
INSOLVENCY LAW
DIFC LAW No. 3 of 2009

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PART 1: GENERAL

1. Title

This Law may be cited as the "Insolvency Law 2009".

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 As of the date specified in the Enactment Notice in respect of the Law, the DIFC Law No. 7 of 2004 shall be repealed and replaced in its entirety by the Law.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. Interpretation

Schedule 1 contains:

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

7. Administration by the Registrar

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

PART 2: COMPANY VOLUNTARY ARRANGEMENTS

8. 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").
- (2) The directors shall appoint a person (the "nominee") to act in relation to the voluntary arrangement for the purpose of supervising its implementation.
- (3) The nominee must be a person who is registered as an insolvency practitioner under Part 9 of this Law.

9. Moratorium

- (1) Where the directors of an eligible Company intend to make a proposal for a 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;
 - (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 to 13) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.

10. Summoning of meetings

- (1) The nominee shall summon meetings of the Company and of its creditors to consider the proposal.
- (2) The persons to be summoned to a creditors' meeting under this Article 10 are every creditor of the Company of whose claim and address the person summoning the meeting is aware.
- (3) The Company meeting shall be held in accordance with the Companies Law 2009.

11. Decisions of meetings

- (1) The meetings summoned under Article 10 shall decide whether to approve the proposed voluntary arrangement (with or without modifications).
- (2) A meeting so summoned shall not 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. Effect of approval

- (1) This Article 12 has effect where each of the meetings summoned under Article 10 approves the proposed 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:
 - (a) takes effect as if made by the Company at the creditors' meeting; 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 or represented at the meeting) as if he were a party to the 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.

13. Implementation of proposal

- (1) This Article 13 applies where a voluntary arrangement approved by the meetings summoned under Article 10 has taken effect.
- (2) The person who is for the time being carrying out in relation to the voluntary arrangement the functions of the nominee shall be known as the supervisor of the voluntary arrangement.
- (3) The supervisor must be a person who is registered as an insolvency practitioner under Part 9 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 supervisor, he may apply to the Court; and on the application the Court may:
 - (a) confirm, reverse or modify any act or decision of the supervisor;
 - (b) give him directions; or
 - (c) make such other order as it thinks fit.
- (5) The supervisor:
 - (a) may apply to the Court for directions in relation to any particular matter arising under the 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 make an order appointing a person who is registered under Part 9 of this Law to act as an insolvency practitioner in relation to the Company either in substitution for the existing supervisor or to fill a vacancy.

PART 3: RECEIVERSHIP

14. Powers of receivers and 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, 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. An 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) In the application of Schedule 2 to the administrative receiver of a Company:
 - (a) the words "he" and "him" refer to the 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) A receiver or an administrative receiver appointed over property of a Company in the DIFC must be a person who is registered as an insolvency practitioner under Part 9 of this Law.

15. Notification that receiver appointed

When a receiver of any property of a Company has been appointed, every invoice, order for goods or business letter issued by or on behalf of the Company, being a document on or in which the Company's name appears, shall contain a statement that a receiver has been appointed.

16. Interaction of receivers

When an 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 shall immediately vacate office. Once an administrative receiver has been appointed, no subsequent receiver of any part of the property of the Company may be appointed.

17. No duty to enquire as to power of administrative receiver

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

18. Power to dispose of charged property

(1) Where, on an application by the 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 to dispose of the property as if it were not subject to the security interest.

(2) Article 18(1) does not apply in the case of any security interest held by the person by or on whose behalf the 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 18 that:

(a) the net proceeds of the disposal; and

(b) such sum as may be required to make good the deficiency between the net proceeds of the disposal and the net amount which would be realised on a sale of the property in the open market by a willing vendor,

shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of Article 18(3) relates to two or more security interests, that condition shall require the net proceeds of the disposal and, where Article 18(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.

