.

(2) A secured creditor may—

- (a) realise any asset subject to a charge, where he or she is entitled to do so;
- (b) claim as a secured creditor; or
- (c) surrender the charge for the general benefit of creditors and claim as an unsecured creditor for his or her whole debt.

(3) A secured creditor who realises an asset subject to a charge—

- (a) may claim as an unsecured creditor for any balance due, after deducting the net amount realised; and
- (b) shall account to the liquidator or trustee for any surplus remaining from the net amount realised after satisfaction of the whole debt, including any interest payable in respect of that debt up to the time of its satisfaction and after making proper payments to the holder of any other charge over the asset subject to the charge.

(4) Where a creditor claims as a secured creditor, the claim shall be verified by a statutory declaration and shall—

- (a) set out in full the particulars of the claim;
- (b) set out in full the particulars of the charge including the date on which it was given; and
- (c) identify any documents that substantiate the claim and the charge and sections 6 and 8 shall apply to such a claim.

(5) The liquidator or trustee may require production of any document referred to in subsection 4(c).

(6) Where a claim is made by a creditor as a secured creditor, the liquidator or trustee shall—

- (a) meet the claim in full and redeem the charge;

- (b) realise the asset subject to the charge and pay the secured creditor the lesser of the amount of the claim and the net amount realised taking into account the liquidator or trustees reasonable remuneration; or
- (c) reject the claim in whole or in part, and
  - (i) where a claim is rejected in whole or in part, the creditor may make a revised claim as a secured creditor within ten working days of receiving notice of the rejection; and
  - (ii) the liquidator or trustee may, if he or she subsequently considers that a claim was wrongly rejected in whole or in part, revoke or amend any such decision.

(7) A creditor who claims as a secured creditor, may claim as an unsecured creditor for any balance due to him or her, after deducting any payment made under subsection (6).

(8) The liquidator or trustee may at any time require a secured creditor by notice in writing to—

- (a) take possession of any asset subject to a charge, if entitled to do so; or
- (b) deliver a claim as a secured creditor in accordance with subsection (1),

within twenty working days after receipt of the notice, if he or she intends to rely on the security.

## 12. Preferential debts.

(1) Subject to section 11, and subsection (2), the liquidator or trustee shall apply the assets to the preferential debts listed in subsections (4), (5) and (6), which debts shall be paid in priority to other debts.

(2) Preferential debts shall so far as the assets are insufficient to meet them, have priority over the claims of secured creditors in respect of assets—

- (a) which are subject to a security interest; and
- (b) become subject to that security interest by reason of its application to certain existing assets of the grantor and those of its future assets which were after-acquired property or proceeds,

and shall be paid accordingly out of those assets.

(3) Preferential debts are as listed in subsections (4), (5) and (6) and shall be paid in the order of priority in which they are listed.

(4) First to be paid shall be—

- (a) remuneration and expenses properly incurred by the liquidator or trustee;
- (b) any receiver's or provisional administrator's indemnity under sections 159 or 187 and any remuneration and expenses properly incurred by any receiver, liquidator, provisional liquidator administrator, proposed supervisor or supervisor; and
- (c) the reasonable costs of any person who petitioned court for a liquidation or bankruptcy order, including the reasonable costs of any person appearing on the petition whose costs are allowed by the court.

(5) After making the payments listed in subsection (4), next to be paid shall be—

- (a) all wages or basic salary, wholly earned or earned in part by way of commission for four months;

- (b) all amounts due in respect of any compensation or liability for compensation under the Worker's Compensation Act, accrued before the commencement of the liquidation or bankruptcy, not exceeding the prescribed amount;
- (c) all amounts that are preferential debts under section 33 or 105.

(6) After paying the sums referred to in subsection (5), the liquidator shall then pay—

- (a) the amount of any tax withheld and not paid over to the Uganda Revenue Authority for twelve months prior to the commencement of insolvency; and
- (b) contributions payable under the National Social Security Fund Act.

(7) This section shall apply notwithstanding any other law.

### **13. Non-preferential debts.**

(1) After paying preferential debts in accordance with section 12, the liquidator or trustee shall apply the assets in satisfaction of all other claims.

(2) The claims referred to in subsection (1) shall rank equally among themselves and shall be paid in full unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(3) Where before the commencement of a liquidation or bankruptcy, a creditor agrees to accept a lower priority in respect of a debt than that which the creditor would otherwise have under this section, nothing in this section shall prevent the agreement from having effect according to its terms.

**14. Surplus assets.**

Where there is a surplus after making the payments referred to in section 13—

- (a) in the case of a bankruptcy, the trustee in bankruptcy shall pay the surplus to the bankrupt; and
- (b) in the case of a liquidation, the liquidator shall distribute the company's surplus assets in accordance with the memorandum and articles of association of the company and the Companies Act.

*Voidable transactions.***15. Preferences.**

(1) A transaction involving a transfer of property by a company or individual to another person shall be voidable on the application of the creditor, receiver, liquidator or trustee where the transfer—

- (a) is made—
  - (i) on account of an antecedent debt;
  - (ii) at a time when the company or individual was unable to pay the company's or individual's due debts; and
  - (iii) within the year preceding the commencement of the liquidation or bankruptcy; or
- (b) enabled that person to receive more towards the satisfaction of the debt than the person would otherwise have received or be likely to receive in the liquidation or bankruptcy,

unless the debt was incurred in the ordinary course of the company's or individual's business and the transfer was made not later than forty five working days after the debt was incurred.

(2) A transfer made within the six months preceding the commencement of the liquidation or bankruptcy is, unless the contrary is proved, presumed to have been made—

- (a) at a time when the company or individual was unable to pay the company's or individual's due debts; and
- (b) on account of a debt not incurred in the ordinary course of business.

### **16. Transactions at undervalue.**

A transaction entered into by a company or individual is voidable on the application of the creditor, receiver, member or contributory, liquidator or trustee if—

- (a) it was entered into within one year preceding the commencement of the liquidation or bankruptcy;
- (b) the value of the consideration received by the company or individual is significantly less than the value of the consideration provided by the company or individual;
- (c) when the transaction was entered into, the company or individual—
  - (i) was unable to pay the company's or individual's due debts;
  - (ii) was engaged or about to engage in transactions for which its, his or her financial resources were unreasonably small; or
  - (iii) incurred the obligation knowing that the company or individual would not be able to perform the obligation when required to do so;
- (d) the company or individual became unable to pay its, his or her due debts as a result of the transaction; or
- (e) the transaction was entered into to aid the insolvent to put the asset beyond the reach of the creditors.

