



Dubai
International
Financial
Centre

INSOLVENCY LAW
DIFC LAW No. 1 of 2019

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PART 1: GENERAL**1. Title and repeal**

- (1) This Law may be cited as the "Insolvency Law 2019" or "this Law".
- (2) This Law repeals and replaces the Insolvency Law 2009 (DIFC Law No. 3 of 2009) as it was in force immediately prior to the commencement of this Law (the "Previous Law").
- (3) Except where otherwise provided in this Law, anything done or omitted to be done pursuant to or for the purposes of the Previous Law is deemed to be done or omitted to be done pursuant to or for the purposes of this Law.
- (4) Without limiting the generality of Article 1(3), and subject only to Article 1(6), such repeal and replacement shall not affect:
 - (a) any right, privilege, remedy, obligation or Liability accrued to or incurred by any person; or
 - (b) any investigation or legal or administrative proceeding commenced, or to be commenced, in respect of any such right, remedy, privilege, obligation or Liability,under the Previous Law, and any such investigation or legal or administrative proceeding may be instituted, continued or enforced, including any penalty, fine or forfeiture, under this Law.
- (5) Where there is no equivalent provision in this Law to a provision in the Previous Law, the relevant provision in the Previous Law is deemed to survive the repeal and replacement under this Article 1 until such time as necessary for the purposes of any investigation or legal or administrative proceeding specified in Article 1(4)(b).
- (6) Any regulations made under the Previous Law which are not expressly repealed or amended shall be deemed to be Regulations made under this Law or the Companies Law or the Operating Law only so far as, and to the extent, such regulations do not conflict with this Law or the Companies Law or the Operating Law.
- (7) Unless otherwise provided, any reference to:
 - (a) the Previous Law includes regulations made under the Previous Law;
 - (b) this Law includes a reference to the Regulations made under this Law;
 - (c) the Companies Law includes where applicable a reference to the regulations made under the Companies Law; and
 - (d) the Operating Law includes a reference where applicable to the regulations made under the Operating Law.

2. Legislative Authority

This Law is made by the Ruler.

3. Application of this Law

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

4. Date of enactment and commencement

- (1) This Law is enacted on the date specified in the Enactment Notice in respect of this Law.
- (2) This Law comes into force on the date specified in the Enactment Notice in respect of this Law.

5. Interpretation

Schedule 1 contains:

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

6. Administration by the Registrar

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

PART 2: COMPANY VOLUNTARY ARRANGEMENTS**7. Company arrangements**

- (1) The Directors of a Company may make a proposal under this Part to the Shareholders and to its creditors for an 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 shall be a person who is registered as an insolvency practitioner under Part 10 of this Law.

8. 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 8;
 - (b) the procedure for obtaining such a moratorium;
 - (c) the effects of such a moratorium; and
 - (d) the procedure applicable (in place of Articles 9 to 12) in relation to the approval and implementation of a Voluntary Arrangement where such a moratorium is or has been in force.

9. Consideration of proposal

- (1) The Nominee shall summon meetings of the Company and of its creditors to consider the proposal for such time, date and place as he thinks fit.
- (2) Notice of the creditors meeting shall be given to every creditor of the Company whose claim and address the Company is aware.
- (3) The General Meeting shall be held in accordance with the Companies Law.

10. Decisions of the Company and its creditors

- (1) The meetings summoned under Article 9 shall decide whether to approve the proposed Voluntary Arrangement.
- (2) The Company and its creditors may approve the proposed Voluntary Arrangement with or without modifications.
- (3) Neither the Company nor its creditors may approve any proposal or modification which affects the right of a preferential creditor or a secured creditor of the Company to enforce his rights or his security, except with the concurrence of the creditor concerned.

11. Effect of approval

- (1) This Article 11 has effect where each of the meetings summoned under Article 9 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' meetings; and
 - (b) binds every person who in accordance with the Regulations was entitled to vote at that meeting (whether or not he was in attendance or represented at the meeting) as if he was 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.

12. Implementation of proposal

- (1) This Article 12 applies where a Voluntary Arrangement approved by the meetings summoned under Article 9 has taken effect.
- (2) The person who is for the time being carrying out the functions of the Nominee in relation to the Voluntary Arrangement shall be known as the Supervisor of the Voluntary Arrangement.
- (3) The Supervisor shall be a person who is registered as an insolvency practitioner under Part 10 of this Law.
- (4) If any of the Company's creditors or any other person is dissatisfied by any act, omission or decision of the Supervisor, he may apply to the Court and 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.
- (6) The Court may, whenever:
 - (a) it is expedient to appoint a person to carry out the functions of the Supervisor, and
 - (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is registered under Part 10 of this Law to act as an insolvency practitioner in relation to the Voluntary Arrangement, either in substitution for the existing Supervisor or to fill a vacancy.

