



Dubai
International
Financial
Centre

Annex C

INSOLVENCY LAW-

DIFC LAW No. 3[•] of 200918

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PART 1: GENERAL

1. Title and repeal

- (1) This ~~Law~~ Insolvency Law 2018 repeals and replaces the Insolvency Law 2009 (DIFC Law No. 3 of 2009) as it was in force immediately prior to the commencement of this Law (the "Previous Law"), and may be cited as the "Insolvency Law 2009/2018" or "this Law".
- (2) Except where otherwise provided in this Law, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes of this Law.
- (3) Without limiting the generality of Article 1(2), and subject only to Article 1(4), such repeal and replacement shall not affect:
- (a) any right, privilege, remedy, obligation or Liability accrued to or incurred by any person; or
- (b) any investigation or legal or administrative proceeding commenced, or to be commenced, in respect of any such right, remedy, privilege, obligation or Liability,
- under the Previous Law, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (4) Where there is no equivalent provision in this Law to a provision in the Previous Law, the relevant provision in the Previous Law is deemed to survive the repeal and replacement under this Article 1 until such time as necessary for the purposes of any investigation or legal or administrative proceeding specified in Article 1(3)(b).

2. Legislative Authority

This Law is made by the Ruler ~~of Dubai~~.

3. Application of the Law

This Law applies in the jurisdiction of the Dubai International Financial Centre.

4. Date of enactment

This Law is enacted on the date specified in the Enactment Notice in respect of this Law.

~~5.~~ **Commencement**

~~This Law comes into force on the date specified in the Enactment Notice in respect of this Law. As of the date specified in the Enactment Notice in respect of the Law, the DIFC Law No. 7 of 2004 shall be repealed and replaced in its entirety by the Law.~~

~~6-5.~~ **Interpretation**

Schedule 1 contains:

- (a) interpretative provisions which apply to this Law; and
- (b) a list of defined terms used in this Law.

~~7-6.~~ **Administration by the Registrar**

This Law and any legislation made under this Law is administered by the Registrar.

PART 2: COMPANY VOLUNTARY ARRANGEMENTS

8.7. Company arrangements

- (1) The directors of a Company may make a proposal under this Part to the Company and to its creditors for a scheme of arrangement of its affairs (a "~~voluntary arrangement~~ Voluntary Arrangement").
- (2) The directors ~~shall~~ must appoint a person (the "~~n~~ Nominee") to act in relation to the ~~voluntary arrangement~~ Voluntary Arrangement for the purpose of supervising its implementation.
- (3) The ~~n~~ Nominee must be a person who is registered as an insolvency practitioner under Part ~~9~~ 10 of this Law.

9.8. Moratorium

- (1) Where the directors of an eligible Company intend to make a proposal for a ~~voluntary arrangement~~ Voluntary Arrangement, they may take steps to obtain a moratorium for the Company.
- (2) The Board of Directors of the DIFCA may make Regulations in relation to the obtaining of a moratorium, including but not limited to Regulations as to:
 - (a) Companies eligible for a moratorium under this Article ~~9~~ 8;
 - (b) the procedure for obtaining such a moratorium;
 - (c) the effects of such a moratorium; and
 - (d) the procedure applicable (in place of Articles ~~10~~ 9 to ~~13~~ 12) in relation to the approval and implementation of a ~~voluntary arrangement~~ Voluntary Arrangement where such a moratorium is or has been in force.

10.9. Summoning ~~Consideration of meetings~~ proposal

- (1) The ~~nominee shall~~ Nominee must summon meetings of the Company and of its creditors to consider the proposal ~~for such time, date and place as he thinks fit, and~~
- (2) ~~The persons to~~ Notice must be ~~summoned to a creditors' meeting under this Article 10 are given to every creditor of the Company of whose claim and address the person summoning the meeting Company is aware.~~
- (3) The Company meeting ~~shall~~ must be held in accordance with the Companies Law ~~2009~~.

11.10. Decisions of ~~meetings~~ the Company and its creditors

- (1) ~~The meetings summoned under Article 10 shall decide whether to approve the proposed voluntary arrangement (Voluntary Arrangement.~~
- ~~(1)(2)~~ The Company and its creditors may approve the proposed Voluntary Arrangement with or without modifications).
- ~~(2)(3)~~ A meeting so summoned shall not ~~Neither the Company nor its creditors may~~ approve any proposal or modification which affects the right of a preferential creditor or a secured creditor of the Company to enforce his rights or his security, except with the concurrence of the creditor concerned.

12.11. Effect of approval

- (1) This Article ~~12~~11 has effect where each of the meetings summoned under Article ~~10~~9 approves the proposed ~~voluntary arrangement~~Voluntary Arrangement either with the same modifications or without modifications.
- (2) Where the proposed arrangements approved by the meetings differ from each other, the Court may, on application brought by any aggrieved person, determine which of the proposed arrangements is to be taken to be the approved arrangement.
- (3) The approved ~~voluntary arrangement~~Voluntary Arrangement:
 - (a) takes effect as if made by the Company at the creditors' meetings; and
 - (b) binds every person who in accordance with the Regulations ~~had notice of, and~~ was entitled to vote at; that meeting (whether or not he ~~was present in attendance~~ or represented at the meeting) as if he were a party to the ~~voluntary arrangement~~Voluntary Arrangement.
- (4) If the Company is being wound up or under receivership, the Court may do one or both of the following, namely:
 - (a) by order stay all proceedings in the winding up or discharge the receivership; and/or
 - (b) give such directions with respect to the conduct of the winding up or the receivership as it thinks appropriate for facilitating the ~~voluntary arrangement~~Voluntary Arrangement.

13.12. Implementation of proposal

- (1) This Article ~~13~~12 applies where a ~~voluntary arrangement~~Voluntary Arrangement approved by the meetings summoned under Article ~~10~~9 has taken effect.
- (2) The person who is for the time being carrying out in relation to the ~~voluntary arrangement~~Voluntary Arrangement the functions of the ~~n~~Nominee shall be known as the ~~s~~SSupervisor of the ~~voluntary arrangement~~Voluntary Arrangement.
- (3) The ~~s~~SSupervisor must be a person who is registered as an insolvency practitioner under Part ~~9~~10 of this Law.
- (4) If any of the Company's creditors or any other person is dissatisfied by any act, omission or decision of the ~~s~~SSupervisor, he may apply to the Court; and on the application the Court may:
 - (a) confirm, reverse or modify any act or decision of the ~~s~~SSupervisor;
 - (b) give him directions; or
 - (c) make such other order as it thinks fit.
- (5) The ~~s~~SSupervisor:
 - (a) may apply to the Court for directions in relation to any particular matter arising under the ~~voluntary arrangement~~Voluntary Arrangement; and
 - (b) is included among the persons who may apply to the Court for the winding up of the Company-
~~or for a receivership order to be made in relation to it.~~

(6) The Court may, whenever:

(a) it is expedient to appoint a person to carry out the functions of the Supervisor, and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is registered under Part 910 of this Law to act as an insolvency practitioner in relation to the ~~Company~~ Voluntary Arrangement, either in substitution for the existing ~~S~~Supervisor or to fill a vacancy.

PART 3: REHABILITATION

13. Scope

A Company is eligible to apply under this Part for a Rehabilitation Plan where the debtor is or is likely to become unable to pay its debts and there is a reasonable likelihood of a successful Rehabilitation Plan being reached between the Company and its creditors and shareholders unless it is excluded from being eligible in such manner as prescribed in the Regulations.

14. Common provision of the Regulations that apply under this Part

The following Regulations described in (a) to (h) shall also apply to a Company making an application under this Part: (a) Introduction; (b) Notice and advertisement of beginning of a moratorium; (c) Notice and advertisement of end of moratorium; (d) Eligibility; (e) Effect of Moratorium; (f) Security Interests; (g) Requirements on invoices, orders or business letters; and (h) Financial Markets.

15. Application for Rehabilitation Plan and automatic moratorium

- (1) The directors of a Company may propose a Rehabilitation Plan under this Part of this Law.
- (2) Where the board of a Company notifies the Court in writing (the date of such notification, the "Notification Date") together with such other documents as may be prescribed that they intend to make a proposal to the Company's creditors for a Rehabilitation Plan (a "Rehabilitation Plan Notification"), the Court shall convene and an automatic moratorium shall immediately apply to all creditors, secured or unsecured and without their consent, in respect of such Company and its assets wherever located from the time of the Rehabilitation Plan Notification.

16. Moratorium Period

Unless otherwise ordered by the Court the automatic moratorium shall apply for a period of 120 days from the Notification Date ("the Moratorium Period").

17. Effect of the Moratorium

- (1) The moratorium shall have effect in such manner as prescribed in the Regulations save where modified by this Part.
- (2) The moratorium shall not affect any parties from exercising any right in such manner as prescribed in the Regulations pertaining to Financial Markets.

18. Effect of the moratorium on contracts

- (1) An application under this Part shall not render any undue debt due and payable. Any contrary provision in a contract, or in any applicable law shall be deemed unenforceable for the Moratorium Period.
- (2) Any termination or modification provision in any contract linked to an Insolvency related term ceases to have effect during the Moratorium Period, unless (a) the Company agrees to the termination; or (b) the Court grants permission to terminate; or (c) any sums due after the commencement of the Moratorium Period which the company has agreed to pay, but such sums are not paid within 20 days beginning with the day that payment is due.
- (3) During the Moratorium Period but before the sanctioning of the Rehabilitation Plan the Company may assume, assign or reject an executory contract or unexpired lease. The Company may not assume such contracts or leases unless at the time of assumption it provides adequate assurance to the Contracting Party that it or its assignee will cure any defaults and provide adequate assurance of future performance or as otherwise agreed by the Contracting Party.

- (4) During the Moratorium Period a creditor of such Company is precluded from exercising any right of set-off in respect of any obligation due from such Company unless such rights arise in accordance with the Regulations pertaining to Financial Markets.

19. Relief from the moratorium

Upon the application of any creditor(s), and upon no less than 10 days' notice to the Company, the Court shall be authorised to grant relief from the moratorium in relation to any specific creditor(s) on such terms and conditions as the Court finds to be equitable. In granting any relief, the court shall have regard to the following:

- (a) whether there is any imminent irreparable harm to the Company in the absence of a moratorium in relation to that specific creditor; and
- (b) whether the creditor would suffer any significant loss which the Company cannot compensate the creditor for and the balance of harm tips in favour of the creditor.

20. Appointment of the Rehabilitation Nominee

The board of the Company shall appoint one or more Rehabilitation Nominee(s) ("Rehabilitation Nominee") immediately prior to the Rehabilitation Plan Notification and the name and qualification of each Rehabilitation Nominee must be set out in the Rehabilitation Plan Notification. Where more than one Rehabilitation Nominee is appointed, each Rehabilitation Nominee may exercise its functions independently. The Rehabilitation Nominee will have the authority to perform such functions as are given to him under this Part and otherwise as the Court may from time to time order on application by the Company with the consent of the Rehabilitation Nominee.

21. Identity of the Rehabilitation Nominee

Each Rehabilitation Nominee must be a person who is a registered as an insolvency practitioner under Part 10 of this Law.

22. Management of the debtor

- (1) Notwithstanding the appointment of the Rehabilitation Nominee, the directors are authorised to continue managing the Company's affairs (and shall continue to be responsible and liable for any actions taken in such capacities) except in cases where there is evidence of the Company or its management, officers, directors being guilty of fraud, dishonesty, incompetence, mismanagement, or any of the offences set out in Chapter 7 of Part 6 of this Law.
- (2) In cases where there is evidence of fraud, dishonesty, incompetence, mismanagement, or any of the offences set out in Chapter 7 of Part 6 of this Law have been committed, the Court may appoint an Administrator to manage the business and assets of the Company ("the Administrator"). The Administrator may be appointed for the purposes set out in Article 32(8) of Part 4 in accordance with the provisions set out in Part 4.
- (3) Where an Administrator is appointed pursuant to Part 4 of this Law, the remuneration of the Rehabilitation Nominee and any expenses properly incurred by him shall be charged on and paid out in priority to any other unsecured debts, *pari passu* with the remuneration and expenses of the Administrator pursuant to Article 40(3).

23. Termination and expiration of the Moratorium Period

- (1) Notwithstanding the moratorium and prior to the expiration of the Moratorium Period, the Court may terminate any Moratorium Period upon the request of a creditor of the Company, upon notice and hearing for cause shown, including bad faith. The Court makes such consequential orders as it considers appropriate, including taking steps to wind up the Company in accordance with Chapter 5 of Part 6 of this Law or appoint an Administrator in circumstances where Article 22(2) applies.

- (2) Following the expiration or termination of the Moratorium Period, the Company must take steps to either:
- (a) seek directions in accordance with Article 24 below; or
 - (b) agree to the promotion of an alternative Rehabilitation Plan proposed any creditors or shareholders; or
 - (c) seek to terminate the Rehabilitation Plan process by way of an application to the Court and wind up the Company under Part 6 of this Law.
- (3) In the event that the Company fails to take any steps in (2) above, upon the request of a creditor of the Company, the Court may appoint an Administrator in circumstances where Article 22(2) applies or alternatively taken steps to wind up the Company in accordance with Chapter 5 of Part 6 of this Law.

24. Directions Hearing

- (1) When the Company or the Administrator appointed pursuant to Article 22(2) has a proposal for a Rehabilitation Plan that it is satisfied is ready to be considered by the creditors and shareholders, the Company shall propose to the Court notice and voting procedures, which shall separately classify secured creditors, unsecured creditors and shareholders for the purposes of voting, for a meeting of creditors and shareholders to vote on the Rehabilitation Plan.
- (2) In connection with any such proposal, the Rehabilitation Nominee or Administrator shall file with the Court a statement from the Rehabilitation Nominee or Administrator (as appropriate) concerning whether, in his opinion, (a) the proposed Rehabilitation Plan has a reasonable prospect of being approved and implemented, (b) the Company is likely to have sufficient funds available to it during the moratorium to enable it to carry on its businesses and (c) meetings of the Company and its creditors and shareholders should be summoned to consider the proposed Rehabilitation Plan.
- (3) The Court shall hold a hearing, at which creditors and shareholders shall be entitled to be heard upon no less than 10 days' notice, to consider the classification of creditors and proposed notice and voting procedures (the "Directions Hearing").
- (4) At the Directions Hearing, the Court may order that the proposed notice and voting procedures are approved or rejected, or that the proposed notice and voting procedures are approved as modified by the Court. The Court may also extend the Moratorium Period for a specified period to allow the Rehabilitation Plan to be considered by the Company's creditors and shareholders.

25. Meeting and Voting Requirements

- (1) Prior to the occurrence of any meeting for creditors and shareholders of the Company to vote upon any arrangement, creditors and shareholders of the Company shall be provided with reasonable notice of the occurrence of such meeting in a manner approved by the Court at the Directions Hearing.
- (2) Any notice of a meeting of creditors and shareholders of the Company to vote upon the Rehabilitation Plan shall be sent in writing to all creditors and shareholders and shall include a copy of the Rehabilitation Plan to be voted upon by creditors and shareholders of the Company. The Rehabilitation Plan should include such matters as required by the Regulations.
- (3) In respect of the voting, the following provisions are effective:
- (a) If at least three-quarters in value (of claims agreed to by the Company or otherwise allowed by the Court) of any class of creditors or shareholders, present and voting either in person or by proxy at the meeting, or voting through such other procedure as is approved by the Court, agree to any arrangement, the Rehabilitation Plan, if sanctioned by the Court, shall be binding

on all persons within such class that have or could have a claim against or interest in the Company before the date the Court sanctions the Rehabilitation Plan.

- (b) Notwithstanding any other provision of this Part, a class of creditors or shareholders that is unimpaired under any Rehabilitation Plan, and each holder of a claim or interest of such class, are conclusively deemed to have accepted the Rehabilitation Plan, and solicitation of votes from such class is not required.
- (c) Notwithstanding any other provision of this Part, a class is deemed not to have accepted a Rehabilitation Plan if such arrangement provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the Rehabilitation Plan on account of such claims or interests.