**17. Voidable charges.**

(1) A transaction providing for or creating a charge over any property of a company or individual in respect of any debt is voidable on the application of the creditor, receiver, member or contributory liquidator or trustee if the charge was given within the year preceding the commencement of the liquidation or bankruptcy on account of the antecedent debt unless—

- (a) the charge secures the actual price or value of property sold or supplied to the company or individual or any other valuable consideration given by the person making the charge prior to the execution of the security and immediately after the charge was made, the company or individual was able to pay its due debts; or
- (b) the charge is in substitution for a charge given more than one year preceding the commencement of the liquidation or bankruptcy.

(2) Unless the contrary is proved, a company or individual giving a charge within the six months preceding the commencement of the liquidation or bankruptcy is presumed to have been unable to pay the company or individual's due debts immediately after giving the charge.

**18. Insider dealings.**

(1) Subject to subsection (3), a transaction, entered into by a company or individual relating to any asset of the insolvent is voidable on the application of the liquidator, receiver, member or contributory, trustee or creditor if the transaction involves—

- (a) spouses, siblings, children of the insolvent or any person with a close social proximity to the insolvent;
- (b) employees, officers, professional or other service providers of the insolvent;

- (c) business associates, partners, shareholders, directors or other similar person.

(2) Unless the contrary is proved, a transaction referred to in subsection (1), shall be taken to be a preference or a transaction aimed at aiding the insolvent to put the assets of the insolvent's estate beyond the reach of creditors.

(3) This section applies to a transaction entered into within twelve months preceding the insolvency.

### **19. Procedure for setting aside voidable transactions.**

(1) A liquidator, receiver, member or contributory, trustee or creditor who wishes to have a voidable transaction under sections 15, 16, 17 or 18 set aside shall—

- (a) file in court a notice to that effect, specifying the transaction to be set aside and the property or value which the liquidator or trustee wishes to recover and the effect of subsections (2), (3) and (4); and
- (b) serve a copy of the notice on the person with whom the transaction was entered into and on every other person from whom the liquidator, receiver or trustee wishes to recover.

(2) A person—

- (a) who would be affected by the setting aside of the transaction specified in the notice; and
- (b) who considers that the transaction is not voidable under sections 15, 16, 17 or 18,

may apply to the court for an order that the transaction should not be set aside.

(3) Unless a person on whom the notice was served has applied to the court under subsection (2), the transaction shall be set aside from the twentieth working day after the date of service of the notice.

(4) Where one or more persons have applied to the court under subsection (2), the transaction shall be set aside from the day on which the last application is finally determined unless the court orders otherwise.

(5) Where a transaction is set aside under this section—

- (a) any person affected may, after giving up the benefit of the transaction, claim for the value of the benefit as a creditor in the liquidation or bankruptcy;
- (b) the court may make one or more of the following orders—
  - (i) requiring a person to pay to the liquidator, receiver or trustee, in respect of benefits received by that person as a result of the transaction, the sums which fairly represent those benefits;
  - (ii) requiring property transferred as part of the transaction to be restored to the company or the bankrupt's estate;
  - (iii) requiring property to be vested in the company or the trustee if it represents in a person's hands the application, either of the proceeds of sale of property or of money, so transferred;
  - (iv) releasing, in a whole or in part, a charge given by the company or individual;
  - (v) requiring security to be given for the discharge of an order made under this section; or
  - (vi) specifying the extent to which a person affected by the setting aside of a transaction or by a declaration or order made under this section is entitled to claim as a creditor in the liquidation or bankruptcy.

(6) The setting aside of a transaction or a declaration or order made under this section shall not affect the title or interest of a person in property which that person has acquired—

- (a) from a person other than the insolvent;
- (b) for valuable consideration; and
- (c) without knowledge of the circumstances of the transaction under which the person other than the insolvent acquired the property from the company or individual.

(7) Recovery by the liquidator, receiver or trustee of any property or its value, under this section or any other section, or under any other enactment or in equity or otherwise, may be denied wholly or in part where—

- (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 or payment of the property 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.

(8) In this section, “transaction” includes—

- (a) an execution under any judicial proceedings; or
- (b) a payment, including a payment made in pursuance of a judgement or order of a court, in respect of any transaction to which sections 15, 16, 17 and 18 apply.

### PART III—INDIVIDUAL INSOLVENCY

## 20. Petition for bankruptcy.

(1) A debtor may petition court for bankruptcy alleging that the debtor is unable to pay his or her debts and the court may, subject to sections 21 and 22 make a bankruptcy order in respect of the debtor.

(2) Upon failure by the debtor to satisfy the statutory demand made under section 4, a petition for bankruptcy shall be presented by a creditor or a debtor and the court may subject to sections 21 and 22 make a bankruptcy order in respect of the debtor.

(3) The bankruptcy order made under subsection (1) or (2), shall declare the debtor bankrupt and shall appoint the official receiver as interim receiver of the estate, for the preservation of the estate of the bankrupt.

(4) The official receiver shall have the powers to sell or otherwise dispose of any perishable and any other goods, the value of which is likely to diminish if they are not disposed of unless court limits the powers or places conditions on the exercise.

(5) The bankruptcy shall commence on the date on which the bankruptcy order is made.

## **21. Statement of affairs.**

(1) The court shall require a debtor in respect of whom a petition has been presented under section 20, to file a statement of his or her affairs verified by an affidavit.

(2) The statement referred to in subsection (1) shall include—

(a) particulars of the debtor's creditors, debts and assets; and

(b) such other information as may be prescribed.

(3) A debtor who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

## **22. Public examination of debtor.**

(1) Where a petition for a bankruptcy order is presented to the court under section 20, the court shall direct that a public examination be held on a day appointed by the court and the debtor shall attend on that day and be publicly examined on his or her affairs, dealings and property.

(2) The examination shall be held as soon as conveniently practicable after the expiration of the time given by the court for the submission of the debtor's statement of affairs under section 20.

(3) A creditor who has tendered a proof, or his or her representative authorised in writing, may question the debtor concerning his or her affairs and the causes of his or her failure.

(4) The official receiver shall take part in the examination of the debtor, and for the purpose may employ an advocate if he or she so desires.

(5) If a trustee is appointed before the conclusion of the examination, he or she may take part in the examination.

(6) The court may put such questions to the debtor as it may think fit.

(7) The debtor shall, be examined upon oath, and it shall be his or her duty to answer all such questions as the court may put or allow to be put to him or her.

(8) Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him or her, and may thereafter, except as in this Act provided, be used in evidence against him or her; they shall be open to the inspection of any creditor at all reasonable times.

