

No. 11 of 2004

VIRGIN ISLANDS

**INSOLVENCY
(AMENDMENT AND CONSEQUENTIAL PROVISIONS) ACT, 2004**

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No. 11 of 2004

**Insolvency
(Amendment and Consequential Provisions)
Act, 2004**

**Virgin
Islands**

I Assent

**THOMAS MACAN
Governor**

5th August, 2004

VIRGIN ISLANDS

No. 11 of 2004

An Act to amend the Insolvency Act, 2003 (No. 5 of 2003) and to make certain provisions that consequential to the enactment of that Act.

[Gazetted 19th August, 2004]

ENACTED by the Legislature of the Virgin Islands as follows:

1. (1) This Act may be cited as the Insolvency (Amendment and Consequential Provisions) Act, 2004.

Short title and commencement.

(2) The provisions of this Act come into operation on such date or dates as may be appointed by the Governor by Proclamation published in the *Gazette*.

2. Section 2 of the Insolvency Act, 2003 (referred to in this Act as “the principal Act”) is amended

Section 2 amended.
No. 5 of 2003

(a) in the definition of “insurance company” by deleting the words “in the previous two years”;

(b) in the definition of “prescribed”

(i) by inserting after “Rules” in the first place that it occurs, the words “or the Regulations made under section 486”, and

(ii) by inserting after “Rules” in the second place that it occurs, the words “or those Regulations”; and

(c) in the definition of “Rules” by inserting after “section 498”, the words “and, where appropriate, the Rules made under sections 499 and 500”.

Section 11 amended.

3. Section 11(2) of the principal Act is amended by deleting the semicolon occurring after the word “individual” and substituting a colon.

Section 12 amended.

4. Section 12 of the principal Act is amended by deleting the semicolon occurring after the word “individual” and substituting a colon.

Section 17 amended.

5. Section 17 of the principal Act is amended

(a) in subsection (2)(c), by deleting the word “him” and substituting the words “the supervisor or interim supervisor”;

(b) in subsection (4), by inserting a colon after the word “persons”.

Division title amended.

6. The title of Division 2 of Part II of the principal Act is amended
Section 17 of the principal Act is amended by deleting the word “Creditors” and substituting the word “Creditors”.

Section 26 amended.

7. Section 26 of the principal Act is amended

(a) in subsection (1), by inserting after the words “may amend”, the words “or withdraw”;

(b) in subsection (2), by inserting after the words “not amend”, the words “or withdraw”; and

(c) in subsection (3), by inserting after the word “amended”, the words “or withdrawn”.

Section 31 amended.

8. Section 31 of the principal Act is amended

(a) in the marginal note, by inserting after the word “Amendment”, the words “or withdrawal”; and

(b) by inserting after subsection (3), the following subsection:

“ (4) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may withdraw a proposal at a creditors’ meeting called under section 27 in accordance with the Rules.”.

9. Section 32 of the principal Act is amended

Section 32 amended.

- (a) in subsection (2),
 - (i) in paragraph (a), by inserting after the word “rejected”, the words “or withdrawn”;
 - (ii) in paragraph (c), by inserting after the semicolon the word “and”; and
 - (iii) by deleting paragraph (d); and
- (b) in subsection (4)(b), by inserting after the words “the proposal is”, the words “withdrawn in accordance with section 31(4) or is”.

10. Section 34 of the principal Act is amended by deleting subsection (2) and substituting the following subsection:

Section 34 amended.

- “ (2) For the purposes of subsection (1), a person is a creditor of the company
- (a) where the company is in administration or liquidation at the time that the proposal is approved, if he was a creditor at the commencement of the administration or liquidation, as the case may be; or
 - (b) in any other case, if he has a claim against the company that would be an admissible claim in the liquidation of the company commencing at the time of the approval of the arrangement.”.

11. Section 35(3)(c) of the principal Act is amended

Section 35 amended.

- (a) by deleting the word “stayed” and substituting the words “terminated by order of the Court under section 233”; and
- (b) by deleting the word “stay” and substituting the word “termination”.

Section 37
amended.

12. Section 37(3)(b)(ii) of the principal Act is amended by inserting after the word “company”, the words “who is bound by the arrangement”.

Section 38
amended.

13. Section 38 of the principal Act is amended

(a) in the marginal note, by inserting after the word “completion”, the words “or premature termination”;

(b) in subsection (1)

(i) by inserting after the word “completed”, the words “or terminated prematurely”;

(ii) by inserting after the words “its completion”, the words “or termination”;

(iii) in paragraphs (a) and (b), by inserting after the words “of completion”, the words “or termination”;

(iv) in paragraph (b) by deleting the words “creditor and member” and substituting the words “creditor of the company who is bound by the arrangement and each member”; and

Section 41
amended.

(c) in subsection (2), by inserting after the words “is completed”, the words “or terminated prematurely”.

14. Section 41(2) of the principal Act is amended

(a) in paragraph (a), by deleting the word “or” after the semicolon;

(b) in paragraph (b), by deleting the full stop and substituting the words “; or”; and

(c) by inserting after paragraph (b), the following paragraph:

“(c) where the licence of the insolvency practitioner appointed as supervisor or interim supervisor is suspended or revoked, by the Official Receiver.”.

Section 42
amended.

15. Section 42 of the principal Act is amended

- (a) in subsection (1)(b)(i), by deleting the words “stay the liquidation” and substituting the words “terminate the liquidation under section 233”; and
- (b) in subsection (3)(b), by inserting a comma after the words “such an application”.

16. Section 43 of the principal Act is amended by inserting after subsection (7) the following subsections:

Section 43 amended.

“ (8) Subject to subsection (9), no application under this section shall be made after the arrangement has been completed or has prematurely terminated.

(9) A creditor who did not participate in the approval of an arrangement may make an application under this section after the completion of an arrangement if, when the arrangement was completed, he was unaware of the arrangement.

(10) An application under subsection (9) shall be made within four weeks of the creditor first becoming aware of the arrangement.

(11) For the purposes of this section, a creditor does not participate in the approval of an arrangement if, for whatever reason,

- (a) he was not given notice of the meeting of creditors called to consider the proposal; and
- (b) he did not attend the meeting at which the arrangement was approved, whether in person or by proxy.”.

17. Section 44 of the principal Act is amended by deleting the words “44,”.

Section 44 amended.

18. Section 47(1) of the principal Act is amended in paragraph (a), by inserting before the words “insolvency practitioner”, the word “eligible”.

Section 47 amended.

19. Section 48 of the principal Act is amended by repealing subsection (1) and substituting following subsection:

Section 48 amended.

“ (1) The interim supervisor shall, within two business days of his appointment file a copy of the notice of his

appointment with the Official Receiver and, if the debtor is a regulated person, with the Commission.”.

Section 50 amended.

- 20.** Section 50 of the principal Act is amended
- (a) in subsection (1), by inserting after the words “may amend”, the words “or withdraw”; and
 - (b) in subsection (2), by inserting after the word “amended”, the words “or withdrawn”.

Section 55 amended.

- 21.** Section 55(3)(b) of the principal Act is amended by deleting the word “company” and substituting the word “debtor”.

Section 60 amended.

- 22.** Section 60 of the principal Act is amended
- (a) in the marginal note, by inserting after “Amendment”, the words “or withdrawal”;
 - (b) in subsection (3)(a), by inserting after the word “under”, the word “section”; and
 - (c) by inserting after subsection (3), the following subsection:
“ (4) The debtor may withdraw a proposal at a creditors’ meeting called under section 58 in accordance with the Rules.”.

Section 61 amended.

- 23.** Section 61 of the principal Act is amended
- (a) in subsection (2)(a), by inserting after the word “rejected”, the words “or withdrawn”; and
 - (b) in subsection (3), by inserting after the words “rejected the proposal”, the words “or that it was withdrawn by the debtor under section 60(4)”.

Section 62 amended.

- 24.** Section 62(6) of the principal Act is amended by deleting the words “subsection (2)” and substituting the words “subsection (5)”.

Section 65 amended.

- 25.** Section 65(3)(b) of the principal Act is amended
- (a) in subparagraph (i), by deleting the word “Court” and substituting the words “Official Receiver”; and
 - (b) in subparagraph (iii), by inserting after the word “debtor”,

the words “who is bound by the arrangement”.

26. Section 66 of the principal Act is amended

Section 66
amended.