PART 3: REHABILITATION**13. Scope**

A Company is eligible to apply under this Part for a Rehabilitation Plan where the debtor is or is likely to become unable to pay its debts and there is a reasonable likelihood of a successful Rehabilitation Plan being reached between the Company and its creditors and Shareholders unless it is excluded from being eligible in such manner as prescribed in the Regulations. If the Company is an Authorised Person, the creditors shall notify the DFSA immediately upon filing the application.

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

Except where modified by this Part, the Regulations relating to the moratorium and the prevalence of the Business Rules of Authorised Financial Market Institutions over this Law and treatment of Financial Collateral shall apply.

15. Application for Rehabilitation Plan and automatic moratorium

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

16. Moratorium period

Unless otherwise ordered by the Court the automatic moratorium shall apply for a period of one hundred and twenty (120) days from the Notification Date referred to in Article 15(2) ("the Moratorium Period").

17. Effect of the moratorium

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

18. Effect of the moratorium on contracts

- (1) An application under this Part shall not render any undue debt due and payable. Any contrary provision in a contract, or in any applicable law shall be deemed unenforceable for the Moratorium Period.
- (2) Any termination or modification provision in any contract linked to an Insolvency related term ceases to have effect during the Moratorium Period, unless:
 - (a) the Company agrees to the termination; or
 - (b) the Court grants permission to terminate; or
 - (c) any sums due after the commencement of the Moratorium Period which the Company has agreed to pay and remain unpaid for a period of more than twenty (20) days after the payment is due.
- (3) During the Moratorium Period but before the sanctioning of the Rehabilitation Plan, the Company may assume, assign, or reject an executory contract or unexpired Lease. The Company may not assume such contracts or Leases unless; at the time of the assumption it provides adequate assurance to the

contracting party that it, or its assignee, will cure any defaults and provide adequate assurance of future performance or, as otherwise agreed by the contracting party.

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

19. Relief from the moratorium

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

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

20. Appointment of the Rehabilitation Nominee

The board of the Company shall appoint one (1) or more Rehabilitation Nominee(s) immediately prior to the Rehabilitation Plan Notification. The name and qualification of each Rehabilitation Nominee shall be set out in the Rehabilitation Plan Notification. Where more than one Rehabilitation Nominee is appointed, each Rehabilitation Nominee may exercise its functions independently. The Rehabilitation Nominee will have the authority to perform such functions as are given to him under this Part and otherwise as the Court may from time to time order on application by the Company with the consent of the Rehabilitation Nominee.

21. Qualification of the Rehabilitation Nominee

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

22. Management of the Company

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

23. Termination and expiration of the moratorium period

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

- (2) Following the expiration or termination of the Moratorium Period, the Company shall take steps to either:
 - (a) seek directions in accordance with Article 24 below; or
 - (b) agree to an alternative Rehabilitation Plan proposed by any creditors or Shareholders; or
 - (c) seek to terminate the Rehabilitation Plan process by way of an application to the Court and wind up the Company under Part 6 of this Law.
- (3) In the event that the Company fails to take any steps in Article 23(2) above, upon the request of a creditor of the Company, the Court may appoint an Administrator in circumstances where Article 22(2) applies or alternatively taken steps to wind up the Company in accordance with Chapter 5 of Part 6 of this Law.

24. Directions Hearing

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

25. Meeting and voting requirements

- (1) Prior to the occurrence of any meeting for creditors and Shareholders of the Company to vote upon any arrangement, creditors and Shareholders of the Company shall be provided with reasonable notice of the occurrence of such meeting in a manner approved by the Court at the Directions Hearing.
- (2) Any notice of a meeting of creditors and Shareholders of the Company to vote upon the Rehabilitation Plan shall be sent in writing to all creditors and Shareholders and shall include a copy of the Rehabilitation Plan to be voted upon by creditors and Shareholders of the Company.
- (3) If at least three-quarters in value (of claims agreed to by the Company or otherwise allowed by the Court) of any class of creditors or Shareholders, present and voting either in person or by proxy at the meeting, or voting through such other procedure as is approved by the Court, agree to any arrangement, the Rehabilitation Plan, if sanctioned by the Court, shall be binding on all persons within such class that have or could have a claim against or interest in the Company before the date the Court sanctions the Rehabilitation Plan.