(9) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his or her examination is concluded, but that order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor suffers from any such mental or physical affliction or disability as in the opinion of the court make him or her unfit to attend his or her public examination, the court may make an order dispensing with the examination or directing that the debtor be examined on such terms, in such manner and at such place as the court considers expedient.

**23. Inquiry into debtor's dealings and property.**

(1) The court may require any person referred to in subsection (2), to submit an affidavit to the court containing an account of his or her dealings with the debtor or to produce any documents in his or her possession, or under his or her control relating to the debtor or the debtor's dealings, affairs or property.

(2) This section applies to—

- (a) a person known or believed to have any property comprised in the debtor's estate in his or her possession or to be indebted to the debtor; or
- (b) a person appearing before court to give information concerning the debtor or the debtor's dealings, affairs or property.

**24. Official receiver's notice of commencement of bankruptcy and creditor's first meeting.**

The official receiver shall, within fourteen days after the commencement of the bankruptcy—

- (a) give public notice of the date of commencement of the bankruptcy; and
- (b) call the creditors' first meeting.

**25. Appointment of trustee.**

The creditors' first meeting shall, appoint a trustee and vest the bankrupt's estate in the trustee.

**26. Trustee's notice of bankruptcy and particulars.**

The trustee shall, within five working days after his or her appointment, give public notice of—

- (a) the trustee's full name;
- (b) the trustee's physical office address, daytime telephone number and electronic address; and
- (c) the date of commencement of the bankruptcy.

## **27. Effect of bankruptcy order.**

(1) Upon the making of a bankruptcy order,—

- (a) the bankrupt's estate shall, vest first in the official receiver and then in the trustee, without any conveyance, assignment or transfer; and
- (b) except with the trustee's written consent or with the leave of the court and in accordance with such terms as the court may impose, no proceedings, execution or other legal process may be commenced or continued and no distress may be levied against the bankrupt or the bankrupt's estate.

(2) Subject to compliance with section 11, nothing in this Act shall prevent the exercise of the power of enforcement of a charge over property in the bankrupt's estate.

## **28. Special manager of bankrupt's estate.**

(1) The court may, on an application under this section, appoint any person to be a special manager of—

- (a) a bankrupt's estate;
- (b) the business of an un-discharged bankrupt; or
- (c) the property or business of an individual where an interim receiver has been appointed.

(2) An application under this section, may be made by the trustee or interim receiver where it appears to him or her that the nature of the estate, property or business or the interests of the creditors generally, require the appointment of another person to manage the estate, property or business.

(3) A special manager appointed under this section shall, have such powers and duties as may be given by court.

## **29. Duties of a trustee.**

(1) The fundamental duty of a trustee is to collect, realise as advantageously as is reasonably possible and distribute, the bankrupt's estate in accordance with this Part and Part II.

(2) Without prejudice to subsection (1), a trustee shall—

- (a) take custody and control of the bankrupt's estate;
- (b) register in his or her names all land and other assets forming part of the bankrupt's estate at the making of the bankruptcy order notwithstanding any transactions that may have taken place and any other law;
- (c) keep the bankrupt's estate's money separate from other money held by or under the control of the trustee;
- (d) keep, in accordance with generally accepted accounting procedures and standards, full account and other records of all receipts, expenditures and other transactions relating to the bankruptcy and retain the accounts and records of the bankruptcy for not less than six years after the bankruptcy ends;
- (e) permit those accounts and records to be inspected by—
  - (i) any committee of inspection unless the trustee believes on reasonable grounds that inspection would be prejudicial to the bankruptcy; or

- (ii) if the court so order, any creditor; and
- (f) perform any other function or duty specified in this Act

### 30. Trustee's notice to creditors.

(1) Within four working days after issuing the notice under section 26 or a further period as the court may allow, a trustee shall send written notice to every known creditor explaining the right of any creditor to require the trustee to call a creditors' meeting under section 46.

(2) In determining whether to permit an extension of time under subsection (1), the court shall take into account any non-compliance of the debtor with section 21.

### *Bankrupt's estate*

### 31. Bankrupt's estate.

- (1) Subject to subsection (2), a bankrupt's estate comprises—
- (a) all property belonging to or vested in the bankrupt at the commencement of the bankruptcy;
  - (b) any property which by virtue of sections 15, 16, 17, 18 and 32 is treated as belonging to or vested in the bankrupt; and
  - (c) a portion of the debtor's salary as shall be determined by court.
- (2) Subsection (1) does not apply to—
- (a) tools, books and other items of equipment which are necessary to the bankrupt for use personally by him or her in his or her employment, business or vocation, of a value to be prescribed;
  - (b) clothing, beddings and the provisions which are necessary for satisfying the basic domestic needs of the bankrupt and his or her family; or

- (c) property held by the bankrupt in trust for any other person;
- (d) the matrimonial home of the bankrupt; and
- (d) any other property of a value to be prescribed that the court may exempt.

(3) For the purposes of subsection (2)—

“matrimonial home” means a building or part of a building in which a bankrupt and his or her spouse or, as the case may be, spouses, and their children, if any ordinarily reside together and includes—

- (a) where a building and its curtilage are occupied primarily for residential purposes, that curtilage and outbuildings on it; and
- (b) where a building is on or occupied in conjunction with agricultural land or pastoral land, any land allocated by one spouse to his or her spouse or in the case of a husband, to his spouses for his, her, or their exclusive use;

“ordinarily resides” means residing in a place with some degree of continuity apart from accidental or temporary absences; and a bankrupt is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period.

### **32. Property acquired after commencement of bankruptcy.**

(1) Subject to subsections, (2) and (3), a trustee may by notice in writing claim for the bankrupt’s estate any property which has been acquired by or has devolved upon, the bankrupt since the commencement of the bankruptcy.

(2) Where, before or after service of a notice under subsection (1)—

- (a) a person acquires property or enters into a transaction in respect of property in good faith, for value and without notice of the bankruptcy, or

(b) a banker enters into a transaction in good faith and without notice of the bankruptcy, the trustee is not in respect of that property or transaction, entitled under this section to any remedy against that person or any person whose title to any property derives from that person.

(3) Except with the leave of the court, a notice shall not be served under subsection (1), after thirty working days after the day on which it first came to the knowledge of the trustee that the property in question had been acquired by or had devolved upon, the bankrupt.

(4) On the application of the trustee, the court may make an order claiming for the bankrupt's estate the income of the bankrupt during the period for which the order is in force as may be specified.