- (a) in the marginal note, by inserting after the word “Completion”, the words “or premature termination”;
- (b) in subsection (1),
 - (i) by inserting after the word “completed”, the words “or terminated prematurely”;
 - (ii) by inserting after the word “completion” in both places where it occurs, the words “or termination”; and
 - (iii) by inserting after the words “creditor of the debtor”, the words “who is bound by the arrangement”; and
- (c) in subsection (2), by deleting the words “is completed, the report prepared under section 61” and substituting the words “is completed or terminated, the report prepared under section 65(2)(c)”.

27. Section 67(3) of the principal Act is amended by deleting the words “subsection (1)” and substituting the words “subsection (2)”.

Section 67
amended.

28. Section 69 of the principal Act is amended

Section 69
amended.

- (a) in subsection (1), by deleting the words “who has filed with the Court a notice of consent to act”; and
- (b) in subsection (2), by deleting paragraph (d) and substituting the following paragraph:
 - “(d) where the licence of the supervisor or interim supervisor is suspended or revoked, by the Official Receiver.”.

29. Section 72 of the principal Act is amended

Section 72
amended.

- (a) in subsection (2)(d), by deleting the word “by”;
- (b) in subsection (6), by inserting after the words “section 58”, the words “or section 67”;

- (c) in subsection (7), by deleting the word “company” and substituting the word “debtor”; and
- (d) by inserting after subsection (7), the following subsections:
 - “ (8) Subject to subsection (9), no application under this section shall be made after the arrangement has been completed or has prematurely terminated.
 - (9) A creditor who did not participate in the approval of an arrangement may make an application under this section after the completion of an arrangement if, when the arrangement was completed, he was unaware of the arrangement.
 - (10) An application under subsection (9) shall be made within four weeks of the creditor first becoming aware of the arrangement.
 - (11) For the purposes of this section, a creditor does not participate in the approval of an arrangement if, for whatever reason,
 - (a) he was not given notice of the meeting of creditors called to consider the proposal; and
 - (b) he did not attend the meeting at which the arrangement was approved, whether in person or by proxy.”.

Section 77
amended.

30. Section 77 of the principal Act is amended:

- (a) in subsection (2)(a), by inserting after the word “company”, the words “, or the board of the company”;
- (b) in subsection (3),
 - (i) by deleting the word “five” and substituting the word “seven”;
 - (ii) by deleting paragraphs (e) and (f);
 - (iii) in paragraph (g), by deleting the full stop at the end of the paragraph and substituting the words “; and”; and

(iv) by inserting after paragraph (g), the following paragraph:

“(h) on any other person prescribed by the Rules.”;

(c) in subsection (4), by inserting after the words “subsection (3)”, the words “(a) to (g)”;

(d) by inserting after subsection (4), the following subsection:

“(4A) The Court shall not abridge the time period specified in subsection (3) in respect of a person specified in subsection (3)(a) without that person’s consent.”.

31. Section 79(3) of the principal Act is amended by deleting paragraph (b) and substituting the following paragraph: Section 79 amended.

“(b) notice of his appointment has been filed with the Registrar under section 118(1) no later than the day before the date of the hearing of the application.”.

32. Section 82(1)(a) of the principal Act is amended Section 82 amended.

(a) in subparagraph (i), by inserting before the words “may be”, the words “is or”;

(b) in subparagraph (ii), by deleting the word “and” after the comma;

(c) in subparagraph (iii), by deleting the semicolon and substituting the words “, and”;

(d) by inserting after subparagraph (iii), the following subparagraph:

“(iv) such other person as may be prescribed by the Rules;”.

33. Section 84(4) of the principal Act is amended Section 84 amended.

(a) in paragraph (b), by deleting the word “or” after the semicolon;

(b) in paragraph (c), by deleting the full stop and substituting the words “; or”;

Section 85
amended.

- (c) by inserting after paragraph (c), the following paragraph:
 - “(d) the filing of an application for the appointment of a liquidator under Part VI.”.

34. Section 85 of the principal Act is amended

- (a) in subsection (1),
 - (i) by inserting after the words “order against it”, the words “or the dismissal of the application”; and
 - (ii) in paragraph (c)(ii), by inserting before the words “goods supplied”, the words “subject to subsection (1A),”; and
- (b) by inserting after subsection (1), the following subsection:

“(1A) Subsection (1)(c)(ii) does not prevent a company disposing of or dealing with goods supplied subject to a retention of title agreement in the ordinary course of business.”.

Section 87
amended.

35. Section 87 of the principal Act is amended by repealing subsection (3) and substituting the following subsections:

- “(3) In performing his functions and undertaking his duties under this Act, an administrator acts as an officer of the Court.
- (4) Whilst a company is in administration, the directors and other officers of the company remain in office and their powers, functions and duties continue except to the extent that
 - (a) they are inconsistent with the powers, functions and duties of the administrator; or
 - (b) the administrator otherwise directs in writing.

(5) Notwithstanding subsection (4), a director may exercise a power inconsistent with the powers, functions and duties of the administrator if the administrator authorises the exercise of that power in writing.

(6) Any power conferred on the company in administration whether by an enactment, its memorandum or articles or otherwise, which could be exercised so as to interfere with the exercise by the administrator of his powers, shall not be exercised without the written consent of the administrator.”.

- 36.** Section 90(5) of the principal Act is amended by deleting the word “may” in the first place where it occurs. Section 90 amended.
- 37.** Section 94 of the principal Act is amended Section 94 amended.
- (a) in subsection (1), by deleting the words “a creditor of a company in administration” and substituting the words “the creditors’ committee, a creditor or the Official Receiver”; and
 - (b) in subsection (3), by deleting the words “An administrator” and substituting the words “Unless, in accordance with this section, he has previously resigned or been removed from office, an administrator”.
- 38.** Section 95 of the principal Act is amended Section 95 amended.
- (a) by deleting the marginal note and substituting the following marginal note:

“Appointment of replacement administrator”;
 - (b) by deleting subsection (1) and substituting the following subsection:

“ (1) Where the administrator of a company dies or is removed or resigns under section 94 and no administrator is appointed in his place, the Court, on the application of a person specified in subsection (2) or on its own motion,
 - (a) if there is at least one administrator remaining in place, may appoint an eligible insolvency practitioner as administrator in his place; or

(b) if the administrator who has died or is removed or resigned was the sole administrator of the company, shall appoint an eligible insolvency practitioner in his place.”; and

(c) in subsection (2),

(i) in paragraph (b), by deleting the word “or” after the semicolon,

(ii) in paragraph (c), by deleting the full stop and substituting the words “; or”; and

(iii) by inserting after paragraph (c), the following paragraph:

“(d) the Official Receiver.”.

Section 97
amended.

39. Section 97 of the principal Act is amended

(a) in subsection (1),

(i) by inserting after the words “The administrator”, the words “and, where he has vacated office, the former administrator,”;

(ii) by inserting after “possession or control”, the words “or, in the case of a former administrator, that were in his possession or control immediately before vacating office”;

(iii) in paragraph (a), by deleting “incurred, whilst he was administrator” and substituting “incurred during the administration of the company”;

(b) by inserting after subsection (3), the following subsection:

“(3A) For the purposes of subsection (1)(a),

(a) any action taken or omitted to be taken within the period of 14 days after an administrator’s appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) an administrator is deemed to have adopted a

contract of employment if notice of the termination of the contract is not given within 14 days after the date of his appointment.”; and

- (c) in subsection (4), by deleting the words “subsection (1)(b)” and substituting the words “subsection (1)(a)”.

40. Section 100(1)(d) of the principal Act is amended by inserting after the word “company”, the words “or advertise the meeting and report in accordance with the Rules”.

Section 100 amended.

41. Section 101(1) of the principal Act is amended by inserting after the word “under”, the word “section”.

Section 101 amended.

42. Section 104(1)(d) of the principal Act is amended by inserting after the word “company”, the words “or advertise the meeting and report in accordance with the Rules”.

Section 104 amended.

43. Section 107(3)(c) of the principal Act is amended by deleting the word “to” and substituting the word “with”.

Section 107 amended.

44. Section 108 of the principal Act is amended by inserting after subsection (2), the following subsection:

Section 108 amended.

“ (2A) A failure to comply with subsection (1) does not affect the validity of the document.”.

45. Section 116 of the principal Act is amended

Section 116 amended.

(a) in subsection (1),

(i) in paragraph (e), by deleting the word “and” after the semicolon; and

(ii) by inserting after paragraph (e), the following paragraph:

“(ea) the Official Receiver; and”;

(b) in subsection (2)(b), by deleting the words “a person who is not eligible under” and substituting the words “such other person specified in”.

46. Section 119(2) of the principal Act is amended

Section 119 amended.