- (4) Notwithstanding any other provision of this Part, a class of creditors or Shareholders that is Unimpaired under any Rehabilitation Plan, and each holder of a claim or interest of such class, are conclusively deemed to have accepted the Rehabilitation Plan, and solicitation of votes from such class is not required.
- (5) The Rehabilitation Plan should include such matters as required by the Regulations.

26. Challenges to the Rehabilitation Plan

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

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

then the creditor or Shareholder may make a written application to the Court of its objection to the arrangement until the date that is ten (10) days prior to the Post Plan Hearing. In the event of any such objection, any responses shall be filed at least five (5) days prior to the Post Plan Hearing, and the Court shall consider such objection, and any responses, and order such relief as it thinks just and appropriate at the Post Plan Hearing.

27. Post Plan Hearing and Court sanction

Upon no less than twenty (20) days' notice to creditors and Shareholders of the Company, the Court at the Post Plan Hearing shall sanction the Rehabilitation Plan upon a finding that:

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

28. No Court sanction and winding up

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

29. Effect of Court sanction

A Rehabilitation Plan sanctioned under Article 27 shall bind as if he were a party to the Rehabilitation Plan every person affected by the Rehabilitation Plan and who in accordance with Articles 24 and 25 is either:

- (a) entitled to vote; or
- (b) would have been so entitled if he had notice of it.

30. Discretionary relief in conjunction with a Rehabilitation Plan

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

31. Priority funding

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

PART 4: ADMINISTRATION**32. Application for an order appointing an Administrator**

- (1) An application for the appointment of an Administrator pursuant to Article 22(2) of Part 3 may only be made by one (1) or more creditors either jointly or separately in the circumstances where an application for Rehabilitation has been made and there is evidence of misconduct. If the Company is an Authorised Person, the creditors shall notify the DFSA immediately upon filing the application.
- (2) The Administrator shall be a person who is registered as an insolvency practitioner under Part 10 of this Law.
- (3) Notice of the application shall be given to all creditors of the Company. Any person who is entitled to appoint an Administrative Receiver shall indicate whether or not they object to the appointment of an Administrator.
- (4) Upon hearing the application, including any objections to the appointment, the Court may dismiss it adjourn it, or make an order that it thinks fit, including a winding up order in accordance with this Law.
- (5) If the Court is:
 - (a) satisfied that a Company is or is likely to become unable to pay its debts; and
 - (b) considers the appointment of an Administrator would be likely to achieve one or more of the purposes in Article 32(8),
 - (c) the Court may appoint an Administrator in relation to the Company.
- (6) The order appointing the Administrator shall direct that during the period for which the order is in force, the affairs business and property of the business shall be managed by a person appointed by the Court as Administrator.
- (7) The Court in making such appointment may give all the necessary powers to enable the Administrator to rehabilitate the Company including those set out in Schedule 2. The Court shall also make provision for any additional fees and indemnities that the Administrator may reasonably request. Alternatively, the Court may make an order for the commencement of the winding up of the Company under this Law or any other order it considers appropriate.
- (8) The purposes for which an order may be made are:
 - (a) the approval of a Rehabilitation Plan under Part 3;
 - (b) the approval of a Voluntary Arrangement under Part 2;
 - (c) the approval of a scheme of arrangement under the Companies Law; and
 - (d) the use of investigation procedures in relation to matters set out in Articles 107 to 111 and Articles 131 to 135,

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

33. Effect of order

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

34. Moratorium

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

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

- (1) Except where modified by this Part, Articles 43, 45 to 47, 50, 88, 107 to 116, 131 to 134 and Schedule 2 shall also apply to an Administrator under this Part and references to "Receiver" or "Liquidator" in these provisions shall be taken as references to an "Administrator" and references to "Liquidation" or "winding up" shall be taken as reference to Administration.
- (2) Where the Administrator seeks the approval of a Rehabilitation Plan under Part 3 or the approval of a Voluntary Arrangement under Part 2, those Parts shall apply to an Administrator unless modified by this Part 4. In such instances the Administrator may also act as the Nominee.
- (3) Except where modified by this Part the Regulations relating to the appointment of a Receiver apply and references to "Receiver" in these provisions shall be taken as references to an "Administrator".
- (4) For the purposes of the Regulations relating to mutual credits, mutual debts or other mutual dealings does not include any debt arising out of an obligation where the Liquidation was immediately preceded by Rehabilitation or Administration and:
 - (a) at the time the obligation was incurred the creditor had notice of the Rehabilitation or Administration; or
 - (b) any debt arising out of an obligation incurred during Rehabilitation or Administration which immediately preceded the Liquidation; or
 - (c) any debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement where that agreement was entered into:
 - (i) at a time when the creditor had notice of the Rehabilitation or Administration; or
 - (ii) during the Rehabilitation or Administration.