(5) Where at any time after the commencement of the bankruptcy and before the final distribution under section 49, including after discharge, any property is acquired by or devolves upon, the bankrupt or where there is an increase of the bankrupt's income, the bankrupt shall immediately give the trustee notice of the property or of the increase in income.

(6) A person who contravenes subsection(5), commits an offence.

*General powers of trustee and conduct of bankruptcy.*

**33. Trustee's power to obtain documents.**

(1) A trustee may, subject to subsection (2), require any person, including the bankrupt, having possession of books or documents which relate to the bankrupt's estate or affairs, including any which would be privileged from disclosure in any proceedings, to deliver them to the trustee.

(2) A person shall not withhold a document of the company from a trustee on the ground that possession of the document creates a charge over property of the bankrupt.

(3) Subject to subsection (4), production of a document to the trustee does not prejudice the existence or priority of the charge and the trustee shall make the document available to any person otherwise entitled to it for the purpose of dealing with or realising the charge or the secured property.

(4) A person shall, not enforce a lien over any document of the bankrupt in respect of a debt for services rendered to the bankrupt before the commencement of the bankruptcy, but the debt shall be a preferential claim under section 12, to the extent of twenty five currency points or to a greater amount as may be prescribed at the commencement of the bankruptcy.

### **34. Trustee's power to allow bankrupt to manage property.**

A trustee may appoint the bankrupt—

- (a) to oversee the management of the bankrupt's estate or any part of it; or
- (b) in any other respect, to assist in administering the estate in a manner and on terms as the trustee may direct.

### **35. Trustee's power to disclaim onerous property.**

(1) The trustee may disclaim any onerous property, even if the trustee has taken possession of it, tried to sell it or otherwise exercised rights of ownership.

(2) A disclaimer under this section—

- (a) brings to an end the rights, interest and liabilities of the bankrupt, his or her estate and trustee in respect of the property disclaimed; but
- (b) does not, except so far as necessary release the bankrupt, his or her estate and trustee from any liability or affect the rights or liabilities of any other person.

(3) For the purposes of this section “onerous property” means—

- (a) any unprofitable contract; or
- (b) any other property of the bankrupt which is not capable of being sold or not readily capable of being sold or which may give rise to a liability to pay money or perform any other onerous act.

(4) A person suffering loss or damage as a result of a disclaimer made under this section, may—

- (a) apply to the court for an order that the disclaimed property be delivered to or vested in that person; or
- (b) taking into account the effect of any order made by the court under paragraph (a), claim as a creditor in the estate for the amount of the loss or damage.

### **36. Official name of trustee.**

The official name of a trustee in bankruptcy shall be ‘the trustee of the property of a bankrupt’, with an insertion of the name of the bankrupt and by that name the trustee may exercise any of the trustee’s functions, powers and duties under this Act.

### **37. Vacation of office by trustee.**

(1) The office of trustee shall become vacant if the person holding office is removed from office under section 52 or 209, resigns, dies or becomes unqualified under section 204.

(2) The court, on the application of any creditor or the bankrupt may review the appointment of a successor to a trustee made under this section, and if it thinks fit, may appoint instead any other insolvency practitioner or the official receiver.

(3) Where as the result of the vacation of office by a trustee, there is no person acting as trustee, the official receiver shall act as trustee until a successor is appointed under subsection (2).

(4) A person vacating the office of trustee shall give such information and assistance in the conduct of the bankrupt as the person's successor reasonably requires.

(5) A person who unreasonably refuses to give the information and assistance under subsection (4) commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

### **38. Duties of a bankrupt.**

(1) The bankrupt shall—

- (a) give to the trustee information relating to his or her affairs;
- (b) appear before the trustee at such times; and
- (c) do all such other things,

as the trustee may reasonably require for the purposes of carrying out his or her functions under this Act.

(2) A bankrupt who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.

### **39. Compliance order.**

Where a person does not comply with a requirement of the trustee under section 33, the court may, on the application of the trustee, order the person to comply and may make ancillary orders as it thinks fit.

### **40. Search and seizure.**

(1) Where a bankruptcy order has been made or applied for and the court is satisfied, on the application of the trustee or interim receiver that there is, in or on any place or thing, any property, records or other documents in respect of which an offence under section 54 has been or is about to be committed, the court may issue a warrant, with reasonable conditions as it may deem fit, authorising the person named in the warrant to search for and seize property or documents in or on that place or thing and deliver them to the trustee.

(2) Subject to any conditions specified in the warrant, the person named in the warrant may—

- (a) enter and search a place or thing at anytime which is reasonable in the circumstances, within fourteen days after the date of issue of the warrant;
- (b) use such assistance as is reasonable in the circumstances; and
- (c) use reasonable force in the circumstances, to enter or break open anything in or on the place or thing.

#### **41. Termination of bankruptcy.**

(1) Bankruptcy terminates—

- (a) when a bankrupt is discharged from bankruptcy under section 42;
- (b) when the bankruptcy order is annulled under section 44; or
- (c) upon withdrawal of a bankruptcy petition with leave of court.

(2) The court shall not grant any application for withdrawal under subsection (1)(c), if it is proved to the satisfaction of the court that rights and interests of other creditors are likely to be prejudiced.

#### **42. Discharge.**

(1) Subject to subsection (2), a bankrupt shall be discharged from bankruptcy, when the court, on an application by the bankrupt makes an order discharging the bankrupt.

(2) The court shall, while considering a bankrupt's application for discharge, take into consideration the official receiver's report on the bankruptcy and the conduct of the bankrupt during the bankruptcy proceedings and any other matters court may consider pertinent.

(3) The court may, as a condition for his or her discharge, require a bankrupt to consent to a decree being entered against him or her in favour of the official receiver or trustee for—

(a) the balance or part of a balance of the debts provable under the bankruptcy which is not satisfied at the date of discharge; or

(b) the balance or part of any balance of the debts, to be paid out of the future earnings of the bankrupt or property acquired after the bankruptcy, in such manner and subject to such conditions as the court may direct.

(4) Execution shall not be issued on the decree without leave of court, which leave may be given on proof that the bankrupt has since his or her discharge, acquired property or income available towards the payment of his debts.

(5) The court may subject a discharge order to such terms and conditions as the court may consider proper.

### **43. Effect of discharge.**

(1) Subject to subsections (2) and (3), a discharge order releases a bankrupt from all bankruptcy debts.