- (a) in paragraphs (a) and (b), by inserting before the words “every public document”, the words “where the company is in administrative receivership, ”;
- (b) in paragraph (a), by deleting the word “and” after the semicolon;
- (c) in paragraph (b), by deleting the full stop and substituting the words “; and”; and
- (d) by inserting after paragraph (b), the following paragraph:
 - “(c) where a receiver is appointed in relation to a specific asset or specific assets, every public document issued by or on behalf of the company, or the receiver, that relates to that asset or those assets.”.

Section 120
amended.

47. Section 120 of the principal Act is amended

- (a) in subsection (3),
 - (i) by deleting the words “vacates office in accordance with subsection (2)” and substituting the words “resigns, vacates office in accordance with subsection (2) or is removed from office under section 123”; and
 - (ii) in paragraph (a), by inserting after the words “appointed him”, the words “and any joint receiver”; and
- (b) by deleting subsection (5) and substituting the following subsection:
 - “(5) Where a receiver resigns, vacates office in accordance with subsection (2) or is removed from office under section 123, he shall, within seven days of ceasing to hold office, give notice in the prescribed form to the Registrar and, where the company in respect of which he was appointed is, or has been, a regulated person, to the Commission.”.

Section 123
amended.

48. Section 123 of the principal Act is amended in subsection (3),

- (a) in paragraph (d), by deleting the word “or” after the semicolon; and

(b) by inserting after paragraph (d), the following paragraph:

“(da) where the company is or has been a regulated person, by the Commission; or”.

49. Section 130 of the principal Act is amended

Section 130 amended.

(a) in subsection (1)(b), by deleting the words “or absence due to sickness, or” and substituting the words “and absence due to sickness or other good cause, sums payable in lieu of holiday and”; and

(b) by deleting subsection (4) and substituting the following subsection:

“(4) For the purposes of subsection (1)(b),

(a) any action taken or omitted to be taken within the period of 14 days after a receiver’s appointment shall not be taken to amount or contribute to the adoption of a contract; and

(b) a receiver is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within 14 days after the date of his appointment.”.

50. Section 134(2) of the principal Act is amended by inserting after the words “Court may order”, the words “or the other enactment may provide for”.

Section 134 amended.

51. Section 136(5)(a)(i) of the principal Act is amended by deleting the words “Rules of Court” and substituting the words “the Civil Procedure Rules”.

Section 136 amended.

52. Section 147 of the principal Act is amended

Section 147 amended.

(a) in subsection (1),

(i) by inserting after the words “with the Registrar”, the words “and, where appointed by the Court, with the Court,”;

(ii) in paragraph (e), by deleting the full stop and substituting a comma; and

- (iii) by inserting at the end of the subsection “and containing such other information as may be prescribed.”;
- (b) in subsection (3)(a),
 - (i) in subparagraph (i), by inserting after the comma at the end of the subparagraph, the word “and”; and
 - (ii) by deleting subparagraph (ii);
- (c) in subsection (3)(b), by inserting at the beginning of the paragraph the words “either send a copy of the report to each creditor of the company or”; and
- (d) in subsection (4), by deleting the words “of is” and substituting the words “of his”.

Section 148 amended.

53. Section 148(2) of the principal Act is amended

- (a) in paragraph (a), by deleting the word “and” after the semicolon;
- (b) in paragraph (b), by deleting the full stop at the end of the paragraph and substituting the words “; and”; and
- (b) by inserting after paragraph (b), the following paragraph:
 - “(c) where he publishes a notice under section 147(3)(b), he stated his intention to apply for the order in that notice.”.

Section 149 amended.

54. Section 149 of the principal Act is amended

- (a) by designating the existing provision as subsection (1); and
- (b) by inserting after the existing provision the following subsection:
 - “(2) In this Part, “company” includes a foreign company.”.

Section 150 amended.

55. Section 150(1) of the principal Act is amended by deleting the word “434” and substituting the word “435”.

- Section 155
amended.
- 56.** Section 155(2) of the principal Act is amended
- (a) in paragraph (d), by inserting after the word “him”, the words “or such longer period as may be prescribed”; and
 - (b) in paragraph (e), by inserting before the word “trustee”, the word “bankruptcy”.
- Section 156
amended.
- 57.** Section 156(2) of the principal Act is amended by deleting the word “seven” and substituting the word “fourteen”.
- Section 157
amended.
- 58.** Section 157 of the principal Act is amended in subsections (3) and (5), by inserting after the words “liquidator or”, the word “for”.
- Section 159
amended.
- 59.** Section 159 of the principal Act is amended
- (a) in subsection (2), by inserting after the words “Subject to”, the words “subsection (5) and”; and
 - (b) by inserting after subsection (4), the following subsections:
 - “ (5) The members of a company that is a regulated person may not appoint a liquidator under subsection (2) unless at least 5 business days written notice of the resolution, or such shorter period of notice as the Commission may agree to accept in writing, has been given to the Commission.
 - (6) A resolution passed in contravention of subsection (5) is void and of no effect.”
- Section 161
amended.
- 60.** Section 161 of the principal Act is amended
- (a) in subsection (1)(a), by inserting after the word “filed”, the words “and served”;
 - (b) by inserting after subsection (3), the following subsection:
 - “ (3A) The acts of a liquidator appointed in breach of section 161(1)(a) carried out in good faith are valid provided that he is not aware of the breach.”
- Section 162
amended.
- 61.** Section 162(6) of the principal Act is amended by deleting the word “creditor’s” and substituting the word “creditors”.

Section 163
amended.

62. Section 163 of the principal Act is amended by inserting after subsection (3), the following subsections:

“ (3A) An application to appoint a liquidator under subsection (1)(c) may only be made by the Commission or the Attorney General.

(3B) The Commission may only make an application to appoint a liquidator under subsection (1)(c) if the foreign company concerned is, or at any time has been, a regulated person.”.

Section 167
amended.

63. Section 167 of the principal Act is amended by inserting after subsection (3), the following subsection:

“ (4) An application for the appointment of a liquidator shall be dismissed if the company is in liquidation, a liquidator having been appointed by the members under section 159(2).”.

Section 168
amended.

64. Section 168 of the principal Act is amended by inserting after subsection (3), the following subsection:

“ (4) Section 496(1)(a) shall not apply to the time periods specified in this section.”.

Section 170
amended.

65. Section 170(5) of the principal Act is amended by inserting after the words “deposit at Court”, the words “, or otherwise secure to the satisfaction of the Court,”.

Section 175
amended.

66. Section 175(1)(b) of the principal Act is amended by inserting after the words “under this Part”, the words “or authorised by the liquidator”.

Section 178
amended.

67. Section 178(1) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) advertise his appointment in accordance with the Rules;”.

Section 179
amended.

68. Section 179(1) of the principal Act is amended by deleting the word “14” and substituting the word “21”.

Section 185
amended.

69. Section 185 of the principal Act is amended by inserting after subsection (2), the following subsections:

“ (2A) If it appears to the liquidator that the company has carried on unlicensed financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

(2B) Where the liquidator makes a report to the Commission under subsection (2A) he shall

- (a) send to the Commission a copy of every notice or other document that he is required under this Part to send to a creditor or the Court; and
- (b) notify the Commission of any application made to the Court in or in connection with the liquidation.”.

70. Section 186 of the principal Act is amended by inserting after subsection (5), the following subsection:

Section 186 amended.

“(6) The acts of a liquidator of a company are valid notwithstanding any defect in his nomination, appointment or qualifications.”.

71. Section 187 of the principal Act is amended

Section 187 amended.

- (a) in subsection (1)(a)(ii), by inserting after the words “Rules or”, the words “the Regulations made under section 486 or, in his capacity as liquidator, under”;
- (b) in subsection (3)(a), by deleting the word “another” and substituting the words “an eligible insolvency practitioner as”; and
- (c) in subsection (3)(b), by deleting the word “another” and substituting “the Official Receiver or an eligible insolvency practitioner as”.

72. Section 188 of the principal Act is amended

Section 188 amended.

- (a) in subsection (2),
 - (i) by inserting after the words “the company”, the words “to the Registrar”; and
 - (ii) by inserting at the end of the subsection before the full stop, the words “and his resignation takes effect from the date that the notice is received by the Official Receiver”; and
- (b) by deleting subsection (6) and substituting the following

subsections:

“ (6) If the creditors resolve to accept the resignation of a liquidator, they may appoint an eligible insolvency practitioner as liquidator in his place.