26. Challenges to the Rehabilitation Plan

If following the vote of each class of creditors and shareholders on a Rehabilitation Plan under Article 25 of this Part, any member of a class considers that:

- (a) the arrangement is unfairly prejudicial to it; or
- (b) that the Rehabilitation Plan was not proposed in good faith; or
- (c) that there has been material violation of the notice and voting procedures approved by the Court at the Directions Hearing.

then the creditor or equity interest holder may make a written application to the Court of its objection to the arrangement until the date that is 10 days prior to the Post Plan Hearing. In the event of any such objection, any responses shall be filed at least five days prior to the Post Plan Hearing, and the Court shall consider such objection, and any responses, and order such relief as it deems just and appropriate at the Post Plan Hearing.

27. Post Plan Hearing and Court Sanction

Upon no less than 20 days' notice to creditors and shareholders of the Company and at an open hearing at which creditors and shareholders may be heard (the "Post Plan Hearing"), the Court shall sanction the Rehabilitation Plan upon a finding by the Court that:

- (a) the Rehabilitation Plan proposal complies with this Part;
- (b) the Rehabilitation Plan has been proposed in good faith;
- (c) the arrangement is not unfairly prejudicial to each class of creditors and shareholders, and the Company's general body of creditors, taken as a whole;
- (d) either (1) all classes of creditors and shareholders have voted to accept or are deemed to accept the Rehabilitation Plan, or (2) if a class of claims or interests is impaired under the Rehabilitation Plan, at least one impaired class of creditors has voted to accept the Rehabilitation Plan;
- (e) there has been no material violation of the notice and voting procedures approved by the Court at the Directions Hearing in relation to the relevant meeting;
- (f) any class of creditors or shareholders voting against the Rehabilitation Plan or deemed to vote against the Rehabilitation Plan has received at least as much value as such class would have received in a winding up of the Company pursuant to Part 6; and
- (g) with respect to any class of claims, the holder of any claim or interest that is junior to the claims of any class will not receive or retain under the Rehabilitation Plan on account of such junior claim or interest any property.

28. No Court sanction and winding up

If at the Post Plan Hearing the Court does not sanction the Rehabilitation Plan in accordance with Article 27 of this Part, the Court shall immediately proceed to take steps to wind up the Company in accordance with Chapter 5 of Part 6 of this Law.

29. Effect of Court Sanction

Any Rehabilitation Plan sanctioned by the Court under Article 27 of this Part shall bind all parties in interest, including without limitation all holders of claims or equity interests in the Company, any other party ordered by the Court and every person who in accordance with this Part: (a) was entitled to vote at that meeting (whether or not he was present or represented at it); or (b) would have been so entitled if he had notice of it, as if he were a party to the Rehabilitation Plan.

30. Discretionary relief in conjunction with a Rehabilitation Plan

- (1) From the Notification Date to the conclusion of the Rehabilitation Plan process under this Part, the Court may, in its discretion, authorise such relief as may be necessary or appropriate to facilitate the Company's rehabilitation.
- (2) Such relief may only be considered upon an application by the Company providing ten [10] days' notice to creditors, shareholders or any affected parties (or such shorter notice period as may be permitted by the Court). Creditors, shareholders, or any affected party may be heard at the application.

31. Priority funding

- (1) The Court may, in its discretion, authorise the Company to obtain secured or unsecured credit and incur secured or unsecured debt which debt has: (a) priority over unsecured debt existing as of the Notification Date; (b) is secured by an interest on property of the Company that is not otherwise subject to a Security Interest; or (c) is secured by a junior Security Interest on property of the Company that is already subject to a Security Interest. Nothing in this Article shall limit the ability of the Company to obtain unsecured credit in the ordinary course of its business.
- (2) If the Company is unable to obtain credit pursuant to Article 31(1), the Court may authorise the obtaining of credit or the incurring of debt secured by a senior or equal Security Interest on property of the Company that is already subject to a Security Interest. The Court may only authorise such credit if there is Adequate Protection of the interest of the holder of the Security Interest on the property of the Company on which such senior or equal Security Interest is proposed to be granted or, if with the consent of the holder of the Security Interest on the property of the Company on which such senior or equal Security Interest is proposed to be granted.

PART 4: ADMINISTRATION

32. Application for an order appointing an administrator

- (1) An application for the appointment of an Administrator pursuant to Article 22(2) of Part 3 may only be made by a creditor or creditors, together or separately in the circumstances where an application for Rehabilitation has been made and there is evidence of misconduct. If the Company is an Authorised Person, the creditors must notify the DFSA immediately upon filing the application.
- (2) The Administrator must be a person who is registered as an insolvency practitioner under Part 10 of this Law.
- (3) Notice of the application shall be given to all creditors of the Company. Any person who is entitled to appoint an Administrative Receiver must indicate whether they object or not to the appointment of an Administrator.
- (4) Upon hearing the application, including any objections to the appointment, the Court may dismiss it or adjourn it, or make an order that it thinks fit, including a winding up order in accordance with this Law.
- (5) If the Court is:
- (a) satisfied that a Company is or is likely to become unable to pay its debts; and
 - (b) considers the appointment of an Administrator would be likely to achieve one or more of the purposes in (8) below,

the Court may appoint an Administrator in relation to the Company.
- (6) The order appointing the Administrator shall direct that during the period for which the order is in force, the affairs business and property of the business shall be managed by a person appointed by the Court as Administrator.
- (7) The Court in making such appointment may give all the necessary powers to enable the Administrator to rehabilitate the Company including those set out in Schedule 2. The Court shall also make provision for any additional fees and indemnities that the Administrator may reasonably request. Alternatively, the Court may make an order for the commencement of the winding up of the Company under this Law or any other such order as it considers appropriate.
- (8) The purposes for which an order may be made are:
- (a) the approval of a Rehabilitation Plan under Part 3;
 - (b) the approval of a Voluntary Arrangement under Part 2;
 - (c) the approval of a scheme of arrangement under the Companies Law; and
 - (d) the use of investigation procedures in relation to matters set out in Chapter 7 of Part 6 (*Protection of Assets in Liquidation*) (Articles 106 to 115) and Articles 131 to 134;

and the order shall specify the purpose(s) for which an Administrator is appointed.

33. Effect of order

On the appointment of the Administrator any petition for winding up shall be dismissed and any Administrative Receiver shall vacate office.

34. Moratorium

During the period for which an Administrator is appointed a moratorium in accordance with the Regulations shall apply.

35. Common provisions of the Law and Regulations that apply under this Part

(1) Except where modified by this Part, the following provisions of the Law shall also apply to an Administrator under this Part: (a) Article 43 (Notification that Receiver appointed); (b) Article 45 (No duty to enquire as to power of Receiver and Administrative Receiver); (c) Article 46 (Power to dispose of property subject to a security interest); (c) Article 47 (Agency and liability for contracts); (d) Article 50 (Committee of creditors); Article 88 (Investigation procedures); Articles 106 to 115; Articles 131 to 134 and (e) Schedule 2 (Powers of Administrative Receiver). For these purposes references to Receiver or Liquidator shall be taken as references to an Administrator and references to Liquidation or winding up shall be taken as reference to Administration.

(2) Where the Administrator seeks the approval of a Rehabilitation Plan under Part 3 or the approval of a Voluntary Arrangement under Part [2] those Parts shall also apply save where modified by this Part 3. In such instances the Administrator may also act as the Nominee.

Except where modified by this Part the following provisions of the Regulations described in (a) to (f) shall also apply to an Administrator appointed under this Part: (a) Notice and advertisement of appointment; (b) Notice requiring Statement of Affairs; (c) Creditors' Committee; (d) Disposal of Collateral; (e) Duties with respect to Excluded Property; and (f) Financial Markets. For these purposes references to Receiver shall be taken as references to an Administrator.

(3) For the purposes of the Regulations relating to mutual credits, mutual debts or other mutual dealings does not include any Debt arising out of an obligation where:

(a)

(i) the Liquidation was immediately preceded by Rehabilitation or Administration; and

(ii) at the time the obligation was incurred the creditor had notice of the Rehabilitation or Administration; or

(b) any Debt arising out of an obligation incurred during Rehabilitation or Administration which immediately preceded the Liquidation; or

(c) any Debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement where that agreement was entered into:

(i) at a time when the creditor had notice of the Rehabilitation or Administration; or

(ii) during the Rehabilitation or Administration.

36. General Powers

(1) The Administrator of a Company:

(a) may do all such things as may be necessary for the management of the affairs, business and property of the Company, and

(b) without prejudice to the generality of paragraph (a), has the powers specified in Schedule 2 to this Law.

and in the application of that Schedule to the Administrator of a Company the words "he", "him", "Receiver" refer to the Administrator.

(2) The Administrator also has power:

(a) to remove any director of the Company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and

(b) to call any meeting of the shareholders or creditors of the Company.

(3) The Administrator may apply to the Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

(4) Any power conferred on the Company or its officers whether by this Law or the Companies Law or any constitutional documents which could be exercised in such a way as to interfere with the exercise by the Administrator of his powers is not exercisable except with the consent of the Administrator, which may be given either generally or in relation to particular cases.

37. General duties

(1) The Administrator of a Company shall, on his appointment, take into his custody or under his control all the property to which the Company is or appears to be entitled.

(2) The Administrator shall manage the affairs, business and property of the Company:

(a) at any time before any Rehabilitation Plan under Part 3 or Voluntary Arrangement under Part 2 or scheme of arrangement under the Companies Law has been approved (with or without modifications), in accordance with any directions given by the Court, and

(b) at any time after proposals have been so approved, in accordance with the Rehabilitation Plan or Voluntary Arrangement or Scheme of Arrangement as from time to time revised.

38. Protection of interests of creditors and shareholders

(1) At any time for which an Administrator is in office, a creditor or shareholder of the Company may apply to the Court by petition for an order under this Article on the ground:

(a) that the Company's affairs, business and property are being or have been managed by the Administrator in a manner which is unfairly prejudicial to the interests of its creditors or shareholders generally, or of some part of its creditors or shareholders (including at least himself), or

(b) that any actual or proposed act or omission of the Administrator is or would be so prejudicial.

(2) On an application for an order under this Article the Court may, subject as follows, make such order as it thinks fit for giving relief in respect of the matters complained of.

(3) An order under this Article shall not prejudice or prevent the implementation of a Rehabilitation Plan, or Voluntary Arrangement, or a scheme of arrangement if it has been approved in accordance with the relevant Law; or

(4) Subject as above, an order under this Article may in particular:

(a) regulate the future management by the Administrator of the Company's affairs, business and property;

- (b) require the Administrator to refrain from doing or continuing an act complained of by the petitioner, or to do an act which the petitioner has complained he has omitted to do;
- (c) require the summoning of a meeting of creditors or shareholders for the purpose of considering such matters as the Court may direct; and
- (d) discharge the appointment of the Administrator and make such consequential provision as the Court thinks fit.

Where the Administrator is discharged, within 10 days after the making of the order effecting the discharge the Administrator shall send a copy of that order to the Registrar; and if without reasonable excuse he fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.

39. Discharge or variation of order appointing an Administrator

- (1) The Administrator of a Company may at any time apply to the Court to be discharged, or to be varied so as to specify an additional purpose.
- (2) The Administrator shall make an application under this Article if:
 - (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or
 - (b) he is required to do so by a meeting of the Company's creditors summoned for the purpose in accordance with this Part.
- (3) On the hearing of an application under this Article, the Court may by order discharge or vary the order appointing the Administrator and make such consequential provision as it thinks fit including if appropriate the making of a winding up order under Part 6 of this Law.
- (4) Where the order is discharged or varied the Administrator shall, within 10 days after the making of the order effecting the discharge or variation, send a copy of that order to the Registrar. If the Administrator without reasonable excuse fails to comply, he is liable to a fine, as set out in Schedule 5.

14.40. Vacation of office

- (1) The Administrator of a Company may at any time be removed from office by order of the Court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Court.
- (2) The Administrator shall vacate office if:
 - (a) he ceases to be qualified to act as an insolvency practitioner in relation to the Company; or
 - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be Administrator, the following provisions apply:
 - (a) His remuneration and any expenses properly incurred by him shall be charged on and paid out in priority to any other unsecured debts from any property of the Company which is in his custody or under his control.
 - (b) Any sums payable in respect of debts or liabilities incurred, while he was Administrator, under contracts entered into or adopted by him in the carrying out of his functions shall be charged on and paid out of any such property as is mentioned above, but before the Administrator's

remuneration and expenses.

41. Release of Administrator

- (1) A person who has ceased to be the Administrator of a Company has his release with effect from the following time, that is to say:
- (a) in the case of a person who has died, the time at which notice is given to the Court in accordance with the rules that he has ceased to hold office;
 - (b) in any other case, such time as the Court may determine.
- (2) Where a person has his release under this Article, he is, with effect from the time specified above, discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as Administrator.

PART 5: RECEIVERSHIP

15.42. Powers of ~~Receivers and administrative receivers~~Administrative Receivers

- (1) Where a Company grants a person powers contained in an instrument ~~to appoint an office holder~~ to get in and sell any part of its property and to apply the proceeds in reduction of a debt due to that other person, ~~the office holder~~such person, once appointed, shall be a ~~Receiver~~ and shall be subject to this Law in his performance of that function.
- (2) A ~~Receiver~~ of the property of a Company may be appointed under, and has all of the powers conferred upon him by, such instrument save as provided in this Law or Regulations.
- (3) A ~~Receiver~~ of the property of a Company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a ~~Receiver~~ has been so appointed, may apply to the Court for directions in relation to any particular matter arising in connection with the performance of the functions of the ~~Receiver~~.
- (4) On such an application, the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks just.
- (5) Where a ~~Receiver~~ is appointed in respect of the property of a Company under powers contained in an instrument, and the property over which he is appointed consists of all or substantially all of the undertaking of the Company, that ~~Receiver~~, once appointed, shall be an ~~administrative receiver~~Administrative Receiver. An ~~administrative receiver~~Administrative Receiver has, in addition to the powers contained in the instrument, the powers set out in Schedule 2 to this Law.
- ~~(6) A reference in any DIFC Law or in any instrument to a "receiver and manager" is to be taken, unless the context requires otherwise, to be a reference to an administrative receiver.~~
- ~~(7)~~(6) In the application of Schedule 2 to the ~~administrative receiver~~Administrative Receiver of a Company:
 - (a) the words "he" and "him" refer to the ~~administrative receiver~~Administrative Receiver; and
 - (b) references to the property of the Company are to the property of which he is or, but for the appointment of some other person as the ~~Receiver~~ of part of the Company's property would be, the ~~Receiver~~.
- ~~(8)~~(7) A ~~Receiver~~ or an ~~administrative receiver~~Administrative Receiver appointed over property of a Company in the DIFC must be a person who is registered as an insolvency practitioner under Part 910 of this Law.

16.43. Notification that ~~Receiver~~ appointed

When a ~~Receiver~~ of any property of a Company has been appointed,

- (a) every invoice, order for goods or business letter or order form (whether in hard copy, electronic copy or any other form) issued by or on behalf of the Company, ~~being a document on or in which~~the Receiver; and
- (b) all the Company's name appears, shall websites,
must contain a statement that a ~~Receiver~~ has been appointed.

17.44. Interaction of ~~receivers~~Receivers and Administrative Receivers

When an ~~administrative receiver~~Administrative Receiver is appointed in respect of the property of a Company, any other ~~Receiver or Receivers~~ appointed prior to the date of appointment of the ~~administrative receiver~~Administrative Receiver ~~shall~~must immediately vacate office. Once an ~~administrative receiver~~Administrative Receiver has been appointed, no subsequent ~~Receiver~~ of any part of the property of the Company may be appointed.

18.45. No duty to enquire as to power of ~~administrative receiver~~ Receiver and Administrative Receiver

A person dealing with an ~~administrative receiver~~ a Receiver or an Administrative Receiver in good faith and for value is not concerned to enquire whether the ~~administrative receiver~~ Receiver or Administrative Receiver is acting within his powers.