(2) A discharge order does not affect—

(a) the functions of the trustee which remain to be carried out;

(b) the operation of this Act, for the purposes of carrying out the functions of a trustee;

(c) the right of any creditor of the bankrupt to claim in the bankruptcy for any debt from which the bankrupt is released; or

(d) the right of any secured creditor of the bankrupt to enforce his or her security for the payment of a debt from which the bankrupt is released.

(3) A discharge order does not release the bankrupt from—

- (a) any bankruptcy debt which he or she incurred or forbearance which was secured by means of any fraud or fraudulent breach of trust to which he or she was a party;
- (b) any liability in respect of a fine imposed for an offence; or
- (c) any other bankruptcy debts as court may in its absolute discretion prescribe at the making of an order of discharge.

(4) A discharge order does not release any other person, whether as partner or co-trustee of the bankrupt or otherwise other than the bankrupt from any liability incurred, from which the bankrupt is released by discharge or from any liability as surety for the bankrupt.

#### **44. Annulment, revocation or setting aside of bankruptcy order.**

(1) The court may annul, revoke or set aside a bankruptcy order, whether or not the bankrupt has been discharged from the bankruptcy, or if at any time, it appears to the court that, basing on any grounds existing at the time the order was made, the order ought not to have been made.

(2) Where the court annuls, revokes or sets aside a bankruptcy order—

- (a) the property of the bankrupt shall vest in a person appointed by the court or, in default of any appointment, it shall revert to the bankrupt on terms as the court may direct; and
- (b) any sale or other disposition of property, payment made or other thing duly done by the trustee or other person acting under the trustee's authority or by the court is valid.

(3) In order to remove any legal disqualification on account of bankruptcy which may be removed if the bankrupt obtains from the court a discharge and a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such a certificate and a refusal to grant the certificate shall be subject to appeal.

(4) Where the court refuses to grant a certificate under subsection (3), the bankrupt may appeal to a higher court.

#### **45. Consequences of bankruptcy.**

(1) Where a debtor is adjudged bankrupt, he or she shall be disqualified from—

- (a) being appointed or acting as a judge of any court in Uganda; or
- (b) being elected to or holding or exercising the office of the President, a member of Parliament, Minister, a member of a local government, council, board, authority or any other government body.

(2) Where a person holding the office of justice of the peace or any other public office is adjudged bankrupt, the office shall immediately become vacant.

(3) The disqualifications to which a bankrupt is subject under this section, shall not apply where—

- (a) the adjudication of bankruptcy against the individual is annulled;
- (b) a period of five years elapses, from the date of discharge of the bankrupt; or
- (c) the individual obtains from the court his or her discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his or her part.

(4) The court may grant or withhold the certificate in subsection 3(c) as it thinks fit, but any refusal to grant the certificate shall be subject to appeal.

**46. Creditors' meetings during bankruptcy.**

(1) Subject to subsection (3), a trustee shall immediately call a creditors' meeting if so requested in writing by any two or more creditors to vote on a proposal that a committee of inspection be appointed to act with the trustee.

(2) The trustee shall give not less than five working days notice of the meeting, which, subject to this section, shall be conducted in accordance with the Third Schedule.

(3) A trustee may decline any request to call a meeting on the ground that—

- (a) the request is frivolous or vexatious;
- (b) the request was not made in good faith; or
- (c) the costs of calling a meeting would be out of proportion to the value of the bankrupt's estate,

and the decision of a trustee to decline a request to call a creditors' meeting may be reviewed by the court on the application of any one or more creditors.

**47. Committee of inspection.**

(1) A committee of inspection shall consist of not less than three persons who are creditors or persons holding general powers of attorney from creditors or authorised directors of companies which are creditors of the bankrupt.

(2) The members of a committee of inspection chosen by any creditors' meeting shall take office immediately.

(3) A committee of inspection has the power to—

- (a) call for reports on the progress of the bankruptcy from the trustee;

- (b) call a creditors' meeting;
- (c) apply to the court for any order under sections 51 or 52 ;  
and
- (d) assist the trustee as appropriate in the conduct of the  
bankruptcy.

(4) Unless the court orders otherwise, the trustee shall pay the reasonable advocate and own client costs incurred by a committee of inspection in exercising its powers under subsection (3) (c) and those costs shall be taken to be expenses properly incurred in the bankruptcy.

(5) The proceedings at meetings of a committee of inspection shall be conducted in accordance with section 72.

#### *Declaration and Distribution of bankrupt's estate*

### **48. Declaration and distribution of dividends**

(1) Whenever the trustee has sufficient funds in hand for the purpose, the trustee shall, in accordance with this section and section 49 and subject to retention of the sums which may be necessary for the payment of expenses of the bankruptcy, declare and distribute dividends among the creditors in respect of the bankruptcy debts which they have respectively claimed and the trustee has admitted.

(2) The trustee shall give not less than five working days notice published in the official language in a widely circulating newspaper in Uganda of his or her intention to declare and distribute a dividend.

(3) A trustee shall declare a dividend by sending to all known creditors a statement of—

- (a) the dividend;
- (b) how it is proposed to distribute it; and
- (c) any other prescribed matter.

(4) In the calculation and distribution of a dividend the trustee shall make provision for—

- (a) any bankruptcy debts which appear to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to submit and establish their claims;
- (b) any bankruptcy debts which are the subject of claims which have not yet been determined; and
- (c) any disputed claims.

(5) A creditor whose debt has not been admitted before the declaration of any dividend is entitled to be paid out of any money in the hands of the trustee, any dividend he or she may not have received, before that money is applied to the payment of any future dividend, such a creditor is not entitled to disturb the distribution of any dividend declared before his or her debt was admitted where that creditor has not participated in the distribution.

#### **49. Final distribution.**

(1) When the trustee has realised all the bankrupt's estate or so much of it as can in the trustee's opinion, be realised without needlessly protracting the trusteeship, he or she shall give written public notice and personal notice to all known creditors—

- (a) of his or her intention to declare a final dividend, or
- (b) that no dividend or further dividend shall be declared.

(2) The notice under subsection (1), shall—

- (a) include a requirement that claims against the bankrupt's estate are to be made by a date called "the final date", specified in the notice, being not less than twenty working days after the giving of the notice; and

(b) in the case of personal notices, be accompanied by a report of the trustee's administration of the bankrupt's estate, including final bankruptcy accounts.

(3) The court may, on the application of any creditor postpone the final date.

(4) Immediately after the final date, the trustee shall—

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; and

(b) if the trustee intends to declare a final dividend, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already admitted.

(5) Within twenty working days from the date of the declaration and distribution of a final dividend, the trustee shall make a report to the official receiver stating that the trustee has realized all the bankrupt's estate or so much of it as can in the trustee's opinion be realized without needlessly protracting the trusteeship.