(6A) If the creditors refuse or fail to accept the resignation of the liquidator, he may apply to the Court for leave to resign in accordance with the Rules.”.

Section 189
amended.

73. Section 189 of the principal Act is amended

- (a) by deleting the marginal note and substituting the following marginal note:

“Appointment of replacement liquidator.”;

- (b) by deleting subsection (1) and substituting the following subsection:

“ (1) Where the liquidator of a company dies or resigns under section 188 and no liquidator is appointed in his place, the Court, on the application of a person specified in subsection (2) or on its own motion,

- (a) if there is at least one liquidator remaining in place, may appoint an eligible insolvency practitioner as liquidator in his place; or

- (b) if the liquidator who has died or resigned was the sole liquidator of the company, shall appoint the Official Receiver or an eligible insolvency practitioner in his place.”; and

- (c) by inserting after subsection (2), the following subsections:

“ (3) Where the Official Receiver is the liquidator of a company, an eligible insolvency practitioner may be appointed in his place

- (a) on the application of the Official Receiver, by the Court; or

- (b) with the consent of the Official Receiver, by resolution of the creditors at a meeting called by the Official Receiver for that purpose.

(4) An application may be made under subsection (3) notwithstanding that the Court has refused to make an appointment on a previous application by the Official Receiver.”.

74. Section 193 of the principal Act is amended Section 193 amended.

- (a) in subsection (1), by deleting the words “The liquidator” and substituting the words “Subject to subsection (7), the liquidator”; and

- (b) by inserting after subsection (6), the following subsection:

“ (7) The liquidator is not required to settle a list of members under this section if it appears to him that it will not be necessary to require any member to contribute to the assets of the company or to adjust the rights of members.”.

75. Section 202 of the principal Act is amended by deleting the words “trustee in bankruptcy” and substituting the words “bankruptcy trustee”. Section 202 amended.

76. Section 209 of the principal Act is amended Section 209 amended.

- (a) in subsection (3), by deleting the words “As soon” and substituting the words “Subject to subsection (6A), as soon”; and

- (b) by inserting after subsection (6), the following subsection:

“ (6A) The liquidator is not required to admit or reject claims under subsection (3) at any time when it appears to him that the company has insufficient assets to enable a distribution to be made to unsecured creditors.”.

77. Section 216 of the principal Act is amended Section 216 amended.

- (a) in subsection (1), by deleting the words “The liquidator of a company may” and substituting the words “Where the liquidator of a company has sufficient funds to make a distribution, he shall, subject to the retention of such sums as may be necessary for his remuneration and the other

costs and expenses of the liquidation”;

- (b) in subsection (2), by deleting the word “form” and substituting the word “from”; and
- (c) by inserting after subsection (2), the following subsection:

“ (3) Where the liquidator makes more than one distribution, subsections (1) and (2) apply to each distribution.”.

Section 225
amended.

78. Section 225 of the principal Act is amended by inserting after subsection (3), the following subsection:

“ (4) Subsection (3) does not apply to a liquidator appointed by the members of a company.”.

Section 234
amended.

79. Section 234(2) of the principal Act is amended

- (a) in paragraph (a)(i), by deleting the words “realisation and distribution” and substituting the words “realisations and distributions”; and
- (b) in paragraph (b), by inserting after the word “statement”, the word “of”.

Section 237
amended.

80. Section 237 of the principal Act is amended

- (a) in subsection (1),
 - (i) in the definition of “general insurance company”, by inserting after the words “that is”, the words “or was”; and
 - (ii) in the definition of “long term insurance company”, by inserting after the words “that is” and after the words “it is”, the words “or was”; and
- (b) by inserting after subsection (1), the following subsections:

“ (2) Subject to subsection (3), this Part applies, with such modifications as are necessary, to a company or a foreign company that has at no time held a licence as an insurer issued under the Insurance Act but which, immediately before the appointment of a liquidator, was

required to hold a licence as an insurer issued under that Act.

(3) Section 239 does not apply to a company specified in subsection (2).”.

Section 238
amended.

81. Section 238 of the principal Act is amended

- (a) in the marginal note, by deleting the words “Modification of Act in respect” and substituting the word “Liquidation”;
- (b) by numbering the existing provision as subsection (1);
- (c) by inserting after the existing provision the following subsections:

“ (2) The liquidator of an insurance company has a duty to obtain and consider such actuarial advice as is appropriate to enable him to properly conduct the liquidation of the company.

(3) The Executive Council may, on the advice of the Commission, make Regulations with respect to the liquidation of insurance companies.

(4) Subject to subsection (5), the Regulations made under subsection (3) may

- (a) modify or exclude the provisions of this Act and the Rules relating to the liquidation of companies in respect of insurance companies; and
- (b) make different provision for different persons, circumstances or cases.

(5) Regulations made under subsection (3) shall not modify or exclude the provisions of this Part.”.

Section 239
amended.

82. Section 239(4) of the principal Act is amended by inserting after the words “members of”, the word “a”.

Section 240
amended.

83. Section 240 of the principal Act is amended in subsections (3) and (4), by deleting the word “179” and substituting the word “163”.

Section 242
amended.

84. Section 242(1) of the principal Act is amended by deleting the words “with a” in the first place where they occur.

Section 244
amended.

85. Section 244(1) of the principal Act is amended

(a) by inserting after the definition of “insolvency transaction”, the following definition:

““officer holder” means

(a) in the case of a company in administration, its administrator; and

(b) in the case of a company in liquidation, its liquidator;” and

(b) in paragraph (a) of the definition of “onset of insolvency”, by inserting after the words “company is”, the words “in administration or is”.

Section 248
amended.

86. Section 248 of the principal Act is amended by deleting the words “the company” in the first place where it occurs and substituting the words “a company”.

Section 249
amended.

87. Section 249 of the principal Act is amended

(a) in subsection (1),

(i) by deleting the words “liquidator of the company” and substituting the words “office holder”; and

(ii) in paragraphs (c)(ii) and (c)(iii), by deleting the word “liquidator” and substituting the words “office holder”; and

(b) in subsection (2),

(i) in paragraph (d), by deleting the word “liquidator” and substituting the word “office holder”; and

(ii) in paragraph (g), by deleting the word “prove” and substituting the word “submit a claim”.

Section 250
amended.

88. Section 250 of the principal Act is amended in subsection (2)(b), by deleting the word “liquidator” and substituting the words “office holder”.

- 89.** Section 255(2) of the principal Act is amended by deleting the word “are” and substituting the word “is”. Section 255 amended.
- 90.** Section 256(5) of the principal Act is amended by deleting the word “have” and substituting the words “has”. Section 256 amended.
- 91.** Section 258(1) of the principal Act is amended by deleting the word “make” in the first place where it occurs. Section 258 amended.
- 92.** Section 260(3) of the principal Act is amended Section 260 amended.
- (a) in paragraph (d), by deleting the word “or”; and
 - (b) by redesignating the last paragraph as paragraph (f).
- 93.** Section 262(1) of the principal Act is amended Section 262 amended.
- (a) in paragraph (b), by inserting after the semicolon the word “or”;
 - (b) in paragraph (c), by deleting the words “; or” at the end of the paragraph and substituting a full stop; and
 - (c) by deleting paragraph (d).
- 94.** Section 271 of the principal Act is amended Section 271 amended.
- (a) in subsection (1), by inserting before the words “prepare a written report”, the words “, as soon as practicable,”;
 - (b) by inserting after subsection (4), the following subsections:
 - “(4A) A liquidator, administrator or administrative receiver who prepares a report under subsection (1) shall not disclose the report to the creditors’ committee, if any, or to any person other than the Official Receiver.
 - (4B) Subsection (4A) does not prevent a liquidator, administrator or administrative receiver disclosing the report to any person properly employed or appointed by him, or acting for him, in the liquidation, administration or administrative receivership.
 - (4C) A report provided to the Official Receiver under subsection (1) shall, in the absence of fraud or

malice, be absolutely privileged for the purposes of the law of defamation.

(4D) Subsection (4C) shall not apply to the extent that the liquidator, administrator or administrative receiver, or a person to whom the report is disclosed under subsection (4B), discloses the report to another person in breach of subsection (4A).”.

Section 272 amended.

95. Section 272(2) of the principal Act is amended by deleting the words “Division 2” and substituting the words “Division 3” and by deleting the word “275” and substituting the word “281”.

Section 274A inserted.

96. The principal Act is amended by inserting after section 274, the following section:

“Order to deliver assets and documents. 274A.(1) Where any person has in his possession or control any assets or documents to which the company appears to be entitled, the Court may, on the application of the office holder, require that person forthwith, or within such period as the Court may direct, to pay, deliver, convey, surrender or transfer the assets or documents to the office holder.