19. Agency and liability for contracts

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

20. Vacation of office

An 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. Report by administrative receiver

(1) Where an administrative receiver is appointed, he shall, within 3 months (or such longer period as the Court may allow) after his appointment, send to all 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 within 3 months (or such longer period as the Court may allow) after his appointment, 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.
 - (3) 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. Committee of creditors

- (1) Where a meeting of creditors is summoned under Article 21(3), the meeting may, if it thinks fit, establish a committee (the "creditors' committee") to exercise the functions conferred on it by or under this Law or Regulations.
- (2) If such a creditors' committee is established, the committee may, on giving not less than 7 days' notice, require the 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 4: WINDING UP

CHAPTER 1 – GENERAL

23. 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. Regulations

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

25. Powers of liquidator

- (1) Any liquidator 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 liquidator, 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 liquidator.
- (3) Without limiting the application of Article 25(2), such Regulations may provide for the power of the liquidator 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 liquidator all books and records in the officer's possession that relate to the Company or to advise the liquidator of the whereabouts of any such book or record;
 - (d) direct an officer of the Company to give to the liquidator such information about the Company's business, property, affairs and financial circumstances as the liquidator may require; and
 - (e) direct an officer of the Company to attend upon the liquidator to provide books and records, information, or other assistance as the liquidator may reasonably require.
- (4) An officer of a Company who:
 - (a) fails to do whatever the liquidator 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 liquidator pursuant to the Regulations;
 - (c) hinders or obstructs a liquidator in the performance of his powers or functions

commits a contravention and is liable to a fine not exceeding \$15,000.

- (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 or nominee or supervisor in relation to a scheme of 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 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. 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;
- (b) if the Company resolves that it should be wound up voluntarily; or
- (c) 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. Notice of resolution to wind up

When a Company has passed a resolution for voluntary winding up, it shall, within 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.

28. 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. Effect on business and status of Company

- (1) In case of a voluntary winding up, the Company shall 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. 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 made after the commencement of a voluntary winding up, is void.

31. **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 12 months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such a declaration must be made within the 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.
- (3) Where a director makes a declaration under this Article 31 without having reasonable grounds for the opinion that the Company will be able to pay its debts in full, together with interest at the official rate, within the period specified, commits a contravention and is liable to a fine not exceeding \$20,000.
- (4) If the Company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, 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. **Distinction between "members'" and "creditors'" voluntary winding up**

A winding up in the case of which a directors' statutory declaration under Article 32 has been made is a "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".

33. **Appointment of liquidator**

- (1) In a members' voluntary winding up, the Company in general meeting shall 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 in general meeting or the liquidator sanctions their continuance.

34. **General Company meeting at each year's end**

- (1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the Company at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Court may allow.
- (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 make up an account of the winding up, showing how it has been conducted and the Company's property has been disposed of, 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.

- (2) The meeting shall be called by advertisement according to Regulations laid down by the Board of Directors of the DIFCA specifying its time, place and object and published at least one month before the meeting.

36. Effect of Company's insolvency

- (1) This Article 36 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 31.
- (2) The liquidator shall summon a meeting of creditors for a day not later than the 28th day after the day on which he formed that opinion, and send notices of the creditors' meeting to the creditors by post not less than 7 days before the day on which that meeting is to be held.
- (3) The liquidator must furnish creditors free of charge with such information concerning the affairs of the Company as they may reasonably require, and the notice of the creditors' meeting shall state this duty.
- (4) The liquidator shall also make out a statement of the affairs of the Company and lay that statement before the creditors' meeting.

37. Conversion to creditors' voluntary winding up

As from the day on which the creditors' meeting is held under Article 36, this Law has effect as if:

- (a) the directors' declaration under Article 31 had not been made; and
- (b) the creditors' meeting and the Company meeting at which it was resolved that the Company be wound up voluntarily were the meetings mentioned in Article 39,

and accordingly the winding up becomes a creditors' voluntary winding up.

CHAPTER 3 - CREDITORS' VOLUNTARY WINDING UP

38. Application of this Chapter

- (1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.
- (2) Articles 39 and 40 do not apply where, under Article 37, a members' voluntary winding up has become a creditors' voluntary winding up.

39. Meeting of creditors

- (1) The Company shall:
 - (a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the Company meeting at which the resolution for voluntary winding up is to be proposed;
 - (b) 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
 - (c) propose a person to act as liquidator of the Company.

- (2) The creditors may, at the creditors meeting, nominate a person to be liquidator.
- (3) In the case of different persons being nominated, the liquidator shall be the person nominated by the creditors.
- (4) The powers of the liquidator nominated by the Company shall not be exercised, except with the sanction of the Court, during the period before the holding of the creditors' meeting.