19.46. Power to dispose of ~~charged~~ property subject to a security interest

- (1) Where, on an application by the ~~administrative receiver~~ Administrative Receiver, the Court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security interest would be likely to promote a more advantageous realisation of the Company's assets than would otherwise be effected, the Court may by order authorise the ~~administrative receiver~~ Administrative Receiver to dispose of the property as if it were not subject to the security interest.
- (2) Article ~~1846~~(1) does not apply in the case of any security interest held by the person by or on whose behalf the ~~administrative receiver~~ Administrative Receiver was appointed, or of any security interest to which a security interest so held has priority.
- (3) It shall be a condition of an order under this Article ~~1846~~ that:
 - (a) the net proceeds of the disposal; and
 - (b) ~~where those proceeds are less than such sum~~ amount as may be required to make ~~good~~ determined by the deficiency between the net proceeds of the disposal and Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency.

~~shall~~ must be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed in pursuance of Article ~~1846~~(3) relates to two or more security interests, that condition ~~shall~~ must require the net proceeds of the disposal and, where Article ~~1846~~(3)(b) applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

20.47. Agency and liability for contracts

The ~~administrative receiver~~ Receiver or Administrative Receiver of a Company is deemed to be the Company's agent unless and until the Company goes into liquidation.

48. Vacation of office

A Receiver or Administrative Receiver of a Company may at any time be removed from office by order of the Court (but not otherwise) and may resign his office by giving notice of his resignation in the manner and to such persons as may be prescribed in the Regulations.

21.49. Report by ~~administrative receiver~~ Administrative Receiver

- (1) Where an ~~administrative receiver~~ Administrative Receiver is appointed, he ~~shall~~ must, within three (3) months (or such longer period as the Court may allow) after his appointment, send to all secured creditors of the Company (so far as he is aware of their addresses) a report as to the following matters, namely:
 - (a) the events leading up to his appointment, so far as he is aware of them;
 - (b) the disposal or proposed disposal by him of any property of the Company and the carrying on or proposed carrying on by him of any business of the Company;

- (c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he was appointed and the amounts payable to preferential creditors; and
 - (d) the amount (if any) likely to be available for the payment of other creditors.
- (2) ~~The administrative receiver shall~~ Administrative Receiver must within three (3) months (or such longer period as the Court may allow) after his appointment, either:
- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the Company; or
 - ~~(e)~~(b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the Company should write for copies of the report to be sent to them free of charge.
- ~~(2) The administrative receiver shall summon a meeting of the Company's unsecured creditors on not less than 14 days' notice, for the purpose of discussing the report.~~

22.50. Committee of creditors

- (1) Where ~~a meeting of creditors is summoned under~~ an Administrative Receiver has sent or published a report as mentioned in Article 21(349)(2), the meeting Company's unsecured creditors may, ~~if it thinks fit~~ in accordance with the Regulations, establish a committee (the "~~creditors' committee~~ Creditors' Committee") to exercise the functions conferred on it by or under this Law or Regulations.
- (2) If such a ~~creditors' committee~~ Creditors' Committee is established, the committee may, on giving not less than seven (7) days' notice, require the ~~administrative receiver~~ Administrative Receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

PART 46: WINDING UP CHAPTER 1**– GENERAL****23-51. Alternative modes of winding up**

- (1) The winding up of a Company may be either voluntary or by the Court.
- (2) This Chapter relates to winding up generally, except where otherwise stated.

24-52. Regulations

The Board of Directors of the DIFCA may make such Regulations as it sees fit in relation to the obligations and liabilities of ~~members~~shareholders, former ~~members~~shareholders, directors, former directors, and other persons to contribute to the assets of a Company which is being wound up.

25-53. Powers of Hliquidator

- (1) Any Hliquidator appointed in a winding up shall have the powers set out in Schedule 3.
- (2) The Board of Directors of the DIFCA shall make such Regulations as it sees fit as regards the exercise of the powers and functions of a Hliquidator, including as to forms and procedures to be adopted in a winding up and as to the responsibilities of officers of the Company and others to co-operate with the Hliquidator.
- (3) Without limiting the application of Article ~~2553~~(2), such Regulations may provide for the power of the Hliquidator to:
 - (a) summon a person to be examined before the Court concerning the affairs of the Company;
 - (b) inspect books and records of the Company;
 - (c) direct an officer of the Company to deliver to the Hliquidator all books and records in the officer's possession that relate to the Company or to advise the Hliquidator of the whereabouts of any such book or record;
 - (d) direct an officer of the Company to give to the Hliquidator such information about the Company's business, property, affairs and financial circumstances as the Hliquidator may require; and
 - (e) direct an officer of the Company to attend upon the Hliquidator to provide books and records, information, or other assistance as the Hliquidator may reasonably require.
- (4) An officer of a Company who:
 - (a) fails to do whatever the Hliquidator reasonably requires the officer to do to assist in the winding up;
 - (b) fails to comply with any reasonable direction given to the officer by the Hliquidator pursuant to the Regulations;
 - (c) hinders or obstructs a Hliquidator in the performance of his powers or functions

commits a contravention and is liable to a fine ~~not exceeding \$15,000, as set out in Schedule 5.~~

- (5) In this Article, an "officer" in relation to a Company means a person who is, or has been but is no longer, a director, a secretary, an employee involved in the management of the Company, a ~~Receiver or administrative receiver, an administrator~~ Administrative Receiver, a Nominee or nominee or supervisor ~~Supervisor~~ in relation to a ~~scheme of arrangement~~ Voluntary Arrangement, or a ~~Liquidator or provisional Liquidator.~~
- (6) A ~~Liquidator~~ may exercise his powers under the Law and Regulations in respect of any person in, or out of, the DIFC.
- (7) In exercising such powers, the ~~liquidator shall~~ liquidator must comply with local requirements relevant to the exercise of those powers including, where appropriate, informing or proceeding in collaboration with a local regulator or authority.

CHAPTER 2 - VOLUNTARY WINDING UP

26.54. **Circumstances in which a Company may be wound up voluntarily**

A Company may be wound up voluntarily:

- (a) in circumstances as may be provided for in the articles of the Company; and where the Company has passed an ordinary resolution for it to be wound up; or
- (b) if the Company resolves by special resolution that it should be wound up voluntarily; ~~or,~~
 - (a) ~~if the Company resolves that it cannot by reason of its liabilities continue its business, and that it is advisable to be wound up.~~

27.55. **Notice of resolution to wind up**

- (1) When a Company has passed a resolution for voluntary winding up, it ~~shall~~ must, within fourteen (14) days after the passing of the resolution, give notice of the resolution by advertisement in such a manner as may be prescribed in the Regulations.
- (2) The notice given under Article 55(1) shall include the following information:
 - (a) the name of the Company;
 - (b) notification that the Company has passed a resolution for voluntary winding up;
 - (c) the date that the resolution for voluntary winding up was passed by the Company; and
 - (d) such further or other information as may be prescribed

28.56. **Commencement of winding up**

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

29.57. **Effect on business and status of Company**

- (1) In case of a voluntary winding up, the Company ~~shall~~ must from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.
- (2) However, the corporate state and corporate powers of the Company, notwithstanding anything to the contrary in its articles, continue until the Company is dissolved.

30-58. Avoidance of share transfers after winding-up resolution

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 Company's ~~members~~shareholders made after the commencement of a voluntary winding up, is void.

31.59. Statutory declaration of solvency

- (1) Where it is proposed to wind up a Company voluntarily, the directors (or, in the case of a Company having more than two directors, the majority of them) may ~~at a directors' meeting~~ make a statutory declaration to the effect that they have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full within such period, not exceeding twelve (12) months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such ~~a declaration~~ declarations must be made within the five (5) weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and it must embody a statement of the Company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) ~~Where a~~ The declarations shall be delivered to the Registrar before the expiration of fifteen (15) days immediately following the date on which the resolution for winding up is passed.
- ~~(3)~~(4) A director making a declaration under this Article 31.59 without having reasonable grounds for the opinion that the Company will be able to pay its debts in full, together with any interest at the official rate, within the period specified, commits a contravention and is liable to a fine not exceeding \$20,000, as set out in Schedule 5.
- ~~(4)~~(5) If the Company is wound up in pursuance of a resolution passed within five (5) weeks after the making of the declarations, and its debts are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

32.60. Distinction between "members'" and "creditors'" voluntary winding up

A winding up in the case of which a directors' statutory declaration under Article ~~32.59~~ has been made is a "~~members' voluntary winding up~~ Members' Voluntary Winding Up"; and a winding up in the case of which such a declaration has not been made is a "~~creditors' voluntary winding up~~ Creditors' Voluntary Winding Up".

CHAPTER 3 – MEMBERS' VOLUNTARY WINDING UP

33.61. Appointment of Liquidator

- (1) In a ~~members' voluntary winding up~~ Members' Voluntary Winding Up, the shareholders of the Company, by ordinary resolution in general meeting shall ~~shall~~ accordance with the constitutional requirements of the Company or any applicable laws, must appoint one or more Liquidators for the purpose of winding up the Company's affairs and distributing its assets.
- (2) On the appointment of a Liquidator all the powers of the directors cease, except so far as the Company, by ordinary resolution in general meeting or ~~accordance with the~~ liquidator ~~constitutional~~ requirements of the Company or any applicable laws, or the Liquidator sanctions their continuance.

34.62. General Company meeting Liquidator's report at each year's end

- (1) ~~In the event of the winding up continuing for more than one (1) year, the liquidator shall summon a general meeting~~ Liquidator must provide the shareholders of the Company with an account of his acts and dealings, and of the conduct of the winding up, during the previous year:
 - (a) at the end of the first year from the commencement of the winding up, and of each succeeding year; or-
 - ~~(a)~~(b) at the first convenient date within three (3) months from the end of the year or such longer period as the Court may allow.

(2) ~~If the Liquidator fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.~~

63. Final account

(2) ~~The liquidator shall lay before the meeting an account of his acts and dealings, and of the conduct of the winding up, during the preceding year.~~

35. Final meeting prior to dissolution

(1) ~~As soon as the Company's affairs are fully wound up, the liquidator shall~~ Liquidator must make up an account of the winding up, showing:

(a) ~~how it has been conducted and the Company's property has been disposed of;~~

(1) ~~details of the remuneration charged and thereupon shall call a general meeting of the Company for the purpose of laying before it the account, and giving an explanation of it.~~

- (b) ~~The meeting shall be called by advertisement according to Regulations laid down~~ expenses incurred by the ~~Board~~ Liquidator during the period since the last report (if any);
 - (c) ~~a description of the work done by the Liquidator during the period since the last report (if any) in respect of Directors~~ which the remuneration was charged and the expenses incurred; and
 - (d) ~~a summary of the DIFCA specifying its time, place and object~~ receipts and ~~published at least one month~~ payments during that period.
- (2) ~~The Liquidator must send a copy of the account to the shareholders of the Company before the end of the period of fourteen (14) days beginning with the day on which the account is made up. The Liquidator shall send the account to the last known addresses of the shareholders of the Company as recorded by the Company. If there is no known address for a shareholder of the Company, the Liquidator shall not be required to send a copy of the account to that shareholder, and shall not be liable pursuant to Article 6363(4).~~
- (2)(3) ~~The Liquidator must send a copy of the account to the Registrar before the end of that period (but not before the meeting, sending it to the shareholders of the Company).~~
- (4) ~~If the Liquidator fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.~~

36-64. Effect of Company's Insolvency

- (1) This Article ~~3664~~ applies where the ~~Liquidator~~ is of the opinion that the Company will be unable to pay its debts in full within the period stated in the directors' declaration under Article ~~3459~~.
- (1A) ~~The liquidator shall summon a meeting~~ Liquidator must before the end of ~~creditors for a day not later than the 28th~~ the period of seven (7) days beginning with the day after the day on which ~~he~~ the Liquidator formed that opinion:
- (a) ~~make out a statement as to the affairs of the Company, and-~~
 - (b) ~~send notices~~ it to the Company's creditors.
- (2) ~~The statement as to the affairs of the creditors' meeting to the Company shall show:~~
- (a) ~~particulars of the Company's assets, debts and liabilities;~~
 - (b) ~~the names and addresses of the Company's creditors;~~
 - (c) ~~the securities held by post not less than 7 days before the day~~ them respectively;
 - (a)(d) ~~the dates on which that meeting is to be held~~ the securities were respectively given; and
 - (e) ~~such further or other information as may be prescribed.~~
- (3) ~~The liquidator must furnish~~ Company's creditors ~~free of charge~~ may in accordance with such ~~information concerning the affairs of~~ the Regulations nominate a person to be Liquidator.
- (3)(4) ~~The Liquidator must in accordance with the Company as they may reasonably require, and~~ Regulations seek such a nomination from the ~~notice of the creditors' meeting shall state this duty~~ Company's creditors.
- (2) ~~The liquidator shall also make out a statement of the affairs of the Company and lay that statement before the creditors' meeting.~~

37-65. Conversion to creditors' voluntary winding up Creditors' Voluntary Winding Up

- (1) ~~As from~~ The winding up becomes a Creditors' Voluntary Winding Up as from the day on which:
- (a) ~~the creditors' meeting is held~~ Company's creditors under Article 36, 64 nominate a person to be Liquidator, or
 - (b) ~~the procedure by which the Company's creditors were to have made such a nomination concludes without a nomination having been made.~~

As from that day this Law has effect as if:

- (2) ~~the directors' declaration under Article 3159 had not been made; and~~
- (3) ~~The Liquidator in the creditors' meeting and~~ Creditors' Voluntary Winding Up is to be the person nominated by the Company's creditors under Article 64 or, where no person has been so nominated, the existing Liquidator.
- (4) ~~In the case of the creditors nominating a person other than the existing Liquidator any director, shareholder or creditor of the Company meeting at~~ may, within seven (7) days after the date on which the nomination was resolved ~~made by the creditors, apply to the Court for an order either:~~
 - (a) ~~directing that the Company be wound up voluntarily were the meetings mentioned in Article 39,~~ existing Liquidator is to be Liquidator instead of or jointly with the person nominated by the creditors, or
 - (b) ~~and accordingly~~ appointing some other person to be Liquidator instead of the person nominated by the creditors.
- (3)(5) ~~The "existing Liquidator" is the person who is Liquidator immediately before the winding up becomes a creditors' voluntary winding up~~ Creditors' Voluntary Winding Up.

CHAPTER 34 - CREDITORS' VOLUNTARY WINDING UP

38.66. Application of this Chapter

- (1) Subject as follows, this Chapter applies in relation to a ~~creditors' voluntary winding up~~ Creditors' Voluntary Winding Up.
- (2) Articles ~~3967 and 4068~~ do not apply where, under Article ~~3765~~, a ~~members' voluntary winding up~~ Members' Voluntary Winding Up has become a ~~creditors' voluntary winding up~~ Creditors' Voluntary Winding Up.

39.67. Meeting ~~Directors to lay statement of affairs before creditors~~

- (1) ~~The directors of the Company shall:~~
 - (1) ~~cause a meeting of its creditors to be summoned for a day not later than the 14th day after the must, before the end of the period of seven (7) days beginning with the day on which there is to be held the Company meeting at which the~~ passes a resolution for voluntary winding up is to be proposed;
 - (a) ~~cause the notices of the creditors' meeting to be distributed to all creditors of whose identity it is aware and published in an appropriate publication not less than 7 days before the day on which that meeting is to be held; and~~
 - (b) ~~propose a person to act as liquidator of the Company.~~

- (a) ~~The~~ make a statement as to the affairs of the Company, and
- (b) send the statement to the Company's creditors.
- (2) The statement as to the affairs of the Company shall show:
 - (a) particulars of the Company's assets, debts and liabilities;
 - (b) the names and addresses of the Company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates on which the securities were respectively given; and
 - (e) such further or other information as may be prescribed.