(2) Subsection (3) has effect where the office holder

- (a) seizes or disposes of any asset which is not an asset 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 asset.

(3) In the circumstances specified in subsection (2), the office holder

- (a) 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
- (b) has a lien on the asset, or the proceeds of its sale, for such expenses as were incurred in connection with the seizure or disposal.”.

- Section 275 amended.
- 97.** Section 275 of the principal Act is amended by deleting the definition of “office holder”.
- Section 281 amended.
- 98.** Section 281 of the principal Act is amended in the definition of “office holder” by inserting after “provisional liquidator”, the words “and, in respect of a company in administration or liquidation or in respect of which a provisional liquidator has been appointed, includes the Official Receiver”.
- Section 282 amended.
- 99.** Section 282 of the principal Act is amended
- (a) in subsection (1), by deleting the words “Subject to subsection (2), an” and substituting the word “An”; and
- (b) in subsection (2)(g), by inserting after the words “office holder is”, the words “the Official Receiver or”.
- Section 284 amended.
- 100.** Section 284(2) of the principal Act is amended
- (a) in paragraph (a), by deleting the word “or” after the semi colon;
- (b) in paragraph (b), by deleting the full stop and substituting the words “; or”; and
- (c) by inserting after paragraph (b) the following paragraph:
- “(c) any other person who the applicant knows or suspects has in his possession or control any asset of the company or is indebted to the company.”.
- Section 285 amended.
- 101.** Section 285(4) of the principal Act is amended in paragraphs (a) and (b), by deleting the word “notice” and substituting the word “order”.
- Section 286 amended.
- 102.** Section 286(7) of the principal Act is amended by inserting after the words “this Act”, the words “other than proceedings for a disqualification order under Part X”.
- Section 288 amended.
- 103.** Section 288(2) of the principal Act is amended by deleting the words “(AG’s Chambers to complete)” and substituting the words “a police officer or a prescribed officer of the Court”.
- Section 289 amended.
- 104.** Section 289(1) of the principal Act is amended by inserting after the word “time”, the words “whilst an officer or”.

Section 293
amended.

105. Section 293 of the principal Act is amended in subsection (1)(a), by deleting the words “of the application” and substituting the words “that the application was filed”.

Section 294
amended.

106. Section 294 of the principal Act is amended

- (a) in paragraph (b), by deleting the word “300” and substituting the word “296”; and
- (b) in paragraph (c), by deleting the words “a voluntary” and substituting the word “an”.

Section 295
amended.

107. Section 295(2) of the principal Act is amended by inserting before the word “statement”, the word “verified”.

Section 301
amended.

108. Section 301 of the principal Act is amended in subsection (1)(c), by deleting the word “voluntary”.

Section 305
amended.

109. Section 305 of the principal Act is amended by deleting the words “under section 295, 300 or 301”.

Section 309
amended.

110. Section 309 of the principal Act is amended

- (a) in subsection (1), by inserting after the word “order”, the words “applying the general principles specified in section 432”;
- (b) in subsection (2)(b), by inserting a comma after the word “made”; and
- (c) in subsection (4), by deleting the word “company” and substituting the word “debtor”.

Section 312
amended.

111. Section 312 of the principal Act is amended in subsection (2)(b) by deleting the comma.

Section 314
amended.

112. Section 314(5) of the principal Act is amended by deleting the words “subsection (3)” and substituting the words “subsection (4)”.

Section 318
amended.

113. Section 318(2) of the principal Act is amended by deleting the word “relate” and substituting the word “relates”.

Section 320
repealed and
substituted.

114. Section 320 of the principal Act is repealed and the following section is substituted:

“Money provided 320. (1) A third party may offer the trustee a sum

in lieu of sale. of money to enable the bankrupt to be left in possession of assets which would otherwise vest in the trustee under section 319.

(2) The trustee may accept an offer made under subsection (1) if he is satisfied that it is a reasonable offer and that the estate will benefit to the extent of the value of the assets in question less the cost of a reasonable replacement.”.

115. Section 321 of the principal Act is amended Section 321 amended.

- (a) in the marginal note, by deleting the words “318, 319 or 320” and substituting the words “318 or 319”;
- (b) in subsection (1)(b), by deleting the words “sections 319 or 320” and substituting the words “section 319”; and
- (c) in subsection (2)(b), by deleting the words “or, in the case of the Official Receiver, on his becoming trustee”.

116. Section 322 of the principal Act is amended Section 322 amended.

- (a) by deleting subsection (4); and
- (b) by inserting after subsection (7), the following subsection:

“ (8) The Rules may provide that pension payments paid to the bankrupt up to a maximum amount specified in the Rules are exempt from subsection (7).”

117. Section 324 of the principal Act is amended by inserting after subsection (3), the following subsections: Section 324 amended.

“ (3A) If it appears to the trustee that the bankrupt is carrying on or has carried on unlicensed financial services business

- (a) he shall, as soon as reasonably practicable, report the matter to the Commission; and
- (b) for the purposes of subsection (3B), he shall treat the bankrupt as a regulated person.

(3B) Where the bankrupt is or has been a regulated person, the trustee shall

- (a) send to the Commission a copy of every notice

or other document that he is required to file with the Court or to send to a creditor of the bankrupt; and

- (b) unless the applicant is the Commission, give the Commission notice of any application made to the Court with respect to the bankruptcy, whether the application is made by him or by some other person.”.

Section 325 amended.

118. Section 325 of the principal Act is amended by inserting after subsection (8), the following subsection:

“(9) The acts of the trustee of a bankrupt are valid notwithstanding any defect in his nomination, appointment or qualifications.”.

Section 326 amended.

119. Section 326(1) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

“(a) advertise his appointment in accordance with the Rules;”.

Section 328 amended.

120. Section 328 of the principal Act is amended

- (a) in subsection (1)(a)(ii), by inserting after the words “Rules or”, the words “the Regulations made under section 486 or, in his capacity as trustee, under”;
- (b) in subsection (3)(a), by deleting the word “another” and substituting the words “an eligible insolvency practitioner as”; and
- (c) in subsection (3)(b),
 - (i) by deleting the word “company” and substituting the word “bankrupt”; and
 - (ii) by deleting the word “another” and substituting the words “the Official Receiver or an eligible insolvency practitioner as”.

Section 329 amended.

121. Section 329 of the principal Act is amended

- (a) in subsection (2),
 - (i) by deleting the words “to the Court,”; and

- (ii) by inserting at the end of the subsection before the full stop, the words “, who shall file a copy of the notice with the Court, and his resignation takes effect from the date that the notice is filed by the Official Receiver with the Court”;
- (b) in subsection (4), by deleting the word “liquidators” and substituting the word “trustees”;
- (c) in subsection (6), by deleting the words “he ceases to hold office as trustee with effect from the date of the meeting” and substituting the words “he shall send a notice of his resignation to the creditors of the bankrupt and to the Official Receiver, who shall file a copy of the notice with the Court, and his resignation takes effect from the date that the notice is filed by the Official Receiver with the Court”; and
- (d) by inserting after subsection (6), the following subsection:
 - “ (6A) If the creditors refuse or fail to accept the resignation of the trustee, he may apply to the Court for leave to resign in accordance with the Rules.”.

122. Section 330 of the principal Act is amended

Section 330
amended.

- (a) by deleting the marginal note and substituting the following marginal note:
 - “Appointment of replacement trustee.”;
- (b) by deleting subsection (1) and substituting the following subsection:
 - “ (1) Where a trustee dies or resigns under section 329, the Court, on the application of a person specified in subsection (2) or on its own motion,
 - (a) if there is at least one trustee remaining in place, may appoint an eligible insolvency practitioner as trustee in his place; or
 - (b) if the trustee who has died or resigned was the sole trustee of the bankrupt,

shall appoint the Official Receiver or an eligible insolvency practitioner in his place.”.

Section 331 amended.

123. Section 331 of the principal Act is amended by deleting the words “in accordance with Part XVI, Division 2” and substituting the words “applying the principles specified in section 432”.

Section 333 amended.

124. Section 333 of the principal Act is amended by inserting after subsection (3), the following subsections:

“ (4) The trustee may, if he considers it appropriate, by written notice, require the bankrupt to attend a creditors’ meeting called under this section.

(5) The bankrupt commits an offence if

- (a) he receives a notice to attend a creditors’ meeting under subsection (4); and
- (b) without reasonable excuse, he fails to attend the meeting.”.