(6) The report under subsection (5), shall include all the final bankruptcy accounts.

## 50. Second bankruptcy.

Where—

(a) a second or subsequent bankruptcy order is made against a discharged bankrupt; or

(b) an order is made for the administration in bankruptcy of the estate of a deceased bankrupt,

any property which immediately before the subsequent order was in the bankrupt's estate, shall vest in the trustee in the subsequent bankruptcy or administration in bankruptcy.

*Supervision and enforcement by the court.***51. Court supervision of trustee.**

(1) On the application of the trustee, any committee of inspection, the official receiver or with the leave of the court, any creditor or the bankrupt, the court may—

- (a) give directions in relation to any matter arising in connection with the bankruptcy;
- (b) confirm, reverse, vary or modify any act or decision of the trustee;
- (c) order an audit of the accounts of the bankruptcy;
- (d) order the trustee to produce the accounts and records of the bankruptcy for audit and to provide the auditor with information concerning the conduct of the bankruptcy as the auditor may request;
- (e) in respect of any period, review or fix the remuneration of the trustee at a level which is reasonable in the circumstances and to the extent that an amount retained by the trustee is found by the court to be unreasonable in the circumstances, order the trustee to refund the amount; or
- (f) declare whether or not the trustee was validly appointed or validly assumed custody or control of any property; of the bankruptcy.

(2) The powers of the court in subsection (1), are in addition to any other powers the court may exercise in its jurisdiction relating to trustees under this Act, and may be exercised in relation to any matter occurring either before or after the commencement of the bankruptcy and whether or not the trustee has ceased to act as trustee when the application or the order is made.

(3) Subject to subsection (4), a trustee who has acted in accordance with a direction of the court in the exercise of his or her powers or functions, shall be entitled to rely on having so acted as a defence to any claim for anything done or not done in accordance with the direction.

(4) A court may order that, by reason of the circumstances in which a direction is obtained, the trustee shall not have the protection under subsection (3).

## 52. Enforcement of trustee's duties.

(1) Where a trustee fails to comply with any of his or her duties, a court may, on such terms and conditions as it thinks fit—

- (a) relieve the trustee of the duty to comply, wholly or in part;
- (b) without prejudice to any other remedy which may be available in respect of any breach of duty by the trustee, order the trustee to comply to the extent specified in the order; or
- (c) remove the trustee from office.

(2) An application for an order under this section, may be made by—

- (a) a committee of inspection;
- (b) any creditor;
- (c) a receiver appointed in respect of any property of the bankrupt; or
- (d) the official receiver.

(3) Except as otherwise ordered by the court, a copy of any application made under this section, shall be served on the trustee not less than five working days before the hearing of the application and the trustee may appear and be heard at the hearing.

(4) Where an order is made under subsection (1) (c), the court may make such order as is appropriate for the preservation of the bankrupt's estate, including an order requiring the removed trustee to make available any accounts, documents or other information necessary for that purpose.

(5) All proceedings relating to any application for an order under this section, shall be served on the official receiver who shall keep a copy of the proceedings on a public file indexed by reference to the name of the trustee concerned.

(6) In this section "failure to comply" means failure of a trustee to comply with any relevant duty arising under—

- (a) this or any other Act or rule of law or rules of court; or
- (b) any order or direction of the court other than an order made under this section.

*Bankruptcy offences.*

**53. Absconding.**

(1) A bankrupt or debtor in respect of whom a bankruptcy order is made shall not—

- (a) leave or attempt to leave Uganda without the permission of court;
- (b) conceal or remove property with the intention of preventing or delaying the assumption of custody or control by the trustee;
- (c) destroy, conceal or remove documents with the intent of defrauding or concealing the state of his or her affairs; or
- (d) obstruct the trustee in his or her duties.

(2) A person who acts in contravention of subsection (1), commits an offence and on conviction is liable to imprisonment not exceeding six months or to community service.

**54. Bankrupt not to obtain credit or engage in business without disclosing bankruptcy.**

(1) A bankrupt shall not—

- (a) alone or jointly with any other person, obtain credit to the extent of the prescribed amount or more without informing the person from whom he or she obtains it that he or she is an un-discharged bankrupt; or
- (b) engage, directly or indirectly, in any business under a name other than that in which he or she was adjudged bankrupt without disclosing to all persons with whom he or she enters into any business transaction, the name in which he or she was so adjudged.

(2) A person who contravenes subsection (1), commits an offence and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding twelve months or both.

**55. Failure to keep proper accounts of business.**

(1) Where a bankrupt has been engaged in any business within two years before the petition, he or she commits an offence if he or she has not kept accounting records that give a true and fair view of the business' financial position and explain its transactions.

(2) The bankrupt does not commit an offence under subsection (1), if he or she proves that in the circumstances in which he or she carried on business, the omission was honest and excusable.

## PART IV—CORPORATE INSOLVENCY

*Liquidation***56. Application of liquidation provisions to foreign companies.**

(1) Sections 57 to 118 and the Fourth Schedule shall also apply to the liquidation of foreign companies.

(2) For the purposes of this Part “company” includes a foreign company.

**57. Modes of liquidation.**

The liquidation of a company may be—

- (a) by the court;
- (b) voluntary; or
- (c) subject to the supervision of the court.

*Voluntary liquidation.***58. Voluntary liquidation**

(1) A company may be liquidated voluntarily if the company resolves by special resolution, that it cannot by reason of its liabilities continue its business and that it is advisable to liquidate.

(2) Voluntary liquidation shall be taken to commence at the time of passing the resolution for voluntary liquidation.

(3) In this Part, a “resolution for voluntary liquidation” means a resolution passed under subsection (1).

**59. Notice of resolution for voluntary liquidation.**

(1) Where a company passes a resolution for voluntary liquidation, it shall, within fourteen days after passing the resolution, give notice of the resolution in the *Gazette* and in a newspaper in the official language with a wide national circulation.

(2) The resolution for voluntary liquidation shall be registered with the registrar and a copy sent to the official receiver within seven days from the date of passing the resolution.

(3) Where default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a default fine and for the purposes of this subsection the liquidator of the company shall be taken to be an officer of the company.

*Consequences of voluntary liquidation.***60. Effect of voluntary liquidation on the business and status of a company.**

(1) A company shall, from the commencement of voluntary liquidation, cease to carry on business, except so far as may be required for the beneficial liquidation of the company.