68. Appointment of Liquidator

- (1) The Company may nominate a person to be Liquidator at the same time at which the resolution for voluntary winding up is passed.
- ~~(1)(2)~~ The Company's creditors may, at in accordance with the creditors meeting, Regulations nominate a person to be Liquidator.
- (3) The Liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the Company.
- ~~(2)(4)~~ In the case of different persons being nominated, the liquidator shall be the person nominated by the creditors, any director, shareholder or creditor of the Company may, within seven (7) days after the date on which the nomination was made by the creditors, apply to the Court for an order either:
- (2) ~~The powers of directing that the liquidator~~ person nominated as Liquidator by the Company shall ~~not be exercised, except~~ Liquidator instead of or jointly with the ~~sanction of~~ person nominated by the Court, ~~during the period before the holding of the creditors' meeting.~~

40. Appointment of liquidation committee

- (a) ~~The creditors at the meeting to be held under Article 39 or at any subsequent meeting may, if they think fit, or~~
- (b) appointing some other person to be Liquidator instead of the person nominated by the creditors.

69. Appointment of Liquidation Committee

- (1) The creditors may in accordance with the Regulations appoint a committee (~~"the "liquidation committee~~ Liquidation Committee) of not more than five (5) persons to exercise the functions conferred on it by or under this Law.
- (2) If such a ~~liquidation committee~~ Liquidation Committee is appointed, the Company may, either at the ~~meeting time~~ at which the resolution for voluntary winding up is passed or at any time subsequently ~~in general meeting~~ by ordinary resolution, appoint such number of persons as they think fit to act as members of the committee, not exceeding five (5).
- (3) However, the creditors may, if they think fit, ~~resolve~~ decide that all or any of the persons so appointed by the Company ought not to be members of the ~~liquidation committee~~ Liquidation Committee; and if the creditors so ~~resolve~~ decide:

- (a) those persons ~~mentioned in the resolution~~ are not then, unless the Court otherwise directs, qualified to act as members of the committee; and
- (b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of ~~those persons mentioned in the resolution~~.

41-70. Directors' powers

On the appointment of a ~~Liquidator~~, all the powers of the directors cease, except so far as the ~~liquidation committee~~ Liquidation Committee (or, if there is no such committee, the creditors) sanction their continuance.

71. Power to disclaim onerous property

- (1) The Liquidator may, by the giving of the prescribed notice, disclaim any onerous property of the Company and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) The following is onerous property for the purposes of this Article 71:
 - (a) any unprofitable contract; and
 - (b) any other property of the Company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.
- (3) The Liquidator may not disclaim only part of an unprofitable contract.
- (4) The disclaimer of any lease shall not take effect unless a copy of the disclaimer has been served (so far as the Liquidator is aware of their addresses) on every person claiming under the Company as an underlessee or mortgagee and the Court directs that the disclaimer shall take effect. Where the Court directs that the disclaimer shall take effect it may also make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article 71 is deemed a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

42-72. Vacancy in office of ~~Liquidator~~

If 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.

43-73. ~~Meetings of Company and creditors~~ Liquidator's report at each year's end

- (1) ~~If~~ In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the Company and a meeting of the creditors. Liquidator must provide the creditors and the shareholders of the Company with an account of his acts and dealings, and of the conduct of the winding up, during the previous year:
 - (a) at the end of the first year from the commencement of the winding up, and of each succeeding year; or-
 - (b) at the first convenient date within ~~three~~ (3) months from the end of the year, and shall lay or such longer period as the Court may allow.
- (2) If the Liquidator fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.
- (4)(3) Where under Article 65 a Members' Voluntary Winding Up has become a Creditors' Voluntary

Winding Up, and the Liquidator sends a statement of affairs to the Company's creditors under Article 64(1A)(b) three (3) months or less before each the end of the meetings an account of his acts and dealings and of the conduct first year from the commencement of the winding up during the preceding, the Liquidator is not required by this section to report to the creditors at the end of that year.

44.74. Final meeting prior to dissolution account

- (1) As soon as the Company's affairs are fully wound up, the liquidator shall Liquidator must make up an account of the winding up, showing:-
- (a) how it has been conducted and the Company's property has been disposed of, and thereupon shall call a general meeting of the Company and a meeting of the creditors for the purpose of laying the account;
 - (b) details of the remuneration charged and expenses incurred by the Liquidator during the period since the last report (if any);
 - (c) a description of the work done by the Liquidator during the period since the last report (if any) in respect of which the remuneration was charged and the expenses incurred; and
 - (d) a summary of the receipts and payments during that period.
- (1)(2) The Liquidator must, before the meetings and giving an explanation of it, end of the period of fourteen (14) days beginning with the day on which the account is made up;

- (a) send a copy of the account to the Company's shareholders, and
- (b) send a copy of the account to the Company's creditors.
- (3) The Liquidator shall send the account to the last known addresses of the shareholders and creditors of the Company as recorded by the Company. If there is no known address for a shareholder or creditor (as applicable) of the Company, the Liquidator shall not be required to send a copy of the account to that shareholder or creditor (as applicable).
- (4) The Liquidator must, before the end of that period (but not before sending it to the shareholders and creditors of the Company), send to the Registrar a copy of the account.
- (5) If the Liquidator fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.

CHAPTER 45 - PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

45-75. Distribution of Company's property

Subject to the provisions of this Law as to preferential payments and to any Regulations made under Article ~~93~~128 and the application of any other laws as described in Article ~~101~~136, the Company's property in a voluntary winding up ~~shall~~must on the winding up be applied in satisfaction of the Company's liabilities which rank pari passu and, subject to that application, ~~shall~~must (unless the articles otherwise provide) be distributed among the ~~members~~shareholders according to their rights and interests in the Company.

46-76. Appointment or removal of Liquidator by the Court

- (1) If for any cause whatever there is no Liquidator acting, the Court may appoint a Liquidator.
- (2) The Court may, on cause shown, remove a Liquidator and appoint another.

47-77. Reference of questions to Court

- (1) The Liquidator or any shareholder or other person liable to contribute to the assets of the Company or creditor may apply to the Court to determine any question arising in the winding up of a Company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court.
- (2) The Court may make such order on the application as it thinks just.

48-78. Expenses of voluntary winding up

All expenses properly incurred in the winding up, including the remuneration of the Liquidator, are payable out of the Company's assets in priority to all other claims.

49-79. Saving for certain rights

The voluntary winding up of a Company does not bar the right of any creditor or any shareholder or other person liable to contribute to the assets of the Company to apply to have it wound up by the Court.

80. Removal or resignation of Liquidator

- (1) This Article 80 applies with respect to the removal from office and vacation of office of the Liquidator of a Company which is being wound up voluntarily.
- (2) The Liquidator may be removed from office only by an order of the Court or:

- (a) in the case of a Members' Voluntary Winding Up, by an ordinary resolution of the shareholders of the Company, or
- (b) in the case of a Creditors' Voluntary Winding Up, by a decision of a meeting of the Company's creditors summoned special for that purpose.
- (3) A Liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the Company.
- (4) A Liquidator may resign his office in the following circumstances:
 - (a) on grounds of ill health;
 - (b) because of the intention to cease to practice as an insolvency practitioner; or
 - (c) because the further discharge of the duties of Liquidator is prevented or made impracticable by a conflict of interest or a change in personal circumstances.
- (5) Before resigning, a Liquidator must deliver a notice to the Court, creditors, shareholders and the Registrar and (a) in the case of a Members' Voluntary Winding Up, require the shareholders to consider whether a replacement should be appointed by way of an ordinary resolution; or (b) in the case of a Creditors' Voluntary Winding Up, summon the creditors to a meeting to consider whether a replacement should be appointed.
- (6) In the case of a Members' Voluntary Winding Up where the Liquidator has produced an account of the winding up under Article 63, the Liquidator vacates office as soon as the Liquidator has complied with Article 63(3).
- (7) In the case of a Creditors' Voluntary Winding Up where the Liquidator has produced an account of the winding up under Article 74, the Liquidator vacates office as soon as the Liquidator has complied with Article 74(3).

CHAPTER 56 – COMPULSORY WINDING UP

50:81. Circumstances in which Company may be wound up by the Court

A Company may be wound up by the Court if:

- (a) the Company has resolved that the Company be wound up by the Court;
- (b) the Company is unable to pay its debts;
- (c) at the time at which a moratorium for the Company under Article 9 comes to an end, no ~~voluntary arrangement~~ Voluntary Arrangement approved under ~~Part~~ Chapter 2 has effect in relation to the Company;
- (d) the Court ~~may~~ is permitted to make such an order pursuant to any provision of or under DIFC Law; or
- (e) the Court is of the opinion that it is just and equitable that the Company should be wound up.

51-82. Definition of inability to pay debts

- (1) A Company is deemed unable to pay its debts:
 - (a) if a creditor to whom the Company is indebted in a sum exceeding \$2,000.00 then due has served on the Company, by leaving it at the Company's registered office, a written demand requiring the Company to pay the sum so due and the Company has for 3 weeks thereafter neglected to pay the sum or to agree terms in relation to its payment to the reasonable satisfaction of the creditor; or
 - (b) if execution or other process issued on a judgment, decree or order of any Court in favour of a creditor of the Company is returned unsatisfied in whole or in part; or
 - (c) if it is proved to the satisfaction of the Court that the Company is unable to pay its debts as they fall due.
- (2) A Company is also deemed unable to pay its debts if it is proved to the satisfaction of the Court that the value of the Company's current assets is less than the amount of its current liabilities, taking into account its contingent and prospective liabilities.

52-83. Application for winding up

Subject to any provision of or under DIFC Law to the contrary, an application to the Court for the winding up of a Company may only be presented either by the Company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors).

53-84. Petition for winding up on grounds of interests of the DIFC

Where it appears to the DIFCA that it is expedient in the interests of the DIFC that a Company should be wound up, it may present a petition for the Company to be wound up if the Court thinks it just and equitable for it to be so.

54-85. Voiding of property dispositions

In a winding up by the Court, any disposition of the Company's property, and any transfer of shares, or alteration in the status of the Company's ~~members~~shareholders, made after the commencement of the winding up is, unless the Court otherwise orders, void.

55-86. Voiding of attachments

Where a Company is being wound up by the Court, no person may attach, sequester or otherwise appropriate the assets of the Company after the commencement of the winding up, and any such activity is, unless the Court otherwise orders, void.

87. Commencement of winding up by the Court

- (1) If, before the presentation of a petition for the winding up of a Company by the Court, a resolution has been passed by the Company for voluntary winding up, the winding up of the Company is deemed to have commenced at the time of the passing of the resolution; and unless the Court, on proof of fraud or mistake directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.
- (2) In any other case, the winding up of a Company by the Court is deemed to commence at the time of the presentation of the petition for winding up.

56:88. Consequences of winding-up order

(1) On the making of a winding-up order, a copy of the order must forthwith be forwarded by the Company (or otherwise as may be prescribed) to the Registrar.

~~(1)~~(2) When a winding-up order has been made, no action or proceeding shall~~must~~ be proceeded with or commenced against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.

57:89. Investigation procedures

~~Without limiting the application of Article 25, Where a winding-up order is made by the Court, it is the Board of Directors duty of the DIFCA may~~Liquidator to investigate:

(a) if the Company has failed, the causes of the failure; and

(b) generally, the promotion, formation, business, dealings and affairs of the Company,

~~and make such Regulations report (if any) to the Court as it seeshe thinks fit as regards the procedures and powers of a liquidator appointed by the Court.~~

58.90. Choice of liquidator at meetings of Liquidator by creditors and contributories

- (1) Where the Court orders that a Company be wound up, the Court ~~shall~~must identify in the order the person who is to act as Liquidator of the Company, and that person ~~shall~~must take office immediately upon the order being made. That person may either continue the Liquidation or ~~summon meetings of~~seek nominations from the Company's creditors and contributories for the purpose of choosing a person to be Liquidator of the Company.
- (2) The creditors and the contributories ~~at their respective meetings may~~may in accordance with the Regulations nominate a person to be Liquidator.
- (3) The ~~liquidator shall~~Liquidator must be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the contributories.
- (4) In the case of different persons being nominated, any shareholder or other person liable to contribute to the assets of the Company or creditor may, within seven (7) days after the date on which the nomination was made by the creditors, apply to the Court for an order either:
 - (a) appointing the person nominated as Liquidator by the contributories to be a Liquidator instead of, or jointly with, the person nominated by the creditors; or
 - (b) appointing some other person to be Liquidator instead of the person nominated by the creditors.

59.91. Appointment of provisional Liquidator

The Court may, at any time after the presentation of a winding-up petition, appoint a Liquidator provisionally. The powers of such a Liquidator may be limited by the order appointing him.

60.92. Liquidation eCommittee

- (1) ~~The~~This Article applies where a winding-up order has been made by the Court.
- (2) ~~If both the Company's creditors at and the meeting~~Company's contributories decide that a Liquidation Committee should be established, a Liquidation Committee is to be held under Article 58~~established in accordance with the Regulations.~~
- (3) ~~If only the Company's creditors, or at any subsequent meeting may, if they think fit, appoint~~only the Company's contributories, decide that a Liquidation Committee is to be established, a Liquidation Committee is to be established in accordance with the Regulations unless the Court orders otherwise.
- (4) A "Liquidation Committee" is a committee (~~the "liquidation committee"~~) of not more than 5 persons ~~to exercise the~~having such functions as are conferred on it by or under this Law.
 - (1) ~~If such a committee is appointed, the Company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.~~
 - (5) ~~The Liquidator must seek a decision from the Company's creditors and contributories as to whether a Liquidation Committee should be established if requested, in accordance with the Regulations, to do so by one-tenth in value of the Company's creditors.~~
 - (2) ~~However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the Company ought not to be members of the liquidation committee, and if the creditors so resolve:~~
 - (a) ~~the persons mentioned in the resolution are not then, unless the Court otherwise~~

directs, qualified to act as members of the committee; and

~~on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.~~

61.93. General functions in winding up by the Court

The functions of the Liquidator of a Company which is being wound up by the Court are to ensure that the assets of the Company are got in or otherwise secured, realised and distributed to the Company's creditors and, if there is a surplus, to the persons entitled to it.

62.94. Vesting of Company property in Liquidator

- (1) When a winding up order has been made, or where a provisional Liquidator has been appointed, the Liquidator or the provisional Liquidator (as the case may be) shall take into his custody or under his control all the property and things in actions to which the Company is or appears to be entitled.
- (2) In circumstances where the Company was a tenant in respect of a lease that has been surrendered, forfeited or otherwise terminated prior to the making of a winding up order in respect of the Company or where such lease has been disclaimed:
- (a) the Liquidator or the provisional Liquidator (as the case may be) shall remove any assets of the Company from the property that was formerly subject to the lease and take physical custody of those assets as soon as possible and in any event before the expiry of 28 days from the date of the winding up order (unless a longer period is agreed with the former landlord of the Company in respect of the lease); or
- (b) if the Liquidator or the provisional Liquidator (as the case may be) does not or cannot (for whatever reason) remove all such assets of the Company from the property as soon before the expiry of 28 days from the date of the winding up order (or such longer period as may be agreed with the former landlord of the Company in respect of the lease), the former landlord of the Company in respect of the lease may apply to the Court for an order permitting the former landlord to sell such assets of the Company that remain at the property on the open market and account to the Liquidator or the provisional Liquidator (as the case may be) for the proceeds of such sale of assets but excluding the reasonable costs of the former landlord incurred in selling the assets and any rent arrears or other payments that may be owed by the Company to the former landlord in respect of the lease.
- (3) Within seven (7) days of the date of an application to the Court pursuant to Article 94(2)(b), the Liquidator or the provisional Liquidator (as the case may be) shall deliver to the former landlord and the Court a list of the Company's assets situated at the property that was formerly subject to the lease. Interested parties may also attend Court and make representations to the extent that they consider that any assets included in the list provided by the Liquidator or the provisional Liquidator (as the case may be) are owned in whole or in part by persons other than the Company, and the Court may give such directions in respect of such assets as it thinks just.
- ~~(4)~~(4) When a Company is being wound up the Court may on the application of the Liquidator direct that all or any part of the property of whatsoever description belonging to the Company or held by trustees on its behalf ~~shall~~ must vest in the Liquidator.
- ~~(2)~~(5) The Liquidator may bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the Company and recovering its property.