Section 334 amended.

125. Section 334(2) of the principal Act is amended by deleting the words “The claims” and substituting the words “Subject to section 151, the claims”.

Section 336 amended.

126. Section 336 of the principal Act is amended

- (a) in subsection (3), by deleting the words “As soon” and substituting the words “Subject to subsection (7), as soon”; and
- (b) by inserting after subsection (6), the following subsection:

“ (6A) The trustee is not required to admit or reject claims under subsection (3) at any time when it appears to him that there are insufficient assets in the bankrupt’s estate to enable a distribution to be made to unsecured creditors.”.

Section 340 amended.

127. Section 340 of the principal Act is amended

- (a) in subsection (2)(a), by deleting the words “subsection (1)(a)” and substituting the words “section 338(1)(a)”; and
- (b) in subsection (3), by deleting the word “(liability)”.

Section 342
amended.

128. Section 342(3) of the principal Act is amended by deleting the words “All interest” and substituting the words “Subject to section 151, all interest”.

Section 343
amended.

129. Section 343 of the principal Act is amended

(a) in subsection (1) by deleting the words “, declare and distribute dividends among the creditors in respect of the claims that” and substituting the words “and the other costs and expenses of the bankruptcy, distribute dividends among the creditors whose claims”;

(b) by deleting subsection (2) and substituting the following subsection:

“ (2) Before distributing a dividend under subsection (1), the trustee shall send each creditor a notice

(a) stating that he intends to distribute a dividend;
and

(b) fixing a date on or before which creditors shall submit their claims to him.”;

(c) by repealing subsections (3) and (4); and

(d) in subsection (5), by deleting the words “In the calculation and distribution” and substituting the words “In determining the funds available for distribution to creditors by way”.

Section 344
amended.

130. Section 344 of the principal Act is amended

(a) in subsection (1),

(i) by deleting the words “before the declaration of any dividend” and substituting the words “by the date fixed in the notice issued under section 343(2)”;

(ii) by deleting the words “or any other dividend declared before his claim was submitted”; and

(b) by inserting after subsection (1), the following subsection:

“ (2) Subject to section 346, where the trustee makes more than one distribution, section 343 and subsection (1) of this section apply to each distribution.”.

Section 346
amended.

- 131.** Section 346 of the principal Act is amended
- (a) in subsection (1)(a), by deleting the word “declare” and substituting the word “distribute”;
 - (b) in subsection (1)(b), by deleting the word “declared” and substituting the word “distributed”;
 - (c) in subsection (4)(b), by deleting the words “declare a final dividend, declare and” and substituting the words “distribute a final dividend.”.

Section 351
amended.

- 132.** Section 351 of the principal Act is amended
- (a) in subsection (2), by deleting the words “that person has been adjudged bankrupt” and substituting the words “a bankruptcy order has been made against that person”; and
 - (b) in subsection (4)(a), by deleting the words “a bankruptcy application” and substituting the words “an application for a bankruptcy order”.

Section 352
amended.

- 133.** Section 352 of the principal Act is amended
- (a) in subsection (3), by deleting the words “who is adjudged bankrupt” and substituting the words “against whom a bankruptcy order is made”; and
 - (b) in subsection (8), by deleting the word “prove” and substituting the word “claim”.

Section 353
amended.

134. Section 353(1) of the principal Act is amended by deleting the words “official receiver” and substituting the words “Official Receiver”.

Section 355
amended.

- 135.** Section 355 of the principal Act is amended
- (a) in subsection (1),
 - (i) in paragraph (a), by deleting the words “a bankruptcy application” and substituting the words “an application for a bankruptcy order”; and

- (ii) by deleting the word “rules” and substituting the word “Rules”;
- (b) in subsection (2),
 - (i) by deleting the words “filing of the bankruptcy application” and substituting the words “filing of the application for a bankruptcy order”; and
 - (ii) in paragraph (a), by deleting the words “a bankruptcy application” and substituting the words “an application for a bankruptcy order”.

136. Section 356(1) of the principal Act is amended by deleting the words “official receiver” and substituting the words “Official Receiver”. Section 356 amended.

137. Section 362(5) of the principal Act is amended by deleting the words “subsection (5)” and substituting the words “subsection (6)”. Section 362 amended.

138. Section 366 of the principal Act is amended Section 366 amended.

- (a) in subsection (1), by inserting before the words “statement of assets and liabilities”, the word “verified”;
- (b) in subsection (3), by inserting after the word “may”, the words “, in accordance with the Rules”; and
- (c) by inserting after subsection (3), the following subsections:

“ (3A) Where the trustee considers that it would prejudice the conduct of the bankruptcy for the whole or part of a statement of assets and liabilities submitted to him to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement, or any specified part of it.

(3B) The Court may, on an application under subsection (3A), order that the statement of assets and liabilities or, as the case may be, the specified part of it, is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with the leave of the Court.”.

139. Section 368 of the principal Act is amended by deleting the word “226” and substituting the word “367”. Section 368 amended.

Section 370 amended.

140. Section 370(4) of the principal Act is amended in paragraphs (a) and (b), by deleting the word “notice” and substituting the word “order”.

Section 374 amended.

141. Section 374(2) of the principal Act is amended by deleting the word “court” and substituting the word “Court”.

Section 379 amended.

142. Section 379 of the principal Act is amended

- (a) in subsection (1), by deleting the words “subsections (3), (4) and (5)” and substituting the words “subsection (3)”;
- (b) in subsection (3), by deleting the words “subsection (1)” and substituting the words “section 378”; and
- (c) in subsection (4),
 - (i) by deleting the words “subsection (4)” and substituting the words “subsection (3)”, and
 - (ii) in paragraph (f), by deleting the word “insolvent” and substituting the words “unable to pay his debts as they fell due”.

Section 380 amended.

143. Section 380(2)(a) of the principal Act is amended by deleting the word “prove” and substituting the word “claim”.

Section 396 amended.

144. Section 396(1)(a) of the principal Act is amended

- (a) by deleting the word “obtained” and substituting the word “obtains”; and
- (b) by deleting the words “that person” and substituting the words “the person from whom he obtains credit”.

Section 400 amended.

145. Section 400(3) of the principal Act is amended by deleting the words “subsection (2)(b)” and substituting the words “subsection (2)”.

Section 405 amended.

146. Section 405 of the principal Act is amended

- (a) in subsection (2)(g), by deleting the word “prove” and substituting the word “claim”;
- (b) in subsection (2)(h), by deleting the word “company” and substituting the word “bankrupt or trustee”; and
- (c) in subsection (3), by deleting the word “250” and

substituting the word “406”.

147. Section 406(5) of the principal Act is amended by deleting the words “that an application had been made for the bankruptcy of the individual” and substituting the words “of the application on which the bankruptcy order was made”.

Section 406
amended.

148. Section 420 of the principal Act is amended

Section 420
amended.

- (a) in subsection (1)(a), by inserting after the words “administrative receiver”, the words “and in respect of a foreign company, its liquidator”;
- (b) in subsection (2)(a), by inserting after the word “liquidation”, the words “or a foreign company is in liquidation”; and
- (c) by inserting after subsection (2), the following subsection:

“(3) In this Division, where the context requires, “company” includes a foreign company.”.

149. Section 422(2)(b) of the principal Act is amended by deleting the word “Committee” and substituting the word “committee”.

Section 422
amended.

150. Section 423 of the principal Act is amended

Section 423
amended.

- (a) in subsection (2), by inserting after the words “entitlement to vote”, the words “or, in the case of a liquidation or bankruptcy, for distribution purposes,”;
- (b) in subsection (3), by inserting after the words “less than three”, the words “or more than five”.

151. Section 424 of the principal Act is amended

Section 424
amended.

- (a) in subsection (2)(b), by deleting the word “or” after the semicolon;
- (b) in subsection (2), by inserting after paragraph (b) the following paragraph:

“(ba) ceases to be, or is found never to have been, a creditor; or”; and

- (c) by inserting after subsection (3), the following subsection:

“ (4) If a member of the creditors’ committee becomes bankrupt, his bankruptcy trustee replaces him as a member of the committee.”.

Section 428 amended.

152. Section 428 of the principal Act is amended

(a) in subsection (1), by inserting after the words “administrative receivership”, the words “of a company”;

(b) by inserting after subsection (2), the following subsection:

“ (3) The Rules may specify procedures for dealing with potential or actual conflicts of interest of committee members.”.

Section 432 amended.