40. **Appointment of liquidation committee**

- (1) The creditors at the meeting to be held under Article 39 or at any subsequent meeting may, if they think fit, appoint a committee (the "liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Law.
- (2) If such a liquidation 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.
- (3) 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
 - (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 the persons mentioned in the resolution.

41. **Directors' powers**

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

42. **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. **Meetings of Company and creditors at each year's end**

If the winding up continues for more than one year, the liquidator shall summon a general meeting of the Company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year, and shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

44. **Final meeting prior to dissolution**

As soon as the Company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing 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 before the meetings and giving an explanation of it.

CHAPTER 4 - PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

45. Distribution of Company's property

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

46. 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 remove a liquidator and appoint another.

47. 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. 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. Saving for certain rights

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

CHAPTER 5 – COMPULSORY WINDING UP

50. 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 approved under Part 2 has effect in relation to the Company;
- (d) the Court may 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. 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 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. 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 by the Company, or the directors, or by any creditor or creditors (including any contingent or prospective creditor or creditors).

53. 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. 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, made after the commencement of the winding up is, unless the Court otherwise orders, void.

55. 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.

56. Consequences of winding-up order

When a winding-up order has been made, no action or proceeding shall 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. Investigation procedures

Without limiting the application of Article 25, the Board of Directors of the DIFCA may make such Regulations as it sees fit as regards the procedures and powers of a liquidator appointed by the Court.

58. Choice of liquidator at meetings of creditors and contributories

- (1) Where the Court orders that a Company be wound up, the Court shall identify in the order the person who is to act as liquidator of the Company, and that person shall take office immediately upon the order being made. That person may either continue the liquidation or summon meetings of 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 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 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 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. 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. Liquidation committee

- (1) The creditors at the meeting to be held under Article 58 or at any subsequent meeting may, if they think fit, appoint a committee (the "liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Law.
- (2) 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.
- (3) 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
 - (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 the persons mentioned in the resolution.

61. **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. **Vesting of Company property in liquidator**

- (1) When a Company is being wound up the Court may direct that all or any part of the property of whatsoever description belonging to the Company or held by trustees on its behalf shall vest in the liquidator.
- (2) 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.

63. **Power to stay winding up**

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.

64. **Power to exclude creditors not proving in time**

Provided that it is 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. **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. **Preferential debts**

- (1) Subject to the application of any other laws as described in Article 101, in a winding up the Company's preferential debts shall 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. Power to disclaim onerous property

- (1) The liquidator may, by the giving of the prescribed notice, disclaim any onerous property 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:
 - (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) A liquidator in a members' voluntary winding-up may not disclaim property.

69. 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 receiver of the Company's property, being a document on or in which the name of the Company appears, shall contain a statement that the Company is being wound up.

70. Information as to pending liquidations

If the winding up of a Company is not concluded within one year after its commencement, the liquidator shall, 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. 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 by the Court.
- (2) The liquidator or any aggrieved person may apply to the Court for an order in relation to the exercise of the powers or functions of the liquidator.
- (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 liquidator to or of a person.

72. Dissolution and early dissolution

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

- (3) The Court may, on the application of 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 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 liquidator may at any time apply to the Registrar for the early dissolution of the Company.
- (5) Before making an application under Article 72(4), the liquidator shall give not less than 28 days' notice of his intention to do so to the Company's creditors and contributories.

PART 5: PROTECTION OF ASSETS IN LIQUIDATION

73. 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 shall apply in respect of any person, being a past or present officer of the Company, who, within the 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 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 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 the Company from any person.

74. 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 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 2 months before, the date of any unsatisfied judgment or order for the payment of money obtained against the Company.
- (2) Article 80 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. Falsification of Company's books

When a Company is being wound up, Article 80 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. Material omissions from statement relating to Company's affairs

When a Company is being wound up, whether by the Court or voluntarily, Article 80 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 intent to defraud any person.

77. False representations to creditors

(1) When a Company is being wound up, whether by the Court or voluntarily, Article 80 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(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. Fraudulent trading

If in the course of the winding up of a Company it appears 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 shall apply to any persons who were knowingly parties to the carrying on of the business in the manner mentioned above.