95. Final account

- (1) If it appears to the Liquidator that the winding up of the Company is for practical purposes complete the Liquidator must make up an account of the winding up, showing:
- (c) how it has been conducted and the Company's property has been disposed of;
- (d) details of the remuneration charged and expenses incurred by the Liquidator during the period since the last report (if any);
- (e) a description of the work done by the Liquidator during the period since the last report (if any)

in respect of which the remuneration was charged and the expenses incurred; and

- (f) a summary of the receipts and payments during that period.
- (2) The Liquidator must, before the end of the period of fourteen (14) days beginning with the day on which the account is made up send a copy of the account to the company's creditors.
- (3) The Liquidator shall send the account to the last known addresses of the creditors of the Company as recorded by the Company. If there is no known address for a particular creditor of the Company, the Liquidator shall not be required to send a copy of the account to that particular creditor.
- (4) The Liquidator must, before the end of that period (but not before sending it to the creditors of the Company), send to the Registrar a copy of the account.

63.96. Power to stay winding up proceedings

- (1) At any time after the presentation of a winding-up petition, and before a winding-up order has been made, the Company, or creditor or other person liable to contribute to the assets of the Company, may:
 - (a) where any action or proceeding against the Company is pending in the Court, apply to the Court for a stay of proceedings therein; and
 - (b) where any other action or proceeding is pending against the Company, apply to the Court having jurisdiction to wind up the Company to restrain further proceedings in the action or proceeding.

and the Court to which the application is so made may (as the case may be) stay, sist or restrain the proceedings accordingly on such terms as it thinks fit.

- (1)(2) The Court may at any time after an order for winding up, on the application either of the Liquidator or any creditor or shareholder or other person liable to contribute to the assets of the Company, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.
- (3) A copy of every order made under this Article shall forthwith be forwarded by the Company to the Registrar.

64.97. Power to exclude creditors not proving in time

Provided that it satisfied that all necessary steps have been taken to draw the Liquidation of the Company to the attention of creditors, the Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

65.98. Payment of expenses of winding up

The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

66. Removal of liquidator

- (1) ~~This Article 66 applies with respect to the removal from office and vacation of office of the liquidator of a Company which is being wound up voluntarily.~~
- (2) ~~The liquidator may be removed from office only by an order of the Court or, in the case of a members' voluntary winding up, by a general meeting of the Company summoned specially for that purpose, or, in the case of a creditors' voluntary winding up, by a general meeting of~~

~~the Company's creditors summoned specially for that purpose in accordance with the Regulations.~~

67.99. Preferential debts

- (1) Subject to the application of any other laws as described in Article ~~40~~136, in a winding up the Company's preferential debts ~~shall~~must be paid in priority to all other debts.

- (2) The Board of Directors of the DIFCA may make such Regulations as it sees fit to designate certain types of claim on a Company as preferential debts and to prescribe any priorities as to their payment.

68-100. Power to disclaim onerous property

- (1) The Liquidator may, by the giving of the prescribed notice, disclaim any onerous property of the Company and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

- (2) The following is onerous property for the purposes of this Article ~~68~~100:

~~(a) any unprofitable contract; and~~

~~(b)(a) any other property of the Company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.~~

A liquidator in a members' voluntary winding up

(a) any unprofitable contract; and

(b) any other property of the Company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

- (3) The Liquidator may not disclaim ~~property~~, only part of an unprofitable contract.

- (4) The disclaimer of any lease shall not take effect unless a copy of the disclaimer has been served (so far as the Liquidator is aware of their addresses) on every person claiming under the Company as an underlessee or mortgagee and the Court directs that the disclaimer shall take effect. Where the Court directs that the disclaimer shall take effect it may also make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article 100 is deemed a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

101. Rescission of contracts by the Court

- (1) The Court may, on the application of a person who is, as against the Liquidator, entitled to the benefit of or subject to the burden of a contract made with the Company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just.

- (2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

69-102. Notification that Company is in Liquidation

When a Company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the Company, or a Liquidator of the Company, or a ~~R~~Rceiver of the Company's property, being a document on or in which the name of the Company appears, ~~shall~~must contain a statement that the Company is being wound up.

70-103. Information as to pending Liquidations

If the winding up of a Company is not concluded within one (1) year after its commencement, the ~~liquidator shall~~liquidator must, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar a statement in the form prescribed under the Regulations and containing the prescribed particulars with respect to the proceedings in, and position of, the Liquidation.

71.104. Reference of questions to Court

- (1) The Hliquidator or any shareholder or other person liable to contribute to the assets of the Company or creditor may apply to the Court to determine any question arising in the winding up of a Company by the Court.
- (2) The Hliquidator or any aggrieved person may apply to the Court for an order in relation to the exercise of the powers or functions of the Hliquidator.
- (3) The Court may make such order on an application under this Article as it thinks just, including where appropriate an order enforcing or setting aside any direction given or requirement made by the Hliquidator to or of a person.

72.105. Dissolution and early dissolution

- (1) Articles ~~72~~105(2) and 105(3) apply, in the case of a Company being wound up, where the Hliquidator has sent to creditors and the Registrar his final account and return.
- (2) On the expiration of three (3) months from the date of dispatch of the final account and return the Company is deemed to be dissolved.

However, _____ the

- (3) ~~The~~ Court may, on the application of the Liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the Company is to take effect for such time as the Court thinks fit.
- (4) ~~Where~~If it appears to the Liquidator that the realisable assets of the Company are insufficient to cover the expenses of the winding up, and the affairs of the Company do not require any further investigation, the ~~L~~Liquidator may at any time apply to the Registrar for the early dissolution of the Company.
- (5) Before making an application under Article ~~72~~105(4), the ~~liquidator shall~~Liquidator must give not less than twenty eight (28) days' notice of his intention to do so to the Company's creditors and contributories.

- (6) On receipt of the application made under Article 105(4), the Registrar shall forthwith register it and, at the end of the period of 3 months beginning with the day of the registration, the Company shall be dissolved.
- (7) Where a notice has been given under Article 105(4), the Liquidator or any creditor or contributory of the Company, or the Administrative Receiver of the Company (if there is one) may apply to the DIFCA for directions on the grounds that:
- (a) the realisable assets of the Company are sufficient to cover the expenses of the winding up;
 - (b) the affairs of the Company do require further investigation; or
 - (c) for any other reason the early dissolution of the Company is inappropriate.
- (8) Directions under Article 105(7):
- (a) are directions making such provision as the DIFCA thinks fit for enabling the winding up of the Company to proceed as if no notice has been given under Article 105(4); and
 - (b) may include a direction deferring the date at which the dissolution of the Company is to take effect for such period as the DIFCA thinks fit.
- (9) It is the duty of the person on whose application any directions are given under this Article, within seven (7) days after the giving of the directions, to deliver to the Registrar for registration a copy of the directions.

106. Removal or resignation of Liquidator

- (1) This Article 106 applies with respect to the removal from office and vacation of office of the Liquidator of a Company that is being wound up by the Court, or of a provisional Liquidator.
- (2) The Liquidator may be removed from office only by an order of the Court or by a decision of a meeting of the Company's creditors and in accordance with the Regulations, and a provisional Liquidator may be removed from office only by an order of the Court.
- (3) A Liquidator or a provisional Liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the Company.
- (4) A Liquidator may resign his office in the following circumstances:
- (a) on grounds of ill health;
 - (b) because of the intention to cease to practice as an insolvency practitioner; or
 - (c) because the further discharge of the duties of Liquidator is prevented or made impracticable by a conflict of interest or a change in personal circumstances.
- (5) Before resigning, a Liquidator must deliver a notice to the Court, creditors and the Registrar and shall summon the creditors to a meeting to consider whether a replacement should be appointed.
- (6) Where the Liquidator has produced an account of the winding up under Article 95, the Liquidator vacates office as soon as the Liquidator has complied with Article 95(3).

CHAPTER 7: PROTECTION OF ASSETS IN LIQUIDATION**73.107. Fraud in anticipation of winding up**

When a Company is ordered to be wound up by the Court, or passes a resolution for voluntary winding up, Article ~~80~~115 shall apply in respect of any person, being a past or present officer of the Company, who, within the twelve (12) months immediately preceding the commencement of the winding up, has:

- (a) concealed any part of the Company's property to the value of ~~\$200.00~~1,000 or more; or concealed any debt due to or from the Company;
- (b) fraudulently removed any part of the Company's property to the value of ~~\$200.00~~1,000 or more;
- (c) concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the Company's property or affairs;
- (d) made any false entry in any book or paper affecting or relating to the Company's property or affairs;
- (e) fraudulently parted with, altered or made any omission in any document affecting or relating to the Company's property or affairs; or
- (f) pawned, pledged or disposed of any property of the Company which has been obtained on credit and has not been paid for (unless the pawning, pledging or disposal was in the ordinary way of the Company's business),

in each case with the intention of defrauding the creditors of the Company or concealing the state of affairs of the Company from any person or to defeat this Law.

74.108. Transactions in fraud of creditors

- (1) When a Company is ordered to be wound up by the Court or passes a resolution for voluntary winding up, Article ~~80~~115 shall apply in respect of any person, being at the time an officer of the Company, who:
 - (a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against, the Company's property; or
 - (b) has concealed or removed any part of the Company's property since, or within two (2) months before, the date of any unsatisfied judgment or order for the payment of money obtained against the Company.
- (2) Article ~~80~~115 shall not apply to any person if he proves that, at the time of the conduct constituting a breach of this Law he had no intent to defraud the Company's creditors.

75.109. Falsification of Company's books

When a Company is being wound up, Article ~~80~~115 shall apply to an officer or shareholder or other person liable to contribute to the assets of the Company if he destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the Company with intent to defraud or deceive any person.

~~76.110.~~ **Material omissions from statement relating to Company's affairs**

When a Company is being wound up, whether by the Court or voluntarily, Article ~~80~~115 shall apply to any person, being a past or present officer of the Company, who makes any material omission in any statement relating to the Company's affairs with an intent to defraud any person.

~~77.111.~~ **False representations to creditors**

- (1) When a Company is being wound up, whether by the Court or voluntarily, Article ~~80~~115 shall apply to any person, being a past or present officer of the Company, who makes any false representation or commits any other fraud for the purpose of obtaining the consent of the Company's creditors or any of them to an agreement with reference to the Company's affairs or to the winding up.
- (2) A person of the kind specified in Article ~~77~~111(1) is deemed to have made such false representation if, prior to the winding up, he has made any false representation, or committed any other fraud, for that purpose.

~~78.112.~~ **Fraudulent trading**

If in the course of the winding up of a Company ~~it appears~~ the Court is satisfied that any business of the Company has been carried on with intent to defraud creditors of the Company or creditors of any other person, or for any fraudulent purpose, Article ~~80~~115 shall apply to any persons who were knowingly parties to the carrying on of the business in the manner mentioned above.

~~79.113.~~ **Wrongful trading**

- (1) ~~If~~ Subject to Article 113(2) below, if in the course of the winding up of a Company ~~it appears that~~
 - (a) ~~the Company has gone into insolvent liquidation and~~ the Company has gone into insolvent liquidation;
 - ~~(a)(b) the Court is satisfied that~~ (b) the Court is satisfied that at some time before the commencement of the winding up of the Company one or more directors of the Company knew or ought to have known of that there was no reasonable prospect of the Company avoiding going into insolvent ~~liquidation, Article 80 shall apply to such person.~~ liquidation; and

~~80.~~ **Summary remedy against delinquent directors, liquidators**

- (c) that person was a director of the Company at that time,

Article 115 shall apply to such person.

- (2) The Court shall not make a declaration under this Article with respect to any person if it is satisfied that after the condition specified in Article 113(1)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the Company's creditors as (on the assumption that he had knowledge of the matter mentioned in Article 113(1)(b)) he ought to have taken.
- (3) For the purposes of Articles 113(1) and (2), the facts which a director of a Company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both:
 - (a) the general knowledge, skill and experience that may reasonable be expected of a person carrying out the same functions as are carried out by that director in relation to the Company;
 - and

(b) the general knowledge, skill and experience that that director has.

(4) The reference in Article 113(3) to the functions carried out in relation to a Company by a director of the Company includes any functions which he does not carry out but which have been entrusted to him.

114. Misconduct in course of winding-up

(1) Where a Company is being wound up, whether by the Court or voluntarily, Article 115 shall apply to any person, being a past or present director of the Company, if he:

(a) does not to the best of his knowledge and belief fully and truly discover to the Liquidator all the Company's property, and how and to whom and for what consideration and when the Company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the Company's business);

(b) does not deliver up to the Liquidator (or as he directs) all such part of the Company's property as is in his custody or under his control;

(c) does not deliver up to the Liquidator (or as he directs) all books and papers in his custody or under his control belonging to the Company;

(d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the Liquidator as soon as practicable; or

(e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the Company's property or affairs.

(2) It is a defense:

(a) for a person charged under Articles 114(1)(a), (b) or (c) to prove that he had no intention to defraud; and

(b) for a person charged under Article 114(1)(e) to prove that he had no intent to conceal the state of affairs of the Company or to defeat the law.

115. Remedy

The Court may, on application by any aggrieved person including a ~~liquidator or administrative receiver~~ Liquidator, Administrative Receiver, creditor, shareholder or other person liable to contribute to the assets of the Company, make any orders as the Court sees fit in relation to a person to whom this Article ~~80~~115 applies, including one or more of the following orders:

(a) an order to ~~return, repay, restore or pay to account for the Company any~~ money or other property of the Company which he has misapplied or retained; or become accountable for, with interest at such rate as the Court thinks just;

(b) an order to compensate the Company in respect of any misfeasance or breach of any fiduciary or other duty in relation to the Company;

(c) an order to make such contributions (if any) to the Company's assets as the Court thinks proper; or

(d) an order requiring the person to do, or not to do, any act or thing.

84.116. Restriction on re-use of Company names

(2) — Where a Company (the "Liquidating Company") has gone into insolvent ~~liquidation on or after~~
~~the appointed day~~Liquidation and a person was a director or shadow director of that Company at

(1) _____ any time in the period of twelve (12) months ending with the day before it went into HLiquidation, that person may not, except with leave of the Court or in such circumstances as may be prescribed, within the period of five (5) years following the HLiquidation of the HLiquidating Company;

(a) _____ be a director of;

(b) _____ in any way, whether directly or ~~have any connection with~~ indirectly, be concerned or take part in the promotion, formation or management of; or

(c) _____ in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business carried on by,

any Company whose name is a name by which the HLiquidating Company was known at any time in that period of twelve (12) months, or any Company whose name is so similar to the name of the HLiquidating Company as to suggest an association with that Company.

~~(1)(2)~~ A person who fails to comply with Article ~~81~~116(1) commits a contravention and is liable to a fine ~~not exceeding \$10,000,~~ as set out in Schedule 5.

~~A person is personally responsible for all the relevant debts of a Company if at any time he is involved in the management of the Company in contravention of Article 81(1) above.~~

PART 67: RECOGNISED AND FOREIGN COMPANIES**82.117. Proceedings in respect of Foreign Companies**

- (1) Where a Foreign Company is the subject of insolvency proceedings in its jurisdiction of incorporation, the Court ~~shall~~must, upon request from the court of that jurisdiction, assist that court in the gathering and remitting of assets maintained within the DIFC.
- (2) The Board of Directors of the DIFCA may make Regulations in relation to the getting in of assets of Foreign Companies and other issues arising in the context of such co-operation.
- (3) The UNCITRAL Model Law (with certain modifications for application in the DIFC) as set out in Schedule 4 of this Law has force in the DIFC in respect of Foreign Companies. This Law applies with such modification as the context requires for the purpose of giving effect to this Article 117(3)

83.118. Application of this Part in relation to Recognised Companies

- (1) This Part ~~67~~ has effect in addition to, and not in derogation of, any provisions contained in this Law or its Regulations or any other legislation in relation to ~~insolvency~~ and winding up, and the ~~Liquidator~~ or Court may exercise any powers or do any act in the case of a Recognised Company that might be exercised or done by him or it in the winding up of a Company.
- (2) A Recognised Company may be wound up under this Part ~~67~~ notwithstanding that it is being wound up or has been dissolved, deregistered or otherwise ceased to exist as a body corporate under or by virtue of the laws in the place under which it was incorporated.