153. Section 432 of the principal Act is amended

(a) in subsection (1)(c), by inserting after the words “section 172”, the words “and of a person appointed by the Court under section 307”;

(b) in subsection (1)(e), by deleting the word “323” and substituting the word “17”;

(c) in subsection (1)(f), by inserting after the word “under”, the word “section”; and

(d) in subsection (5)(b)(i), by deleting the words “office holder” and substituting the words “insolvency practitioner”.

Section 433 amended.

154. Section 433(4) of the principal Act is amended by deleting the words “subsection (2)” and substituting the words “subsection (3)”.

Title to Part XVII amended.

155. The title to Part XVII of the principal Act is amended by deleting the word “**MARKET**” and substituting the word “**FINANCIAL**”.

Section 434 amended.

156. Section 434 of the principal Act is amended

(a) in subsection (1), by deleting the definition of “multibranch netting agreement”; and

(b) in subsection (2), by deleting the comma immediately after the word “include”.

157. Section 477(b) of the principal Act is amended by inserting after the words “section 260(4)”, the words “or a restricted person within the meaning of section 409”. Section 477 amended.

158. Section 479 of the principal Act is amended Section 479 amended.

- (a) in subsection (1),
 - (i) in paragraph (a), by deleting the word “or” after the semi colon,
 - (ii) in paragraph (b), by deleting the full stop and substituting the words “; or”, and
 - (iii) by inserting after paragraph (b), the following paragraph:
 - “(c) he is no longer resident in the Virgin Islands.”; and

- (b) in subsection (2),
 - (i) in paragraph (b), by deleting the words “section 478 or section 481(1)” and substituting the words “this Part, the Regulations or the Code of Practice”;
 - (ii) in paragraph (d), by deleting the word “or” after the semicolon;
 - (iii) in paragraph (e), by deleting the full stop and substituting the words “; or”; and
 - (iv) by inserting after paragraph (e), the following paragraph:
 - “(f) he fails to comply with a directive issued by the Commission under section 480A.”.

159. The principal Act is amended by inserting after section 480, the following section: Section 480A inserted.

“Directives. 480A. (1) Where the Commission is entitled to revoke or suspend the licence of a licensee under section 479(2), the Commission may issue one or more of the following directives:

- (a) that the licensee shall take all necessary steps to resign as an

insolvency practitioner in respect of certain specified insolvency matters or specified types or descriptions of insolvency matters;

- (b) that the licensee shall not accept any new appointments as an insolvency practitioner or any new appointments of a specified type or description;
- (c) that the licensee shall take such other action as the Commission considers may be necessary to ensure that he properly fulfils his duties as an insolvency practitioner either generally or in respect of particular insolvency matters.

(2) Without limiting subsection (1), where it considers it necessary for the exercise of its functions or for the proper supervision of insolvency practitioners, the Commission may issue directives of a special or general nature not inconsistent with this Part.

(3) Where the Commission issues a directive of a general nature under subsection (2), it shall cause the directive to be advertised in the *Gazette*.”.

Section 486
amended.

160. Section 486 of the principal Act is amended

- (a) in subsection (1),
 - (i) by inserting after the words “The Executive Council may”, the words “, on the recommendation of the Commission,”; and
 - (ii) by inserting after paragraph (f), the following paragraph:
 - “(fa) the submission to the Commission of complaints and the procedures for dealing with such complaints;”
- (b) by inserting after subsection (3), the following subsection:

“(4) Sections 494, 495, 496 and 502 apply in respect of the Regulations.”.

161. Section 487(3) of the principal Act is amended by deleting the words “Code of Conduct” and substituting the words “Code of Practice”. Section 487 amended.

162. The principal Act is amended by inserting after section 487, the following section: Section 487A inserted.

“Insolvency Surplus Account. 487A.(1) The Commission shall open and maintain an account called the Insolvency Surplus Account with a reputable bank licensed and operating in the Virgin Islands.

(2) The Commission shall pay into the Insolvency Surplus Account all monies representing the unclaimed assets of companies and bankrupts that are received by it in accordance with the Rules.

(3) The Rules may provide for the management of the Insolvency Surplus Account by the Commission, the investment of monies held in the Insolvency Surplus Account and the circumstances in which monies shall or may be paid into and out of the Insolvency Surplus Account.”.

163. Section 491 of the principal Act is amended in subsection (1), by deleting the words “and any other enactment” and substituting the words “Act, any other enactment, the Rules and the Regulations”. Section 491 amended.

164. Section 496 of the principal Act is amended by repealing subsection (3). Section 496 amended.

165. Section 497(1) of the principal Act is amended by deleting subsection (1) and substituting the following subsection: Section 497 amended.

“(1) Anything which is required or permitted to be done under this Act or the Rules by a resolution of the creditors of a company, a bankrupt or an individual debtor, by a resolution of a creditors’ committee or by a resolution of the members of a company may be done by written resolution of the creditors, creditors’ committee or members in accordance with and subject to any conditions specified in the Rules.”.

166. Section 499 of the principal Act is amended Section 499 amended.

(a) in subsection (1), by deleting the words “The Rules shall specify” and substituting the words “The Executive Council may make Rules specifying”; and

Section 500 amended.

- (b) in subsection (2), by inserting after the words “The Rules”, the words “made under subsection (1)”.

167. Section 500 of the principal Act is amended

- (a) in subsection (1), by deleting the words “The Rules shall specify” and substituting the words “The Executive Council may make Rules specifying”; and
- (b) in subsection (2), by inserting after the words “The Rules”, the words “made under subsection (1)”.

Section 503A inserted.

168. The principal Act is amended by inserting after section 503, the following section:

“Disapplication and modification of No. 12 of 2001.	503A. The Financial Services Commission Act, 2001 is disappplied and modified with respect to the Official Receiver, licensed insolvency practitioners and former licensed insolvency practitioners to the extent specified in Schedule 6.”.
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Schedule 1 amended.

169. Schedule 1 of the principal Act is amended in paragraph 20, by deleting the words “or otherwise” and substituting the word “and”.

Schedule 3 amended.

170. Schedule 3 of the principal Act is amended in paragraph 5

- (a) by deleting the word “References” and substituting the words “Unless the context otherwise requires, references”; and
- (b) in subparagraph (a), by deleting the words “and 161” and substituting the words “, 161 and 162”.

Schedule 6 inserted.

171. The principal Act is amended by inserting after Schedule 5, the following Schedule:

“SCHEDULE 6

[Section 503A]

**DISAPPLICATION AND MODIFICATION OF
FINANCIAL SERVICES COMMISSION ACT**

The Financial Services Commission Act, 2001 is disappplied and modified with respect to the Official Receiver, licensed insolvency

practitioners and former licensed insolvency practitioners to the extent specified below:

1. Section 29 and section 49(1)(c) of the Financial Services Commission Act, 2001 do not apply to the Official Receiver in respect of any information, document, record, statement or thing made or disclosed to him in the course of discharging any function or duty or exercising any power in his capacity as Official Receiver.
2. Sections 30 and 31 of the Financial Services Commission Act, 2001 do not apply to any person engaged in or related to the business of acting as an insolvency practitioner.
3. Sections 32 and 33 of the Financial Services Commission Act, 2001 do not apply to a licenced insolvency practitioner, a former licenced insolvency practitioner or a person carrying on business as an insolvency practitioner.
4. Sections 34, 36, 37, 38, 39 and 40 of the Financial Services Commission Act, 2001 do not apply to a licensed insolvency practitioner.
5. Section 35 of the Financial Services Commission Act, 2001 does not apply to a licensed insolvency practitioner or a former licensed insolvency practitioner.
6. Section 41 of the Financial Services Commission Act, 2001 does not apply with respect to licensed insolvency practitioners.”.

172. The enactments set out in the second column of the Schedule to this Act are repealed or amended to the extent specified in the third column.