79. Wrongful trading

If in the course of the winding up of a Company it appears that the Company has gone into insolvent liquidation and 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.

80. Summary remedy against delinquent directors, liquidators

The Court may, on application by any aggrieved person including a liquidator or administrative receiver, make any orders as the Court sees fit in relation to a person to whom this Article 80 applies, including one or more of the following orders:

- (a) an order to return or pay to the Company any money or other property of the Company which he has misapplied or retained, or become accountable for;
- (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.

81. Restriction on re-use of Company names

(1) Where a Company (the "liquidating Company") has gone into insolvent liquidation on or after the appointed day and a person was a director or shadow director of that Company at

any time in the period of 12 months ending with the day before it went into liquidation, that person may not, within the period of five years following the liquidation of the liquidating Company, be a director of or have any connection with any Company whose name is a name by which the liquidating Company was known at any time in that period of 12 months, or whose name is so similar to the name of the liquidating Company as to suggest an association with that Company.

- (2) A person who fails to comply with Article 81(1) commits a contravention and is liable to a fine not exceeding \$10,000.
- (3) 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 6: RECOGNISED AND FOREIGN COMPANIES

82. 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, 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.

83. Application of this Part in relation to Recognised Companies

- (1) This Part 6 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 6 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. Winding up Recognised Companies

- (1) Subject to this Part 6, 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) 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 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. **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 in 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 7: OTHER TYPES OF COMPANY

86. 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 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, 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 8: APPLICATION OF THE LAW TO LIMITED LIABILITY PARTNERSHIPS

87. 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 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) references to the articles of a Company shall include references to the Limited Liability Partnership agreement of a Limited Liability Partnership;
- (e) references to a resolution of a Company shall include references to a determination of a Limited Liability Partnership;
- (f) references to a meeting of a Company shall include references to a meeting of the members of a Limited Liability Partnership;
- (g) the following modifications shall apply:
 - (i) in Article 8(1), for "The directors of a company" substitute "A Limited Liability Partnership" and delete "to the Company and";
 - (ii) in Article 8(2), for "The directors" substitute "A Limited Liability Partnership";
 - (iii) omit Article 10(3);
 - (iv) for Article 26, substitute the following:

"A Limited Liability Partnership may be wound up voluntarily when it determines that it is to be wound up voluntarily";
 - (v) in Article 31, for "director(s)" (wherever it appears) substitute "designated members";
 - (vi) in Article 32, for "directors" substitute "designated members";
 - (vii) in Article 36(1), for "directors" substitute "designated members";
 - (viii) in Article 37(a), for "directors" substitute "designated members";
 - (ix) in Article 54, 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
 - (x) in Article 75, substitute "a member" for "an officer or shareholder".

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

PART 9: INSOLVENCY PRACTITIONERS

88. Restrictions on service as liquidator or receiver

- (1) No person may be appointed as or serve as a receiver, an administrative receiver, a liquidator or provisional liquidator 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 88(1), no insolvency practitioner may be appointed by the Court as:
 - (a) liquidator under Article 58 of the Law; or
 - (b) provisional liquidator under Article 59 of the Law,unless he is further registered as an official liquidator under this Part.
- (3) The registration of an insolvency practitioner as an official liquidator constitutes an acknowledgement of that insolvency practitioner that he will accept any appointment made by the Court as a liquidator or provisional liquidator to a Company in accordance with the provisions of any rules of procedure as may be made by the Court.

89. 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 liquidator is a reference to an official liquidator 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 liquidator 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.
- (3) The Board of Directors of the DIFCA may make Regulations providing for such requirements referred to in Article 89(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 liquidator on that person's request or as otherwise provided under this Law.

90. Register of insolvency practitioners and official liquidators

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

- (2) The Registrar shall 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. Obligation of disclosure to the Registrar

- (1) Subject to Article 91(2), an insolvency practitioner appointed to a Company shall disclose to the Registrar any matter which reasonably tends to show one 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(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(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(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(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. 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:

- (d) an order that the Registrar may cancel, or suspend for a specified period, the registration of the insolvency practitioner or as an official liquidator;
- (e) an order imposing conditions or restrictions on the future conduct of the insolvency practitioner;
- (f) an order requiring the insolvency practitioner to do, or refrain from doing, any act or thing; or
- (g) 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: MISCELLANEOUS

93. 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(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(2A) shall apply not only in relation to Regulations made under Article 93(1) on or after the date on which this Law comes into force, but also in relation to Regulations made under Article 93(1) before that date.
- (3) 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.
- (4) The Board of Directors of the DIFCA shall publish draft Regulations in the manner prescribed under Article 141 of the Companies Law 2009.