84.119. Winding up Recognised Companies

- (1) Subject to this Part ~~67~~, a Recognised Company may be wound up under this Law and this Law applies accordingly to a Recognised Company with such adaptations as are necessary, including the following:
 - (a) the place of business of a Recognised Company in the DIFC is taken, for all the purposes of the winding up, to be the registered office of the Recognised Company;
 - (b) a Recognised Company is not to be wound up voluntarily under this Law; and
 - (c) a Recognised Company may be wound up by the Court if:
 - (i) the Recognised Company is unable to pay its debts, has been dissolved or deregistered in its place of origin, has ceased to carry on business in the DIFC, or has a place of business in the DIFC only for the purpose of winding up its affairs; or
 - (ii) the Court is of the opinion that it is just and equitable that the Recognised Company should be wound up.
- (2) On a Recognised Company being wound up, every person who:
 - (a) in any case – is liable to pay or contribute to the payment of:
 - (i) a debt or liability of a Recognised Company;
 - (ii) any sum for the adjustment of the rights of the ~~members~~shareholders among themselves; or
 - (iii) the costs and expenses of the winding up; or

- (b) if the Recognised Company has been dissolved or deregistered in its place of origin
– was so liable immediately before the dissolution or deregistration,

is a contributory and every contributory is liable to contribute to the property of the Recognised Company all sums due from the contributory in respect of any such liability.

- (3) Any provisions of this and any other DIFC Law with respect to staying and restraining actions and other civil proceedings against a Company at any time after the filing of an application for winding up and before the making of a winding up order extend, in the case of a Recognised Company where the application to stay or restrain is by a creditor, to actions and other civil proceedings against a contributory of the Recognised Company.
- (4) Where an order has been made for the winding up of a Recognised Company, no action or other civil proceeding is to be proceeded with or commenced against a contributory of a Recognised Company in respect of a debt of the Recognised Company except by leave of the Court and subject to such terms as the Court may impose.

85.120. Outstanding property of a defunct Recognised Company

- (1) This Article applies where, after the dissolution or deregistration of a Recognised Company, outstanding property of the Recognised Company remains in the DIFC.
- (2) The estate and interest in the property of the Recognised Company or of its Liquidator at the time, together with all claims, rights and remedies that the Recognised Company or the Liquidator then had in respect of the property, vests by force of this Article inwith the DIFC.
- (3) Where any claim, right or remedy of a Liquidator may under this Law be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the DIFC may, for the purpose of this Article, make, exercise or avail itself of the claim, right or remedy without such approval or concurrence.

PART 78: OTHER TYPES OF COMPANY

86-121. Application of the Law to other types of Company

- (1) Where, pursuant to Part 10 of the Companies Law—2009, a type of Company is prescribed in Regulations made under that Part, the Board of Directors of the DIFCA may make Regulations:
 - (a) prescribing:
 - (i) the circumstances and manner in which such a type of Company may enter into a ~~voluntary arrangement or receivership~~Voluntary Arrangement or Receivership or be wound up;
 - (ii) any requirements or obligations in relation to the appointment of an insolvency practitioner to such a type of Company; and
 - (iii) forms and procedures for the voluntary arrangement, ~~R~~Receivership and winding up of such a Company; and
 - (b) extending, excluding, waiving or modifying the application of provisions of this Law or of the Regulations, where considered necessary or desirable to facilitate the orderly application of insolvency law in relation to such a type of Company.
- (2) The Law will apply to a type of Company to which this Article applies except where a provision of or the context of the Law or Regulations or other legislation administered by the Registrar provides otherwise.

PART 89: APPLICATION OF THE LAW TO LIMITED LIABILITY PARTNERSHIPS**87.122. Application to Limited Liability Partnerships**

All of the provisions of this Law and the Regulations made for the purpose of this Law shall apply to a Limited Liability Partnership, except where the context otherwise requires, with the following modifications:

- (a) references to a Company shall include references to a Limited Liability Partnership;
- (b) references to a director or to an officer of a Company shall include references to a member of a Limited Liability Partnership;
- (c) references to a shareholder of a Company shall include references to a member of a Limited Liability Partnership;
- ~~(d)~~ (d) references to the other provisions of the Companies Law ~~2009~~ or to provisions of the Insolvency Law shall include references to those provisions as they apply to Limited Liability Partnership in accordance with this Law;
- ~~(d)~~ (e) references to the articles of a Company shall include references to the Limited Liability Partnership agreement of a Limited Liability Partnership;
- ~~(e)~~ (f) references to a resolution of a Company shall include references to a determination of a Limited Liability Partnership;
- ~~(a)~~ references to a meeting of a Company shall include references to a meeting of the members of a Limited Liability Partnership;
- ~~(f)~~ (g) the following modifications shall apply:
 - (i) in Article ~~87~~(1), for "The directors of a company" substitute "A Limited Liability Partnership" and delete "to the Company and";
 - (ii) in Article ~~87~~(2), for "The directors" substitute "A Limited Liability Partnership";
 - ~~(a)~~ omit Article ~~10~~(3);
 - (iii) for Article ~~265~~4, substitute the following:

"A Limited Liability Partnership may be wound up voluntarily when it determines that it is to be wound up voluntarily";
 - (iv) in Article ~~315~~9, for "director(s)" directors" (wherever it appears) substitute "designated members", and for "director" (wherever it appears) substitute "designated member";
 - (v) in Article ~~326~~0, for "directors" substitute "designated members";
 - (vi) in Article ~~366~~4(1), for "directors" substitute "designated members";
 - (vii) in Article ~~37~~(~~a~~67(1), for "directors" substitute "designated members";
 - (viii) in Article ~~54~~85, for "any transfer of shares" substitute "any transfer by a member of the Limited Liability Partnership of his interest in the property of the Limited Liability Partnership"; and
 - (ix) in Article ~~75~~109, substitute "a member" shareholder" for "an officer or shareholder" member".

~~(g)~~(h) such further modifications as the context requires for the purpose of giving effect to that legislation as applied by this Law.

PART 910: INSOLVENCY PRACTITIONERS**88-123. Restrictions on service as Hliquidator or RReceiver**

- (1) No person may be appointed as or serve as a ~~R~~Receiver, an ~~administrative receiver~~Administrative Receiver, a Hliquidator or provisional Hliquidator of a Company under this Law or any other DIFC Law unless he is registered as an insolvency practitioner under this Part.
- (2) Without limiting the generality of Article ~~88123~~(1), no insolvency practitioner may be appointed by the Court as:
 - (a) Hliquidator under ~~Article 58~~Articles 61, 76 or 90 of the Law; or
 - (b) provisional Hliquidator under Article ~~5991~~ of the Law,
 unless he is further registered as an official Hliquidator under this Part.
- (3) The registration of an insolvency practitioner as an official Hliquidator constitutes an acknowledgement of that insolvency practitioner that he will accept any appointment made by the Court as a Hliquidator or provisional Hliquidator to a Company in accordance with the provisions of any rules of procedure as may be made by the Court.

89-124. Qualification and registration of insolvency practitioners

- (1) In this Law, unless expressed otherwise, a reference to:
 - (a) an insolvency practitioner is a reference to an insolvency practitioner who is registered under this Law; and
 - (b) an official Hliquidator is a reference to an official Hliquidator who is registered under this Law.
- (2) The Board of Directors of the DIFCA shall make Regulations containing a set of requirements which an application for registration as an insolvency practitioner or as an official Hliquidator must meet before such application can be accepted and registration be granted by the Registrar. Such Regulations may include requirements relating to the qualifications, experience and fitness and propriety of applicants, and any bonding arrangements that they must put in place.
- (3) The Board of Directors of the DIFCA may make Regulations providing for such requirements referred to in Article ~~89124~~(2) to be varied in cases where an application is made by a person who is, at the time of application, regulated in a jurisdiction other than the DIFC.
- (4) The Registrar may in his absolute discretion refuse to grant an application for registration.
- (5) The Registrar may cancel the registration of an insolvency practitioner or of an official Hliquidator on that person's request or as otherwise provided under this Law.

90-125. Register of insolvency practitioners and official Hliquidators

- (1) The Registrar ~~shall~~must publish and maintain registers of current and past registrations of insolvency practitioners and official Hliquidators in such manner as may be prescribed in the Regulations.

- (2) The Registrar ~~shall~~must make a reasonably current version of any registers maintained under this Article freely available for viewing by the public during the normal business hours of the Registrar.

91.126. Obligation of disclosure to the Registrar

- (1) Subject to Article ~~91.126~~(2), an insolvency practitioner appointed to a Company ~~shall~~must disclose to the Registrar any matter which reasonably tends to show one (1) of the following:
- (a) a breach, or likely breach of a provision of the Law or Regulations or other legislation administered by the Registrar;
 - (b) a failure, or likely failure, to comply with any obligation to which a person is subject under such legislation; or
 - (c) any other matter as the Board of Directors of the DIFCA may prescribe in Regulations,

which may be attributable to the conduct of the relevant Company or of its officers, employees or agents.

- (2) Article ~~91.126~~(1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
- (3) Any provision in an agreement between a Company and an officer, employee, agent or insolvency practitioner is void in so far as it purports to hinder any person from causing or assisting a Company to comply with an obligation under Article ~~91.126~~(1).
- (4) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an insolvency practitioner to comply with an obligation under Article ~~91.126~~(1).
- (5) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article ~~91.126~~(4).
- (6) Without limiting the application of any other provision of this Law, an insolvency practitioner does not contravene any duty to which he is subject merely because he gives to the Registrar:
- (a) a notification as required under this Article; or
 - (b) any other information or opinion in relation to any such matter,

if the insolvency practitioner is acting in good faith and reasonably believes that the notification, information or opinion is relevant to any functions of the Registrar.

92.127. Supervision of insolvency practitioners

- (1) The Court may, on application of the Registrar, and upon being satisfied that an insolvency practitioner:
- (a) has contravened a provision of the Law, Regulations, or other legislation administered by the Registrar; or

- (b) has failed, whether within or outside the DIFC, to carry out or perform duties or functions adequately or properly; or
- (c) is otherwise not a fit and proper person to remain registered as an insolvency practitioner or, where applicable, as an official liquidator,

make one or more of the following orders:

- (a) an order that the Registrar may cancel, or suspend for a specified period, the registration of the insolvency practitioner or as an official liquidator;
- (b) an order imposing conditions or restrictions on the future conduct of the insolvency practitioner;
- (c) an order requiring the insolvency practitioner to do, or refrain from doing, any act or thing; or
- (d) any other order as the Court sees fit.

(2) For the avoidance of doubt:

- (a) any cancellation or suspension of the registration of a person as an insolvency practitioner is deemed to constitute a cancellation or suspension of any registration of the person as an official liquidator; and
- (b) the imposition of any condition or restriction on the future conduct of an insolvency practitioner is deemed, as the context may permit, to constitute the imposition of such a condition or restriction on the future conduct of the insolvency practitioner acting in his capacity as an official liquidator.

(3) Nothing in this Article affects the powers that any person or the Court may have apart from this Article.

PART ~~10~~11: MISCELLANEOUS

93-128. Power to make Regulations

- (1) The Board of Directors of the DIFCA may make Regulations for the purposes of this Law pursuant to the power conferred upon it under Article 140 of the Companies Law ~~2009~~.
- (2) Without limiting the generality of Article 140 of the Companies Law ~~2009~~, such Regulations may be made in respect of:
 - (a) relating to the practice and procedures under this Law including the valuation of liabilities, the ranking of debts (other than preferential debts) and the identification and application of assets; and
 - (b) extending, excluding, waiving or modifying the application of provisions of this Law as may appear to it to be necessary or desirable to amend the powers, duties or responsibilities of any person under this Law.
- ~~(2A)~~ Regulations under Article ~~93~~128(1) may:
 - (a) make different provisions for different cases or circumstances, including different descriptions of Companies and different descriptions of creditors;
 - (b) include supplementary, incidental and consequential provision; and
 - (c) make transitional provision and savings.
- ~~(2B)~~ Article 93~~128~~(2A) shall apply not only in relation to Regulations made under Article ~~93~~128(1) on or after the date on which this Law comes into force, but also in relation to Regulations made under Article ~~93~~128(1) before that date.
- (5) Where any legislation made for the purposes of this Law purports to be made in exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.
- (6) The Board of Directors of the DIFCA shall publish draft Regulations in the manner prescribed under Article 141 of the Companies Law ~~2009~~.

94-129. Getting in the Company's property

- (1) This Article ~~94~~129 applies in the case of a Company where:
 - (a) a ~~R~~Receiver or ~~administrative receiver~~Administrative Receiver is appointed;
 - (b) the Company goes into ~~L~~liquidation; or
 - (c) a provisional ~~L~~liquidator is appointed,

and the "office-holder" means the ~~R~~Receiver, the ~~administrative receiver~~Administrative Receiver, the ~~L~~liquidator or the provisional ~~L~~liquidator, as the case may be.
- (2) Where any person has in his possession or control any property, books, papers or records to which the Company appears to be entitled, the Court may, on application by an office- holder, require that person forthwith (or within such period as the Court may direct) to pay,

deliver, convey, surrender or transfer the property, books, papers or records to the office- holder.

- (3) Where the office-holder:
- (a) seizes or disposes of any property which is not property of the Company; and
 - (b) at the time of seizure or disposal believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of the Court or otherwise) to seize or dispose of that property,

the office-holder is not liable to any person in respect of any loss or damage resulting from the seizure or disposal (except in so far as that loss or damage is caused by the office-holder's own negligence), and has a lien on the property, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.

95.130. Duty to co-operate with office-holder

- (1) This Article ~~95.130~~ applies in the cases mentioned in Article ~~94.129~~(1).
- (2) Each of the persons mentioned in Article ~~95.130~~(3) shall:
 - (a) give to the office-holder such information concerning the Company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date reasonably require;
 - (b) attend on the office-holder at such times as the latter may reasonably require.
- (3) The persons referred to in Article ~~95.130~~(2) are:
 - (a) those who are or have at any time been officers of the Company;
 - (b) those who have taken part in the formation of the Company at any time within one year before the effective date;
 - (c) those who are in the employment of the Company, or have been in its employment (including employment under a contract for services) within that year, and are in the office-holder's opinion capable of giving information which he requires;
 - (d) those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of, another Company which is, or within that year was, an officer of the Company in question; and
 - (e) in the case of a Company being wound up by the Court, any person who has acted as ~~receiver, administrative receiver~~Receiver, Administrative Receiver, provisional ~~Liquidator~~ or Liquidator of the Company.
- (4) For the purposes of Articles ~~95.130~~(2) and (3), the "effective date" is whichever is applicable of the following dates:
 - (a) the date on which the ~~Receiver or administrative receiver~~Administrative Receiver was appointed or, if he was appointed in succession to another ~~Receiver or administrative receiver~~Administrative Receiver, the date on which the first of his predecessors was appointed;
 - (b) the date on which the provisional ~~Liquidator~~ was appointed; and

(c) the date on which the Company went into Liquidation.

(5) Any person referred to in Article 130(3) that fails to comply with the obligations in this Article shall be liable to a fine, as set out in Schedule 5.

96.131. Inquiry into Company's dealings

(1) The Court may order-;

(a) any person involved with officer of the Company-;

(b) any persons known or suspected to have in his possession any property of the Company or supposed to be indebted to the Company; or

(c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the Company,

to produce to it or to the office holder an account of his dealings with the Company or any books, papers or records in his possession relating to the Company or to any such dealings.

(2) Any person that fails to comply with the obligations in this Article shall be liable to a fine, as set out in Schedule 5.

97.132. Transactions at an undervalue

(1) This Article ~~97~~132 applies in the case of a Company where:

(a) ~~—(a receiver or administrative receiver is appointed to the Company; or~~

) the Company goes into Liquidation; or

(b) a provisional Liquidator is appointed,

and the "office-holder" means the ~~receiver, the administrative receiver, the liquidator~~Liquidator or the provisional Liquidator, as the case may be.

(2) Where the Company has at a relevant time (defined in Article ~~100~~135) entered into a transaction with any person at an undervalue, the Court may, on application of the ~~officeholder~~office-holder, make an order restoring the position to what it would have been if the Company had not entered into that transaction.