(2) Subject to subsection (1), the corporate status and powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

**61. Transfers or alterations after commencement of voluntary liquidation are void.**

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the members of the company, made after the commencement of a voluntary liquidation, is void.

*Members' voluntary liquidation.***62. Power of a company to appoint and fix remuneration of liquidators.**

(1) The company shareholders, by special resolution or the directors or any other person authorized by the memorandum and articles of association, may appoint one or more liquidators for the purposes of liquidating the affairs and distributing the assets of the company and may fix the remuneration to be paid to the liquidator.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except where the company in a general meeting or the liquidator sanctions the continuance of those powers.

**63. Power to fill vacancy in office of liquidator.**

(1) Where a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company may in a general meeting, subject to any arrangement with its creditors, fill the vacancy.

(2) For the purposes of subsection (1), a general meeting may be convened by any contributory or, if there are more liquidators than one, by any continuing liquidator.

(3) The meeting shall be held in accordance with the manner provided in this Act, or by the articles of association of the company, or in a manner determined by the court on the application by any contributory or continuing liquidator.

**64. Power of a liquidator to accept shares or other interests as consideration for sale of property of company.**

(1) Where it is proposed or where the transferor company is in the course of voluntary liquidation and where it is proposed that the whole or part of the transferor company's business or property is to be transferred or sold to a transferee company, the liquidator of the transferor company, may—

- (a) with the sanction of a special resolution of the company, conferring a general authority on the liquidator or a specific authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other similar interests in the transferee company for distribution among the members of the transferor company; or
- (b) enter into any other arrangement where the members of the transferor company may, in lieu of receiving cash, shares, policies or other similar interests or in addition to these, participate in the profits of or receive any other benefit from the transferee company.

(2) Any sale or arrangement in pursuance of this section, shall be binding on the members of the transferor company.

(3) A member of the transferor company who did not vote in favour of the special resolution may express his or her dissent to the sale or other arrangement, to the liquidator in writing, delivered to the registered office of the company within seven days after passing the resolution, requesting the liquidator to—

- (a) abstain from carrying the resolution into effect; or
- (b) to purchase his or her interest at a price to be determined by agreement or by arbitration in accordance with the law relating to arbitration in Uganda.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary liquidation or for appointing liquidators, but, if an order is made within a year for the liquidation of the company by or subject to the supervision of the court, the special resolution shall not be valid unless sanctioned by the court.

**65. Duty of liquidator to call creditors' meeting in case of insolvency.**

(1) Where winding up commenced under any other law and the liquidator is at any time of the opinion that the company will not be able to pay its debts in full within the period stated in any declaration made under that other law, the liquidator shall immediately notify the registrar and the official receiver and call a meeting of the creditors and present a statement of the assets and liabilities of the company.

(2) A liquidator who does not comply with this section, commits an offence and is liable on conviction to a fine not exceeding fifteen currency points.

**66. Duty of a liquidator to call a general meeting at the end of each year.**

(1) Subject to section 68, where the liquidation continues for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year of the commencement of the liquidation and of each succeeding year or at the first convenient date within three months from the end of the year or such longer period as the registrar may allow, and shall lay before the meeting an account of his or her acts and dealings and of the conduct of the liquidation during the preceding year.

(2) If the liquidator fails to call a general meeting of the company as required by this section, he or she commits an offence and is liable on conviction to a fine not exceeding five currency points.

**67. Final meeting and dissolution.**

(1) Subject to section 68, as soon as the company is fully liquidated, the liquidator shall—

- (a) prepare an account of the liquidation, showing how the liquidation was conducted and how the property of the company was disposed of; and

- (b) call a general meeting of the company to present the account and to give any required explanation.

(2) The meeting under subsection (1) (b) shall be called by a notice in the *Gazette* and in a newspaper of wide circulation in Uganda, specifying the time, place and the object of the meeting, published at least thirty days before the meeting.

- (3) Within fourteen days after the meeting, the liquidator shall—

(a) send a copy of the account to the registrar; and

(b) make a return of the meeting and of its date to the registrar, and if the copy of the account is not sent or the return of the meeting is not made in accordance with this subsection, the liquidator shall be liable to a fine not exceeding five currency points for every day during which the default continues.

(4) Where there is no quorum at the meeting, this subsection shall be taken to have been complied with if the liquidator, in lieu of the return of the meeting, makes a return that the meeting was duly summoned but that no quorum was realised.

(5) The registrar shall, on receiving the account and the returns in subsections (3) or (4), register them.

(6) Upon the expiration of three months from the date of registration of the return, the company shall be taken to be dissolved unless the court, on the application of the liquidator or any other person who appears to the court to have an interest in the company, makes an order deferring the date on which the dissolution of the company is to take effect, for such time as the court may consider fit.

(7) The person on whose application an order of the court under subsection (6) is made, shall deliver to the registrar, with a copy to the official receiver, a certified copy of the order for registration within seven days after the making of the order.

(8) A person who contravenes subsection (7) shall be liable to a fine not exceeding five currency points for every day that the person is in contravention.

**68. Alternative provisions as to annual and final meetings in case of insolvency.**

Where a liquidator calls a meeting in accordance with section 65, sections 66 and 67 shall not apply, and sections 76 and 77 shall apply to the liquidation of the company as if the liquidation were a creditors' voluntary liquidation and not a members' voluntary liquidation, but that the liquidator shall not be required to call a meeting of creditors under section 76 at the end of the first year of the commencement of the liquidation unless the meeting held under section 65 is held more than three months before the end of that year.

*Creditors' voluntary liquidation.*

**69. Meeting of creditors.**

(1) For the creditors' voluntary liquidation, the company shall—

- (a) cause a meeting of the creditors of the company to be summoned on the same day as the meeting for the resolution for liquidation is to be proposed or on the following day; and
- (b) send to the creditors, notices for the meeting of the creditors of the company, together with the notices for the meeting for proposing the resolution for liquidation.

(2) The notice for the meeting of the creditors shall be advertised once in the *Gazette* and in the official language in a newspaper of wide circulation in Uganda.

(3) The directors of the company shall—

- (a) appoint one of them to preside at the meeting; and

- (b) present a full statement of the position of the company's affairs and a list of the creditors of the company and the estimated amount of their claims, to the meeting of the creditors.

(4) The director appointed to preside at the meeting of the creditors shall attend and preside over the meeting.

(5) Where the meeting of the company at which the resolution for voluntary liquidation is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held under subsection (1), shall have effect as if it has been passed immediately after the passing of the resolution for liquidating the company.