36. General powers

- (1) The Administrator of a Company:
 - (a) may do all such things as may be necessary for the management of the affairs, business and property of the Company, and
 - (b) without prejudice to the generality of Article 36(1)(a), has the powers specified in Schedule 2 to this Law,

and in the application of that Schedule to the Administrator of a Company the words "he", "him", "Receiver" refer to the Administrator.
- (2) The Administrator also has power to:
 - (a) remove any Director of the Company and to appoint any person to be a Director of it, whether to fill a vacancy or otherwise, and
 - (b) call any meeting of the Shareholders or creditors of the Company.
- (3) The Administrator may apply to the Court in relation to any particular matter arising in connection with the carrying out of his functions.
- (4) Any power conferred on the Company or its Officers whether by this Law, the Companies Law or its Articles of Association that could interfere with the exercise of the Administrator's powers, is not exercisable without the consent of the Administrator, which may be given either generally or in relation to particular cases.

37. General duties

- (1) The Administrator of a Company shall, on his appointment, take into his custody or under his control all the property to which the Company is or appears to be entitled.
- (2) The Administrator shall manage the affairs, business and property of the Company:
 - (a) in accordance with any Rehabilitation Plan under Part 3 or Voluntary Arrangement under Part 2 or scheme of arrangement under the Companies Law that has been approved and revised from time to time, and
 - (b) at any time prior to the proposals in Article 37(2)(a) being approved, in accordance with any orders of the Court.

38. Protection of interests of creditors and Shareholders

- (1) At any time that an Administrator is in office, a creditor or Shareholder of the Company may apply to the Court for an order under this Article 38 on the ground that:
 - (a) the Company's affairs, business and property are being or have been managed by the Administrator in a manner which is unfairly prejudicial to some or all of its creditors or Shareholders (including at least himself), or
 - (b) any actual or proposed act or omission of the Administrator is or would be so prejudicial.
- (2) On an application for an order under this Article 38 the Court may, subject as follows, make such order as it thinks fit for giving relief in respect of the matters complained of.
- (3) An order under this Article 38 shall not prejudice or prevent the implementation of a Rehabilitation Plan, or Voluntary Arrangement, or a scheme of arrangement under the Companies Law if it has been approved in accordance with the relevant Law; or
- (4) Subject to Article 38(3), an order under this Article may in particular:
 - (a) regulate the future management of the Company's affairs, business and property by the Administrator;
 - (b) require the Administrator to refrain from doing or continuing an act complained of, or to do an act which he has omitted to do;
 - (c) require the summoning of a meeting of creditors or Shareholders for the purpose of considering such matters as the Court may direct; and
 - (d) discharge the appointment of the Administrator and make such consequential provision as the Court thinks fit.

Where the Administrator is discharged, within thirty (30) days after the making of the order effecting the discharge the Administrator shall send a copy of that order to the Registrar. If the Administrator fails to comply with this Article without reasonable excuse, he is liable to a fine, as set out in Schedule 5.

39. Discharge or variation of order appointing an Administrator

- (1) The Administrator of a Company may at any time apply to the Court to be discharged, or for the order approving the Administrator to be varied so as to specify an additional purpose.
- (2) The Administrator shall make an application under this Article if:
 - (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or

- (b) he is required to do so by a meeting of the Company's creditors summoned in accordance with Article 36(2)(b).
- (3) On the hearing of an application under this Article, the Court may discharge or vary the order appointing the Administrator and make such consequential orders as it thinks fit including if appropriate the making of a winding up order under Part 6 of this Law.
- (4) Where the order is discharged or varied the Administrator shall, within thirty (30) days after the making of the order effecting the discharge or variation, send a copy of that order to the Registrar. If the Administrator fails to comply with this requirement without reasonable excuse, he is liable to a fine, as set out in Schedule 5.

40. Vacation of office

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

41. Release of Administrator

- (1) A person who has ceased to be the Administrator of a Company is released with effect from the following time:
 - (a) in the case of a person who has died, the time at which notice is given to the Court in accordance with the Regulations that he has ceased to hold office;
 - (b) in any other case, such time as the Court may determine.
- (2) Where a person is released under this Article 41, he is, with effect from the time specified above, discharged from all future liability in respect of his acts or omissions in the administration of the Company and in relation to his conduct as the Administrator.