(3) A Company enters into a transaction with a person at an undervalue if it makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the Company to receive no consideration, or consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the Company.

(4) The Court shall not make an order under this Article ~~97~~132 in respect of a transaction at an undervalue if it is satisfied:

(a) that the Company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the Company.

98.133. Preferences

- (1) This Article applies in the cases in which Article ~~97~~132 applies.
- (2) Where the Company has at a relevant time (defined in Article ~~100~~135) given a preference to any person, the Court may, on application of an office-holder, ~~(as defined in Article 132)~~, make an order restoring the position to what it would have been if the Company had not given that preference.
- (3) For the purposes of this Article ~~98~~133 a Company gives a preference to a person if:
 - (a) that person is one of the Company's creditors or a surety or guarantor for any of the Company's debts or other liabilities; and

- (b) the Company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the Company going into insolvent ~~L~~iquidation, will be better than the position he would have been in if that thing had not been done.
- (4) The Court ~~shall~~must not make an order under this Article ~~98~~133 in respect of a preference given to any person unless the Company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in Article ~~98~~133(3)(b).
- (5) A Company which has given a preference to a person connected with the Company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, ~~(such as, for example, receiving additional material consideration therefor)~~ to have been influenced in deciding to give it by such a desire as is mentioned in Article ~~98~~133(4).

99.134. Invalid security interests

- (1) Where a Company becomes insolvent, a security interest in all or substantially all of the Company's property is invalid where:
 - (a) the security interest is created in favour of a person connected with the Company and was created after a date two years prior to the ~~onset of insolvency~~date on which the Company goes into Liquidation or an Administrator is appointed pursuant to a rehabilitation proposal; or
 - (b) the security interest is created after a date one year prior to the ~~onset of insolvency~~date on which the Company goes into Liquidation or an Administrator is appointed pursuant to a rehabilitation proposal and the Company either was at the date of the creation or became pursuant to the transaction in respect of which the charge was created unable to pay its debts as they fell due; or
 - (c) ~~the security interest was created after the commencement of a Company voluntary arrangement~~Voluntary Arrangement.
- (2) Article ~~99~~134(1) does not invalidate a security interest to the extent of the value transferred to the Company or liabilities of the Company released as a result of the transaction giving rise to the grant of the security interest.

100.135. Relevant time under Articles ~~97~~132 and ~~98~~133

The time at which a Company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given:

- (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the Company (otherwise than by reason only of being its employee), at a time in the period of two (2) years ending with the ~~onset of insolvency~~ (date on which ~~expression~~the Company goes into Liquidation or an Administrator is ~~defined below~~); appointed pursuant to a rehabilitation proposal; and
- (b) in the case of a preference which is not such a transaction and is not so given, at a time in the period of six (6) months ending with the ~~onset of insolvency~~; and date on which the Company goes into or an administrator is appointed pursuant to a rehabilitation proposal.
- (c) ~~in either case, at a time between the presentation of a petition for the making of an administration order in relation to the Company and the making of such an order on that petition.~~

101.136. Application of other laws in relation to receivership and winding up

- (1) The provisions of this Law and Regulations relating to the powers of a ~~receiver, administrative receiver~~ Receiver, Administrative Receiver, provisional ~~Liquidator and Liquidator~~ Liquidator to get in, secure, realise and distribute property of a Company are subject to the application of other DIFC Laws and rules and regulations made under those laws which may be inconsistent with or otherwise extend, exclude, modify, or waive the application of provisions of this Law and Regulations in particular cases or classes of case.
- (2) ~~In particular, and without limiting the generality of Article 101136(1), such other laws, rules or regulations may provide for the orderly conduct of affairs or winding up of a Company which is licensed as an Authorised Firm or Authorised Market Institution under the DIFC Law No 1 of 2004 (Regulatory Law 2004) as may be amended from time to time, in relation to which the legislation may prescribe procedures and priorities for the dealing with assets of the Company or other persons in the event of pending or actual Insolvency or other default.~~

102-137. Power of Court to declare dissolution of Company void

- (1) Where a Company has been dissolved under this Law or the Companies Law ~~2009~~, the Court may at any time within ~~ten~~ (10) years of the date of the dissolution, on an application made for the purpose by a ~~Liquidator~~ Liquidator of the Company or by any other person appearing to the Court to be interested, make an order, on such terms as the Court sees fit, declaring the dissolution to have been void and the Court may by the order give such directions and make such provisions as seem just for placing the Company and all other persons in the same position as nearly as may be as if the Company had not been dissolved.
- (2) Upon the making an order under Article ~~102137~~ 102137(1), such proceedings may be taken which might have been taken if the Company had not been dissolved.

103-138. Contraventions and administrative notice of fine

- (1) Where:
 - (a) a provision of the Law or of the Regulations provides that a failure to comply with a provision constitutes a contravention and prescribes a maximum fine in relation to the contravention; and
 - (b) the Registrar considers that a person has committed such a contravention,

the Registrar may impose by written notice given to the person a fine, in respect of the contravention, of such amount as he considers appropriate but not exceeding the prescribed maximum amount in respect of each contravention.
- (2) If a person is knowingly concerned in such a contravention committed by another person, the aforementioned person as well as the other person commits a contravention and is liable to be proceeded with and dealt with under Article ~~1038~~ 1038(1).
- (3) If, within the period specified in the notice issued under Article ~~1038~~ 1038(1):
 - (a) the person pays the fine imposed by the Registrar, then no proceedings may be commenced by the Registrar against the person in respect of the relevant contravention; or
 - (b) the person takes such action as is prescribed in the Regulations as applicable under Article ~~1038~~ 1038(4) to object to the imposition of the fine or has not paid the imposed fine to the Registrar, then the Registrar may apply to the Court for, and the Court may so

order, the payment of the fine or so much of the fine as is not paid and make any further order as the Court sees fit for recovery of the fine.

- (4) The Regulations issued by the Board of Directors of the DIFCA under Article 117(1) of the Companies Law ~~2009~~ apply in relation to the giving of a notice under this Article with such modifications as the context requires for the purpose of giving effect to that legislation as applied by this Law.
- (5) A certificate that purports to be signed by the Registrar and states that a written notice was given to a person pursuant to Article ~~1038~~(1) imposing a fine on the basis of specific facts is:
 - (a) conclusive evidence of the giving of the notice to the person; and
 - (b) prima facie evidence of the facts contained in the notice, in any proceedings commenced under Article ~~1038~~(3).
- (6) Nothing in this Article limits the powers that the Registrar may otherwise have in relation to a failure to comply with the Law or Regulations, including the powers under the Companies Law ~~2009~~ to issue and enforce a direction to a Company or any officer of it to make good a failure.

SCHEDULE 1 INTERPRETATION

139. Remote attendance at meetings

- (1) Subject to Article 139(2), this Article applies to:
- (a) any meeting of the creditors of a Company summoned under this Law or the Regulations; or
 - (b) any meeting of the shareholders of a Company summoned by the office-holder under this Law or Regulations, other than a meeting of the shareholders of the Company in a Members' Voluntary Winding Up.
- (2) This section does not apply where a Receiver or an Administrative Receiver is appointed under Part 5 of the Law.
- (3) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- (4) Where a meeting is conducted and held in the manner referred to in Article 139(3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.
- (5) For the purposes of this Article:
- (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
 - (b) a person is able to exercise the right to vote at a meeting when:
 - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (6) The convener of a meeting which is to be conducted and held in the manner referred to in Article 139(3) shall make whatever arrangements the convener considers appropriate to:
- (a) enable those attending the meeting to exercise their rights to speak or vote, and
 - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (7) Where in the reasonable opinion of the convener:
- (a) a meeting will be attended by persons who will not be present together at the same place, and
 - (b) it is unnecessary or inexpedient to specify a place for the meeting,
- any requirement under this Law or the Regulations to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.
- (8) In making the arrangements referred to in Article 139(6) and in forming the opinion referred to in Article 139(7)(b), the convener must have regard to the legitimate interests of the members and others attending the meeting in the efficient dispatch of the business of the meeting.

- (9) If:
- (a) the notice of a meeting does not specify a place for the meeting,
 - (b) the convener is requested in accordance with the rules to specify a place for the meeting, and
 - (c) that request is made by members representing not less than ten percent of the total voting rights of all the members having at the date of the request a right to vote at the meeting,
- it shall be the duty of the convener to specify a place for the meeting.
- (10) In this section, "the office-holder", in relation to a Company, means:
- (a) its Liquidator or provisional Liquidator of a Company, or
 - (b) its Administrator; or
 - (c) where a Voluntary Arrangement in relation to the Company is proposed or has taken effect under Part 2, the Nominee or the Supervisor of the Voluntary Arrangement.

140. Use of websites

- (1) Subject to Article 140(2), where any provision of this law or the Regulations requires the office-holder to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website:
- (a) in accordance with the Regulations, and
 - (b) in such circumstances as may be prescribed.
- (2) This section does not apply where a Receiver or Administrative Receiver is appointed under Part 3 of the Law.
- (3) In this section, "the office-holder" means:
- (a) the Liquidator or provisional Liquidator of a Company, or
 - (b) where a Voluntary Arrangement in relation to a Company is proposed or has taken effect under Part 2, the Nominee or the Supervisor of the Voluntary Arrangement.

141. Public Register

The events specified in this Article 141 must be notified to the Registrar by the person specified in each case within seven (7) days of the occurrence of the event:

- (a) the date of commencement and the date of cessation of:
 - (i) a Voluntary Arrangement by the Nominee (in the case of commencement) and by the Nominee or the Supervisor as applicable (in the case of cessation);
 - (ii) a Receivership by the Receiver or the Administrative Receiver as applicable;
 - (iii) a Rehabilitation by the Rehabilitation Nominee;
 - (iv) an Administration by the Administrator; and
 - (v) a Liquidation by the Liquidator or provisional Liquidator (as the case may be);
- (b) the name, address, date of appointment and date of vacation of office of:

- (i) each Nominee and Supervisor of a Voluntary Arrangement;
 - (ii) each Rehabilitation Nominee of a Rehabilitation;
 - (iii) each Administrator of an Administration;
 - (iv) each office-holder; and
- (c) the date of the dissolution of the Company by the Liquidator.

SCHEDULE 1
INTERPRETATION

1. Rules of interpretation

- (1) In the Law, a reference to:
- (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
 - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
 - (c) a calendar year shall mean a year of the Gregorian calendar;
 - (d) a day shall refer to a business day, being a normal working day in the DIFC;
 - (e) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in the Law, include publishing or causing to be published in printed or electronic form;
 - (f) a reference to the masculine gender includes the feminine; and
 - (g) any reference to 'dollars' or '\$' is a reference to United States Dollars unless the contrary intention appears.
- (2) The headings in the Law shall not affect its interpretation.

2. Legislation in the DIFC

References to legislation in the Law shall be construed in accordance with the following provisions:

- ~~(a) — Federal Law is law made by the federal government of the United Arab Emirates;~~
- ~~(b)(a) — Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;~~
- ~~(c)(b) — DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC; and~~
- ~~(d) — the Law is the Insolvency Law, DIFC Law No.3 of 2009 made by the Ruler; and~~
- ~~(e)(c) — the Regulations are legislation made by the Board of Directors of the DIFCA pursuant to the powers conferred under the Companies Law 2009 and are binding in nature.~~

3. Defined terms

In the Law, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

| Term | Definition |
|--|--|
| administrative receiver <u>Adequate Protection</u> | has the meaning in Article 14(5); <u>shall mean an interest reasonably sufficient to protect the holder of a valid security interest against a diminution in the value of such security interest to the extent such diminution is occasioned by the moratorium, any grant of a Security Interest pursuant to Article 31 or the Company's use, sale, or lease of the property subject to such security interest following the Rehabilitation Plan Notification.</u> |

| Term | Definition |
|--|--|
| <u>Administrative Receiver</u> | <u>has the meaning in Article 42(5).</u> |
| <u>Administrator</u> | <u>has the meaning given to it in Article 22(2) of Part 3;</u> |
| <u>Board of Directors of the DIFCA</u> | <u>the governing body of the DIFCA.</u> |
| <u>Companies Law</u> | <u>the Companies Law DIFC Law No. 2 of 2009.</u> |
| <u>Company</u> | <u>a company incorporated under the Companies Law.</u> |
| <u>Court</u> | <u>the DIFC Court as established under Dubai Law.</u> |
| <u>Creditors' Committee</u> | <u>means a committee of creditors established in accordance with Article 50.</u> |
| <u>Creditors' Voluntary Winding Up</u> | <u>a winding up other than a Members' Voluntary Winding Up.</u> |

| | |
|--|--|
| Board of Directors of the DIFCA | the governing body of the DIFCA. |
| clearing house | a person authorised to act as a clearing house under the laws of any place where it conducts business as such, and may include an exchange where the rules of such exchange effect settlement netting between members. |
| Company | a company incorporated under the Companies Law 2009. |
| Court | the DIFC Court as established under Dubai Law. |
| creditors' committee | means a committee of creditors established in accordance with Article 22. |
| creditors' voluntary winding up | a winding up other than a members' voluntary winding up. |
| DIFC | the Dubai International Financial Centre. |
| DIFCA | the DIFC Authority established under Dubai Law. |
| DIFC Law | has the meaning given in Article 2 of Schedule 1 to the Law. |
| <u>Directions Hearing</u> | <u>has the meaning given to it in Article 24(3) of Part 3;</u> |
| <u>Dubai Law</u> | <u>Has the meaning given in paragraph 2 of Schedule 1 to the Law.</u> |
| Foreign Company | any association or other body corporate (whether or not it is classed as a company under its law of incorporation) which has corporate existence under its law of incorporation but which is not incorporated in the DIFC, and may include a Recognised Company. |
| Insolvency | has the meaning given in Article paragraph 4(1) of Schedule 1 to the Law. |
| Law Limited Liability Partnership | the Insolvency Law 2009; a partnership with limited liability established under the Limited Liability Partnership Law (DIFC Law No 5 of 2004 as may be amended from time to time). |
| Limited Liability Partnership Liquidating Company | a partnership with limited liability established under the Limited Liability Partnership Law; has the meaning set out in Article 116(1). |
| liquidating company Liquidation | has the meaning set out given in Article 81 (paragraph 4(2) of Schedule 1); to the Law. |
| liquidation Liquidation Committee | has the meaning given a committee appointed in accordance with Article 4(2) of Schedule 69(1 to) or 92(1), as the Law case may be. |
| liquidation committee Liquidator | includes, where the context allows, a committee Liquidator appointed in accordance with Article 40(1) or 60(1), as the case may be provisionally. |

| | |
|---|---|
| liquidator <u>Members' Voluntary Winding Up</u> | includes, where the context allows, a liquidator appointed provisionally <u>a winding up in the case of which a director's statutory declaration has been made in accordance with Article 59.</u> |
| members' voluntary winding up <u>Nominee</u> | a winding up person appointed to act in the case of which relation to a director's statutory declaration has been made <u>Voluntary Arrangement in accordance with Article 31-7(2).</u> |
| nominee <u>Notification Date</u> | a person appointed <u>has the meaning given to act in relation to a voluntary arrangement in accordance with Article 815(2)-;</u> |
| office holder <u>Post Plan Hearing</u> | has the meaning set out <u>given to it in Article 94(1)-27;</u> |

| | |
|---|--|
| President | the president of the DIFC, appointed by a decree of the Ruler pursuant to Dubai Law. |
| Privileged Communication | a communication attracting a privilege arising from the provision of professional legal advice and any other advice or from the relationship of lawyer and client or other similar relationship, but does not include a general duty of confidentiality. |
| ¶ Receiver | has the meaning in Article 14 <u>42</u> (1). |
| receiver and manager | has the meaning in Article 14(6). |
| Recognised Company | a Foreign Company which is registered to carry on business in the DIFC pursuant to the Companies Law 2009 . |
| Registrar | the Registrar of Companies appointed under the Companies Law 2009 . |
| Regulations | has the meaning given in Article 2 of Schedule 1 to the Law. |
| <u>Rehabilitation Nominee</u> | <u>has the meaning given to it in Article 20;</u> |
| <u>Rehabilitation Plan</u> | <u>is the arrangement proposed to the creditors and/or shareholders of the Company under Part 3;</u> |
| <u>Rehabilitation Plan Notification</u> | <u>has the meaning given to it in Article 15;</u> |
| Ruler | the ruler of the Emirate of Dubai. |
| ¶ Resolution—_for—_voluntary winding up | a resolution passed under Article 26 <u>54</u> . |
| Schedule | a schedule to the Law. |
| s Supervisor | has the meaning set out in Article 13 <u>12</u> (2). |
| <u>UNCITRAL Model Law</u> | <u>means the Model Law on cross border insolvency as adopted by the United Nations Commission on International Trade Law on 30 May 1997.</u> |
| unregistered company <u>Unimpaired</u> | any association <u>means where a class of creditors or company other than a Recognised Company shareholders, and each holder of a claim or a Company formed interest of such class is unaffected under the law terms of the DIFC Rehabilitation Plan.</u> |
| voluntary arrangement <u>Voluntary Arrangement</u> | has the meaning set out in Article 8(1). |

4. "Insolvency" and "go into Liquidation"

(1) "Insolvency", in relation to a Company:

- (a) means the inability of the Company to pay its debts determined in accordance with Article ~~51~~81; and
- (b) ~~in Part 10,~~ except in so far as the context otherwise requires, includes the approval of a ~~voluntary arrangement~~Voluntary Arrangement under Part 2, or the appointment of a ~~¶~~Receiver or ~~administrative receiver~~Administrative Receiver under Part 5.