(6) Where default is made—

(a) by the company contrary to subsections (1) and (2);

(b) by the directors contrary to subsection (3); or

(c) by any director of the company contrary to subsection (4),

the company, directors or director, shall be liable to a fine not exceeding fifty currency points, and, in the case of default by the company, every officer of the company who is in default shall be liable to a similar penalty.

## **70. Appointment of liquidator.**

(1) The creditors and the company at their respective meetings under section 69, may nominate a person to be liquidator for the purpose of liquidating the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and if the creditors do not nominate any person, the person nominated by the company shall be the liquidator.

(2) Where different persons are nominated by the company and the directors, any director, member or creditor of the company may, within seven days after the nomination by the creditors, apply to court for an order—

- (a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or
- (b) appointing another person to be liquidator instead of the person appointed by the creditors.

### **71. Appointment of committee of inspection.**

(1) The creditors at the creditors' meeting or at any subsequent meeting may appoint not more than five persons to be members of a committee of inspection.

(2) Where the creditors meeting appoints a committee of inspection, the company may, at the meeting at which the resolution for voluntary liquidation is passed or at a subsequent time in a general meeting, appoint a number of persons as the company thinks fit, to act as members of the committee, but the majority of the members of the committee shall be persons appointed by the creditors.

(3) The creditors may by resolution declare that all or any of the persons appointed by the company ought not to be members of the committee of inspection, and, if the creditors so resolve, the persons mentioned in the resolution shall not unless the court otherwise directs, be qualified to act as members of the committee.

(4) On the application of the creditors, the court may appoint any other person to act as a member of the committee in place of a person mentioned in the resolution.

### **72. Proceedings of committee of inspection.**

Subject to section 71, the following shall apply to the proceedings of a committee of inspection—

- (a) the committee shall meet at least once a month and the liquidator or any member of the committee may call a meeting of the committee as and when he or she considers necessary;
- (b) the committee shall act by a majority of its members present at a meeting;
- (c) a member of the committee may resign by notice in writing signed by him or her and delivered to the liquidator;
- (d) where a member of the committee appointed by the creditors or contributories, becomes bankrupt, compounds, arranges with his or her creditors or is absent from five consecutive meetings of the committee without the leave of the other members who also represent the creditors or contributories as the case may be, his or her office shall immediately become vacant;
- (e) a member of the committee may be removed by an ordinary resolution at a meeting of creditors or contributories, for which fifteen days' notice stating the object of the meeting is given;
- (f) where there is a vacancy in the committee, the liquidator shall immediately call a meeting of creditors or of contributories, to fill the vacancy and the meeting may, by resolution, reappoint the same person or appoint another creditor or contributory to fill the vacancy unless the liquidator, having regard to the position in liquidation, is of the opinion that it is not necessary to fill the vacancy, in which case he or she may apply to the court for an order that the vacancy shall not be filled or shall be filled under the circumstances specified in the order; and
- (g) where there is a vacancy, the remaining members of the committee, if not less than two, may continue to act as the committee of inspection.

**73. Fixing of liquidator's remuneration and cessation of directors' powers.**

(1) The committee of inspection or where there is no committee, the creditors, may fix the remuneration to be paid to the liquidator.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection or where there is no committee, the creditors, sanction the continuation.

**74. Power to fill vacancy in office of liquidator.**

Where a vacancy occurs, by death, resignation or otherwise in the office of a liquidator other than a liquidator appointed by or by the direction of, the court, the creditors may fill the vacancy.

**75. Power of liquidator to accept shares in creditors' voluntary liquidation.**

Section 64 shall apply to creditors' voluntary liquidation and to members' voluntary liquidation, except that the powers of the liquidator under that section shall not be exercised without the approval of the court, or of the committee of inspection in substitution for the approval by special resolution.

**76. Duty of liquidator to call meetings of company and of creditors at end of each year.**

(1) Where the liquidation continues for more than one year, the liquidator shall call a general meeting of the company at the end of the first year after the commencement of the liquidation and of each succeeding year, or at the first convenient date within three months from the end of the year or a longer period as the registrar may allow, and shall lay before the meeting an account of his or her acts and dealings and of the conduct of the liquidation during the preceding year.

(2) A liquidator who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifteen currency points.

**77. Final meeting and dissolution**

(1) As soon as the company is fully liquidated, the liquidator shall—

- (a) prepare an account of the liquidation, showing how the liquidation was conducted and how the property of the company was disposed of; and
- (b) call a general meeting of the company and a meeting of the creditors of the company, to present the account and to give any required explanation.

(2) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he or she commits an offence and is liable on conviction to a fine not exceeding fifteen currency points.

(3) The meetings under subsection (1) shall be called by a notice in the *Gazette* and in a newspaper of wide circulation in Uganda, specifying the time, place and the objects of the meetings, and shall be published at least thirty days before the meetings.

(4) Within fourteen days after the meeting or if the meetings are not held on the same day, after the date of the later meeting, the liquidator shall—

- (a) send a copy of the account to the registrar; and
- (b) make a return of holding the meetings and of the dates of the meetings to the registrar,

and if the copy of the account is not sent or the returns of the meetings are not made in accordance with this subsection, the liquidator shall be liable to a fine not exceeding five currency points for every day for which the default continues.

(5) Where quorum is not realized at the meeting, this section shall be taken to have been complied with if the liquidator, in lieu of the return of the meeting, makes a return that the meeting was duly called but that no quorum was realised.

(6) The registrar shall, on receiving the account and the returns under subsection (4) or (5), register them.

(7) On the expiration of three months from the registration of the returns, the company shall be taken to be dissolved, unless court on the application of the liquidator or of any other person who appears to the court to have an interest in the company, makes an order deferring the date on which the dissolution of the company is to take effect, to a time as the court may think fit.

(8) The person on whose application an order of the court under subsection (6) is made, shall deliver a certified copy of the order to the registrar, with a copy to the official receiver, for registration within seven days after the making of the order.

(9) A person who contravenes subsection (8) shall be liable to a fine not exceeding five currency points per day, for the duration of the default.

*Members' and creditors' voluntary liquidation.*

**78. Members' and creditors voluntary liquidation.**

Sections 79 to 86, apply to both members' and creditors' voluntary liquidation.

**79. Distribution of the property of a company.**

Subject to the provisions of this Act on preferential payments, the assets of a company shall, on its liquidation, be applied in satisfaction of its liabilities simultaneously and equally, and, subject to that application, shall unless the articles of association otherwise provide, be distributed among the members according to their rights and interests in the company.

**80. Powers and duties of a liquidator in voluntary liquidation.**

(1) The liquidator in a voluntary liquidation may—