94. Getting in the Company's property

- (1) This Article 94 applies in the case of a Company where:
 - (a) a receiver or administrative receiver is appointed;
 - (b) the Company goes into liquidation; or
 - (c) a provisional liquidator is appointed,and the "office-holder" means the receiver, the administrative receiver, the liquidator or the provisional 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. Duty to co-operate with office-holder

- (1) This Article 95 applies in the cases mentioned in Article 94(1).
- (2) Each of the persons mentioned in Article 95(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(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, provisional liquidator or liquidator of the Company.
- (4) For the purposes of Articles 95(2) and (3), the "effective date" is whichever is applicable of the following dates:
 - (a) the date on which the receiver or administrative receiver was appointed or, if he was appointed in succession to another receiver or 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.

96. Inquiry into Company's dealings

The Court may order any person involved with 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.

97. Transactions at an undervalue

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

- (a) a receiver or administrative receiver is appointed to the Company; or
- (b) the Company goes into liquidation; or
- (c) a provisional liquidator is appointed,

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

- (2) Where the Company has at a relevant time (defined in Article 100) entered into a transaction with any person at an undervalue, the Court may, on application of the officeholder, 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 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. Preferences

- (1) This Article applies in the cases in which Article 97 applies.

- (2) Where the Company has at a relevant time (defined in Article 100) given a preference to any person, the Court may, on application of an office-holder, 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 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 liquidation, will be better than the position he would have been in if that thing had not been done.
- (4) The Court shall not make an order under this Article 98 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(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(4).

99. 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; or
 - (b) the security interest is created after a date one year prior to the onset of insolvency 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.
- (2) Article 99(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. Relevant time under Articles 97 and 98

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 2 years ending with the onset of insolvency (which expression is defined below);
- (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 6 months ending with the onset of insolvency; and
- (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. 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, provisional liquidator and 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 101(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 Regulatory Law, 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. 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 10 years of the date of the dissolution, on an application made for the purpose by a 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 102(1), such proceedings may be taken which might have been taken if the Company had not been dissolved.

103. 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 103(1).
- (3) If, within the period specified in the notice issued under Article 103(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 103(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 103(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 103(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

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) Dubai Law is law made by the Ruler, as applicable in the Emirate of Dubai;
- (c) DIFC Law is law made by the Ruler (including, by way of example, the Law), as applicable in the DIFC;
- (d) the Law is the Insolvency Law, DIFC Law No.3 of 2009 made by the Ruler; and
- (e) 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	has the meaning in Article 14(5).

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.
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 4(1) of Schedule 1 to the Law.
Law	the Insolvency Law 2009.
Limited Liability Partnership	a partnership with limited liability established under the Limited Liability Partnership Law.
liquidating company	has the meaning set out in Article 81(1).
liquidation	has the meaning given in Article 4(2) of Schedule 1 to the Law.
liquidation committee	a committee appointed in accordance with Article 40(1) or 60(1), as the case may be.
liquidator	includes, where the context allows, a liquidator appointed provisionally.
members' voluntary winding up	a winding up in the case of which a director's statutory declaration has been made in accordance with Article 31.
nominee	a person appointed to act in relation to a voluntary arrangement in accordance with Article 8(2).
office-holder	has the meaning set out in Article 94(1).

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(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.
Ruler	the ruler of the Emirate of Dubai.
resolution for voluntary winding up	a resolution passed under Article 26.
Schedule	a schedule to the Law.
supervisor	has the meaning set out in Article 13(2).
unregistered company	any association or company other than a Recognised Company or a Company formed under the law of the DIFC.
voluntary arrangement	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; and
 - (b) in Part 10, except in so far as the context otherwise requires, includes the approval of a voluntary arrangement under Part 2, or the appointment of a receiver or administrative receiver.
- (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.

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 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 Company's affairs and distributing its assets.

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 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.