- (2) A Company goes into Liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the Court at a time when it has not already gone into Liquidation by passing such a resolution.

POWERS OF ADMINISTRATIVE RECEIVERS SCHEDULE 2

POWERS OF ADMINISTRATIVE RECEIVER

1. Power to take possession of, collect and get in the property of the Company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the Company by public auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the Company.
4. Power to appoint a legal consultant or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the Company.
6. Power to refer to arbitration any question affecting the Company.
7. Power to effect and maintain insurances in respect of the business and property of the Company.
8. Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.
10. Power to appoint any agent to do any business which the ~~Liquidator~~ Receiver is unable to do himself or which can more conveniently be done by an agent.
11. Power to do all such other things as may be necessary for ~~winding up~~ the realisation of Company's affairs and distributing its assets.

POWERS OF LIQUIDATOR IN A WINDING UP SCHEDULE 3

POWERS OF LIQUIDATOR IN A WINDING UP

1. Power to pay any class of creditors in full.
2. Power to make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company, or whereby the Company may be rendered liable.
3. Power to compromise, on such terms as may be agreed:
 - (a) all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Company and a shareholder or other person liable to contribute to the assets of the Company or person alleged to be such or other debtor or person apprehending liability to the Company; and
 - (b) all questions in any way relating to or affecting the assets or the winding up of the Company, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
4. Power to bring or defend any action or other legal proceeding in the name and on behalf of the Company.
5. Power to carry on the business of the Company so far as may be necessary for its beneficial winding up.
6. Power to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
7. Power to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents ~~and for that purpose to use, when necessary, the Company's seal.~~
8. Power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any shareholder or other person liable to contribute to the assets of the Company for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.
9. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with respect to the Company's liability as if the bill or note had been drawn, accepted, made or endorsed by or on behalf of the Company in the course of its business.
10. Power to raise on the security of the assets of the Company any money requisite.
11. Power to take out in his official name letters of administration to any deceased shareholder or other person liable to contribute to the assets of the Company, and to do in his official name any other ~~Law~~act necessary for obtaining payment of any money due from such person's estate which cannot conveniently be done in the name of the Company.

In all such cases the money due is deemed, for the purpose of enabling the Liquidator to take out the letters of administration or recover the money, to be due to the Liquidator himself.

12. Power to appoint an agent to do any business which the Liquidator is unable to do himself.
13. Power to do all such other things as may be necessary for winding up the Company's affairs and distributing its assets.

SCHEDULE 4

UNCITRAL MODEL LAW

SCHEDULE 3

CHAPTER I - GENERAL PROVISIONS

1. Scope of application

(1) This Model Law applies where:

- (a) Assistance is sought in the DIFC by a foreign court or a foreign representative in connection with a foreign proceeding; or
- (b) Assistance is sought in a foreign State in connection with a proceeding under the Insolvency Law 2018; or
- (c) A foreign proceeding and a proceeding under the Insolvency Law 2018 in respect of the same debtor are taking place concurrently; or
- (d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the Insolvency Law 2018.

(2) This Model Law does not apply to a proceeding concerning Regulated Entities that are subject to special insolvency regimes in the DIFC.

2. Definitions

For the purposes of this Model Law:

- (a) "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;
- (b) "Foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;
- (c) "Foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f)(f) of this article;
- (d) "Foreign representative" means a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;
- (e) "Foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;
- (f) "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

3. Conflicts

To the extent that this Model Law conflicts with an obligation of the DIFC arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

4. Competent court

The functions referred to in this Model Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the DIFC Court.

5. Authorisation of insolvency officeholders to act in a foreign State

An insolvency officeholder is authorised to act in a foreign State on behalf of a proceeding under the Insolvency Law 2018, as permitted by the applicable foreign law.

6. Public policy exception

Nothing in this Model Law prevents the DIFC Court from refusing to take an action governed by this Model Law if the action would be manifestly contrary to the public policy of the DIFC.

7. Additional assistance under other laws

Nothing in this Model Law limits the power of a court or a DIFC insolvency officeholder to provide additional assistance to a foreign representative under other laws of the DIFC.

8. Interpretation

In the interpretation of this Model Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

In the interpretation of any provisions of this Model the following documents are relevant:

- (a) The Guide to Enactment of the UNCITRAL Model Law on Cross Border Insolvency (UN document A/CN.9/442); and
- (b) any document relating to the Model Law that is issued by or forms part of the record on preparation of the Model Law maintained by the United Nations Commission on International Trade Law and its working group for the preparation of the Model Law.

CHAPTER II - ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THE DIFC

9. Right of direct access

A foreign representative is entitled to apply directly to the DIFC Court.

10. Limited jurisdiction

The sole fact that an application pursuant to this Model Law is made to the DIFC Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the DIFC Court for any purpose other than the application.

11. Application by a foreign representative to commence a proceeding under the Insolvency Law 2018

A foreign representative is entitled to apply to commence a proceeding under the Insolvency Law 2018 if the conditions for commencing such a proceeding are otherwise met.

12. Participation of a foreign representative in a proceeding under the Insolvency Law 2018

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under the Insolvency Law 2018.

13. Access of foreign creditors to a proceeding under the Insolvency Law 2018

- (1) Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under the Insolvency Law 2018 as creditors in the DIFC.
- (2) Paragraph 1 of this article does not affect the ranking of claims in a proceeding under the Insolvency Law 2018, except that the claims of foreign creditors shall not be ranked lower than ordinary creditors as prescribed by the Insolvency Law 2018 and DIFC Regulations solely because the holder of such a claim is a foreign creditor.

14. Notification to foreign creditors of a proceeding under the Insolvency Law 2018

SCHEDULE 3

- (1) Whenever under the Insolvency Law 2018 notification is to be given to creditors in the DIFC, such notification shall also be given to the known creditors that do not have addresses in the DIFC. The DIFC Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the DIFC Court considers that, under the circumstances, some other form of notification would be more appropriate.
- (3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

 - (a) Indicate a reasonable time period for filing claims and specify the place for then filing;
 - (b) Indicate whether secured creditors need to file details of their secured claims; and
 - (c) Contain any other information required to be included in such a notification to creditors pursuant to the law of the DIFC and the orders of the DIFC Court.

CHAPTER III - RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

15. Application for recognition of a foreign proceeding

- (1) A foreign representative may apply to the DIFC Court for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (3) An application for recognition shall be accompanied by:

 - (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) In the absence of evidence referred to in (a) and (b), any other evidence acceptable to the DIFC Court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (4) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings or any proceedings in the DIFC in respect of the debtor that are known to the foreign representative.
- (5) The DIFC Court may require a translation of documents supplied in support of the application for recognition into an official language of the DIFC.

16. Presumptions concerning recognition

- (1) If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the DIFC Court is entitled to so presume.
- (2) The DIFC Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

17. Decision to recognise a foreign proceeding

- (1) Subject to article 6, a foreign proceeding shall be recognised if:
- (a) The foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;
 - (b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;
 - (c) The application meets the requirements of paragraph 2 of article 15; and
 - (d) The application has been submitted to the DIFC Court referred to in article 4.
- (2) The foreign proceeding shall be recognised:
- (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or
 - (b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.
- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition by the DIFC Court if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

18. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the DIFC Court promptly of:

- (a) Any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

19. Relief that may be granted upon application for recognition of a foreign proceeding

- (1) From the time of filing an application for recognition until the application is decided upon, the DIFC Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:
- (a) Staying execution against the debtor's assets;
 - (b) Entrusting the administration or realisation of all or part of the debtor's assets located in the DIFC to the foreign representative or another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
 - (c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21.
- (2) Unless extended under paragraph 1 (f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.
- (3) The DIFC Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

20. Effects of recognition of a foreign main proceeding

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding:

 - (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (b) Execution against the debtor's assets is stayed; and
 - (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (2) The scope, or termination, of the stay and suspension referred to in paragraph 1 of this article applies in the same scope and effect as the moratorium under Article 87(2) of the Insolvency Law 2018. It does not affect any rights to take steps to enforce security; to repossess goods in the debtor's possession; or a creditor's right to set off its claims.
- (3) Paragraph 1 of this article does not affect the right to request the commencement of a proceeding under the Insolvency Law 2018 or the right to file claims in such a proceeding.
- (4) The DIFC Court may upon the application of the foreign representative or a person affected by the stay or suspension, or of its own motion, modify or terminate such stay or suspension or any part of it, on such terms and conditions as the DIFC Court thinks fit.

21. Relief that may be granted upon recognition of a foreign proceeding

- (1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the DIFC Court may, at the request of the foreign representative, grant any appropriate relief, including:

 - (a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;
 - (b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20;
 - (c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;
 - (d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (e) Entrusting the administration or realisation of all or part of the debtor's assets located in the DIFC to the foreign representative or another person designated by the Court;
 - (f) Extending relief granted under paragraph 1 of article 19;
 - (g) Granting any additional relief that may be available to DIFC insolvency officeholders under the laws of the DIFC.
- (2) Upon recognition of a foreign proceeding, whether main or non-main, the DIFC Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the DIFC to the foreign representative or another person designated by the DIFC Court, provided that the DIFC Court is satisfied that the interests of creditors in the DIFC are adequately protected.
- (3) In granting relief under this article to a representative of a foreign non-main proceeding, the DIFC Court must be satisfied that the relief relates to assets that, under the law of the DIFC, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

22. Protection of creditors and other interested persons

- (1) In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 of this article, the DIFC Court must be satisfied that the interests of the creditors and other

interested persons, including the debtor, are adequately protected.

(2) The DIFC Court may subject relief granted under article 19 or 21 to conditions it considers appropriate.

SCHEDULE 3

(3) The DIFC Court may, at the request of the foreign representative or a person affected by the relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.

23. Actions to avoid acts detrimental to creditors

(1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate any actions in accordance with Articles 129 to 138 of the Insolvency Law 2018.

(2) When the foreign proceeding is a foreign non-main proceeding, the DIFC Court must be satisfied that the action relates to assets that, under the law of the DIFC, should be administered in the foreign non-main proceeding.

24. Foreign representatives right to intervene in other proceedings

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of the DIFC are met, intervene in any proceedings in which the debtor is a party.

CHAPTER IV - COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

25. Cooperation and direct communication between a court of the DIFC and foreign courts or foreign representatives

In matters referred to in article 1, the DIFC Court may cooperate with foreign courts or foreign representatives, either directly or through a DIFC insolvency officeholder.

The DIFC Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

26. Cooperation and direct communication between the DIFC insolvency officeholder and foreign courts or foreign representatives

(1) In matters referred to in article 1, a DIFC insolvency officeholder may, in the exercise of its functions and subject to the supervision of the DIFC Court, cooperate with foreign courts or foreign representatives.

(2) The DIFC insolvency officeholder is entitled, in the exercise of its functions and subject to the supervision of the DIFC Court, to communicate directly with foreign courts or foreign representatives.

27. Forms of cooperation

Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:

(a) Appointment of a person or body to act at the direction of the DIFC Court;

(b) Communication of information by any means considered appropriate by the DIFC Court;

(c) Coordination of the administration and supervision of the debtor's assets and affairs;

(d) Approval or implementation by courts of agreements concerning the coordination of proceedings; and

(e) Coordination of concurrent proceedings regarding the same debtor.

CHAPTER V - CONCURRENT PROCEEDINGS

28. Commencement of a proceeding under the Insolvency Law 2018 after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under the Insolvency Law 2018 may be commenced only if the debtor has assets in the DIFC; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the DIFC and, to the extent necessary to implement cooperation and coordination under

articles 25, 26 and 27, to other assets of the debtor that, under the law of the DIFC, should be administered in that proceeding.

29. Coordination of a proceeding under the Insolvency Law 2018 and a foreign proceeding

Where a foreign proceeding and a proceeding under the Insolvency Law 2018 are taking place concurrently regarding the same debtor, the DIFC Court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

- (a) When the proceeding in the DIFC is taking place at the time the application for recognition of the foreign proceeding is filed,
 - (i) Any relief granted under article 19 or 21 must be consistent with the proceeding in that State; and
 - (ii) If the foreign proceeding is recognised in the DIFC as a foreign main proceeding, article 20 does not apply;
- (b) When the proceeding in the DIFC commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
 - (i) Any relief in effect under article 19 or 21 shall be reviewed by the DIFC Court and shall be modified or terminated if inconsistent with the proceeding in the DIFC; and
 - (ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 2 of article 20 if inconsistent with the proceeding in the DIFC;
- (c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the DIFC Court must be satisfied that the relief relates to assets that, under the law of the DIFC, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

30. Coordination of more than one foreign proceeding

In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the DIFC Court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

- (a) Any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;
- (b) If a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the DIFC Court and shall be modified or terminated if inconsistent with the foreign main proceeding;
- (c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the DIFC Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

31. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under the Insolvency Law 2018, proof that the debtor is insolvent.

32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under the Insolvency Law 2018 regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

SCHEDULE 5

FINES

SCHEDULE 3

| <i><u>Article of Law creating contravention</u></i> | <i><u>General nature of contravention</u></i> | <i><u>Maximum Fine</u></i> |
|---|--|----------------------------|
| <u>38(4)</u> | <u>Administrator failing to submit copy of the Court order discharging the Administrator to the Registrar</u> | <u>\$100per day</u> |
| <u>39(4)</u> | <u>Administrator failing to submit copy of the Court order discharging or varying the order appointing the Administrator</u> | <u>\$100per day</u> |
| <u>53(4)</u> | <u>Officer failing to co-operate with the Liquidator</u> | <u>\$15,000</u> |
| <u>59(4)</u> | <u>Director making a statutory declaration of solvency without reasonable grounds</u> | <u>\$20,000</u> |
| <u>62(2)</u> | <u>Liquidator failing to make a year end report in a Members' Voluntary Winding Up</u> | <u>\$5,000</u> |
| <u>63(4)</u> | <u>Liquidator failing to comply with the requirements in respect of a final account on the conclusion of a Members' Voluntary Winding Up</u> | <u>\$5,000</u> |
| <u>73(2)</u> | <u>Liquidator failing to make a year end report in a Creditors' Voluntary Winding Up</u> | <u>\$5,000</u> |
| <u>74(5)</u> | <u>Liquidator failing to comply with the requirements in respect of a final account on the conclusion of a Creditors' Voluntary Winding Up</u> | <u>\$5,000</u> |
| <u>116(2)</u> | <u>Restriction on the re-use of Company names</u> | <u>\$10,000</u> |
| <u>130(5)</u> | <u>Relevant person failing to comply with the duty to co-operate with the officeholder</u> | <u>\$15,000</u> |
| <u>131(2)</u> | <u>Relevant person failing to provide an account of dealings to the officeholder</u> | <u>\$15,000</u> |