Repeals and amendments.
Schedule

SCHEDULE

[Section 172]

ENACTMENTS REPEALED OR AMENDED

NO.	ENACTMENT	EXTENT OF AMENDMENT OR REPEAL
1.	Bankruptcy Act (Cap. 8)	The Bankruptcy Act (Cap. 8) is repealed.
2.	Companies Act (Cap. 285)	1. In section 2 (a) designate the existing provision as subsection (1); and

<p>3.</p>	<p>International Business Companies Act (Cap. 291)</p>	<p>(b) insert after the existing provision, the following subsection:</p> <p>“ (2) A reference in this Act</p> <p>(a) to a company “winding up” or being “wound up”, whether under this Act or otherwise, includes, where the context allows, a reference to the liquidation of the company under the Insolvency Act, 2003; and</p> <p>(b) to the commencement of such winding up, whether under this Act or otherwise, includes, where the context allows, a reference to the commencement of the liquidation under the Insolvency Act, 2003.”.</p> <p>2. Sections 111 to 150 and sections 152 to 198 are repealed.</p> <p>3. Section 206 is repealed.</p> <p>4. In section 223, delete “; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company”.</p> <p>5. Sections 230 to 235 are repealed.</p> <p>1. In section 2, insert in the appropriate alphabetical order the following:</p> <p>“Insolvency Act” means the Insolvency Act, 2003;” and</p> <p>“liquidation” and “liquidator” have the meaning specified in subsection (7).”</p>
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		<p>2. Insert after subsection (6), the following subsection:</p> <p>“ (7) Unless the context otherwise requires, a reference in this Act to a “liquidator” or to a “liquidation” shall be construed as excluding a liquidator appointed under, or a liquidation under, the Insolvency Act.”.</p> <p>3. In section 89, delete “A company” and substitute “Subject to section 96, a company”.</p> <p>4. In section 90, delete “A company” and substitute “Subject to section 96, a company”.</p> <p>5. Repeal section 96 and substitute the following:</p> <p>96. (1) No resolution shall be passed by the directors under section 89 or 90 or by the members under section 90(2) unless the directors or members, as the case may be, are of the opinion that the company has no liabilities or that it is able to pay its debts as they fall due.</p> <p>(2) Where a liquidator of a company appointed under section 89 or 90 has reason to believe that the company is unable, or will not be able, to pay its debts as they fall due, he shall forthwith file a notice with the Registrar and send a copy of the notice to the company.</p> <p>(3) Where a liquidator who files a notice under subsection (2) is an eligible insolvency practitioner, he is deemed, from the date of the notice, to have been appointed as liquidator under the Insolvency Act and shall comply with section 178 of that Act within 14 days of the date that the notice was filed.</p> <p>(4) Where a liquidator who files a notice under subsection (2) is not an eligible insolvency practitioner, he shall as soon as reasonably practicable</p> <p>(a) appoint an eligible insolvency practitioner as liquidator in his place; or</p>
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<p>4.</p>	<p>Banks and Trust Companies Act, 1990</p>	<p>(b) apply to the Court to appoint the Official Receiver or an eligible insolvency practitioner as liquidator in his place.</p> <p>(5) Where the existing liquidator or the Court appoints the Official Receiver or an insolvency practitioner as liquidator under subsection (4), the liquidator is deemed to have been appointed under the Insolvency Act and he shall comply with section 178 of that Act within 14 days of the date of his appointment.</p> <p>(6) The appointment of a liquidator under sections 89 or 90 does not prevent an application to the Court for the appointment of a liquidator under the Insolvency Act and does not prevent the appointment by the Court of a liquidator on such an application.</p> <p>(7) Where the Court appoints a liquidator under the Insolvency Act in respect of a company that is being wound up under this Part, the liquidator appointed by the directors or members under this Part ceases to hold office.</p> <p>(6) For the purposes of subsections (3), (4) and (5), “eligible insolvency practitioner” and “Official Receiver” have the meanings specified in the Insolvency Act.”.</p> <p>6. In section 98, delete “Companies Act” and substitute “Insolvency Act”.</p> <p>7. In section 99(11), by inserting after “wound up and dissolved”, the words “under this Act or to a company in liquidation under the Insolvency Act”.</p> <p>8. In section 100(4), delete “official receiver” and substitute “official liquidator”.</p> <p>1. In section 13(2), delete from “apply to the court” to the end of the subsection and substitute “apply to the Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act, 2003 for the</p>
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		<p>appointment of a liquidator in respect of the licensee.”.</p> <p>2. In section 20</p> <p>(a) in subsection (2)(e), delete “receiver or manager of a business appointed under the Bankruptcy Act” and substitute “liquidator of a company under the Insolvency Act”;</p> <p>(b) in subsection (5), delete paragraph (d) and substitute the following:</p> <p>(d) apply to the Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act, 2003 for the appointment of a liquidator in respect of the licensee and, if it considers it appropriate, revoke the licence.”.</p>
5.	Company Management Act, 1990	In section 12(2), delete from “apply to the court” to the end of the subsection and substitute “apply to the Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act, 2003 for the appointment of a liquidator in respect of the licensee.”.
6.	Insurance Act, 1994	<p>1. Section 30 is repealed.</p> <p>2. Insert after section 30Q the following section:</p> <p><u>Liquidation of segregated portfolio company</u></p> <p>30R. (1) Notwithstanding any enactment or rule of law to the contrary, in the dissolution or liquidation of a segregated portfolio company, the liquidator shall deal with the assets and liabilities which are attributable to each segregated portfolio in accordance with this Part.</p> <p>(2) Without limiting subsection (1), the liquidator of a segregated portfolio company shall ensure that the assets attributable to one segregated portfolio are not applied to the liabilities attributable to any other segregated portfolio or to a liability specified in section 30J(1), unless an</p>

		<p>asset or liability is attributable to more than one segregated portfolio.</p> <p>3. In section 40</p> <p>(a) by deleting subsection (1) and substituting the following:</p> <p>“ (1) Notwithstanding the provisions of this Part, the Court may, by order, release the domestic business assets of a discontinuing insurer incorporated under the Companies Act or the International Business Companies Act to a liquidator of the insurer appointed under the Insolvency Act, 2003.”;</p> <p>(b) in subsection (2), by deleting “any winding-up or” and substituting “the”;</p> <p>(c) by deleting subsection (3) and substituting the following:</p> <p>“ (3) Subsection (1) applies to an insurer incorporated outside the Territory where a liquidator has been appointed in respect of the insurer under section 163 of the Insolvency Act, 2003.”; and</p> <p>(d) by inserting after subsection (3) the following subsection:</p> <p>“ (4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate.”.</p> <p>4. Part VI is repealed.</p> <p>5. In section 30M</p> <p>(a) in subsection (4)(a), by deleting “the segregated portfolio company is in winding up” and substituting “a liquidator has been appointed in respect of the segregated portfolio company</p>
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		<p>under the Insolvency Act, 2003”;</p> <p>(b) in subsection (4)(b), by deleting “commencement of the winding up of the segregated portfolio company” and substituting “the appointment of a liquidator of the segregated portfolio company under the Insolvency Act, 2003”; and</p> <p>(c) by inserting after subsection (5), the following subsection:</p> <p>“ (6) In subsection (5), “resolution for the voluntary winding up of a segregated portfolio company” means any one of the following:</p> <p>(a) a resolution of the directors of a segregated portfolio company passed under section 89 or 90(1) of the International Business Companies Act (Cap. 291);</p> <p>(b) a resolution of the members of a segregated portfolio company passed under section 90(2) of the International Business Companies Act (Cap. 291);</p> <p>(c) a resolution of the members of a company to appoint a liquidator under the Insolvency Act, 2003.</p>
7.	Mutual Funds Act, 1996	In section 29(vi), delete “wound up or dissolved ” and substitute “wound up, liquidated or dissolved”;
8.	Financial Services Commission Act, 2001	<p>1. In section 37</p> <p>(a) in subsection (1), paragraph (b) is deleted and the following paragraph substituted:</p> <p>“(b) a liquidator is appointed in respect of the regulated person, whether by its directors, its members or the Court, or the regulated person is dissolved;”.</p>

		<p>(b) in subsection (2)</p> <p>(i) in paragraph (d), by deleting “or” after the semi colon;</p> <p>(ii) in paragraph (e), by deleting the full stop and substituting “; or”; and</p> <p>(iii) by inserting after paragraph (e) the following paragraph:</p> <p>“(f) where the regulated person is a company, apply to the Court under section 162(1)(c) or section 163(1)(b) of the Insolvency Act, 2003 for the appointment of a liquidator in respect of the company.”.</p> <p>2. In section 39,</p> <p>(a) in subsection (2)</p> <p>(i) by inserting “and” after the semi-colon in paragraph (b); and</p> <p>(ii) by repealing paragraph (c); and</p> <p>(b) by repealing subsection (2A).</p> <p>3. In section 49(2)(i)(i), by deleting “winding up” and substituting “liquidation”.</p> <p>4. In Schedule 2, by adding after paragraph (15) a new paragraph as follows:</p> <p>“(16) Insolvency Act, 2003”</p>
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Passed by the Legislative Council this 29th day of July, 2004.

V. INEZ ARCHIBALD,
Speaker.

DENNISTON FRASER,
Clerk of the Legislative Council.