PART 5: RECEIVERSHIP**42. Powers of Receivers and Administrative Receivers**

- (1) Where a Company grants a person powers contained in an instrument 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, such person, once appointed, shall be a Receiver and shall be subject to this Law in his performance of that function.
- (2) A Receiver of the property of a Company may be appointed under, and has all of the powers conferred upon him by, such instrument save as provided in this Law or Regulations.
- (3) A Receiver of the property of a Company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a Receiver has been so appointed, may apply to the Court in relation to any particular matter arising in connection with the performance of the functions of the Receiver.
- (4) On an application under Article 42(3), the Court may give such directions, or may make such order declaring the rights of persons before the Court or otherwise, as it thinks fit.
- (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 undertakings 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) 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.
- (7) A Receiver or an Administrative Receiver appointed over property of a Company in the DIFC shall be a person who is registered as an insolvency practitioner under Part 10 of this Law.

43. Notification that Receiver appointed

When a Receiver of any property of a Company has been appointed:

- (a) every invoice, order for goods or business letter or order form (whether in hard copy, electronic copy or any other form) issued by or on behalf of the Company or the Receiver; and
- (b) all the Company's websites,

must contain a statement that a Receiver has been appointed.

44. Interaction of Receivers and Administrative 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.

45. No duty to enquire as to power of Receiver and Administrative Receiver

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

46. Power to dispose of property subject to a security interest

- (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 46(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 46 that:
 - (a) the net proceeds of the disposal; and
 - (b) where those proceeds are less than such amount as may be determined by the Court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency,

must be applied towards discharging the sums secured by the security.
- (4) Where a condition imposed pursuant to Article 46(3) relates to two (2) or more security interests, that condition shall require that the net proceeds of the disposal and, where Article 46(3)(b) applies, the sums mentioned in that Article to be applied towards discharging the sums secured by those securities in the order of their priorities.

47. Agency and liability for contracts

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

48. Vacation of office

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

49. Report by Administrative Receiver

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

- (a) send a copy of the report (so far as he is aware of their addresses) to all unsecured creditors of the Company; or
- (b) publish in the prescribed manner a notice stating an address to which unsecured creditors of the Company should write for copies of the report to be sent to them free of charge.

50. Committee of creditors

- (1) Where an Administrative Receiver has sent or published a report as mentioned in Article 49(2), the Company's unsecured creditors may, in accordance with the Regulations, 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 seven (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 6: WINDING UP**CHAPTER 1 – GENERAL****51. Alternative modes of winding up**

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

52. Regulations

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

53. 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 in relation to the exercise of the powers and functions of a Liquidator, including as to the forms and procedures to be adopted in a winding up and the responsibilities of officers of the Company (as defined in Article 53(5)) and other persons to co-operate with the Liquidator.
- (3) Without limiting the application of Article 53(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; or
 - (c) hinders or obstructs a Liquidator in the performance of his powers or functions,
 commits a contravention and is liable to a fine, as set out in Schedule 5.
- (5) In this Article, an "officer" in relation to a Company means a person who is, or has been but is no longer, a Director, a secretary, an employee involved in the management of the Company, a Receiver or Administrative Receiver, an Administrator, a Nominee or Supervisor in relation to a Voluntary Arrangement, or a Liquidator or provisional Liquidator.

- (6) A Liquidator may exercise his powers under the Law and Regulations in respect of any person, whether that person is inside or outside 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

54. Circumstances in which a Company may be wound up voluntarily

A Company may be wound up voluntarily:

- (a) in circumstances as may be provided for in the articles of the Company and where the Company has passed an Ordinary Resolution for it to be wound up; or
- (b) if the Company resolves by special resolution that it should be wound up voluntarily.

55. Notice of resolution to wind up

- (1) When a Company has passed a Resolution for Voluntary Winding Up, it shall, within fourteen (14) days after the passing the resolution, give notice of the resolution by advertisement in an Appointed Publication.
- (2) The notice given under Article 55(1) shall include the following information:
 - (a) the name of the Company;
 - (b) notification that the Company has passed a Resolution for Voluntary Winding Up;
 - (c) the date that the Resolution for Voluntary Winding Up was passed by the Company; and
 - (d) such further or other information as may be prescribed
- (3) Where the Company is an Authorised Person, a copy of the notice given under Article 55(1) shall also be provided to the DFSA.

56. Commencement of winding up

A voluntary winding up is deemed to commence at the time of the passing of the Resolution for Voluntary Winding Up.

57. 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, other than any business for the proper winding up of the Company.
- (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.

58. Avoidance of share transfers after winding-up resolution

Any transfer of shares, not being a transfer made to or with the sanction of the Liquidator, and any alteration in the status of the Company's Shareholders made after the commencement of a voluntary winding up, is void.

59. Statutory declaration of solvency

- (1) Where it is proposed to wind up a Company voluntarily, the Directors (or, in the case of a Company having more than two (2) Directors, the majority of them) may make a statutory declaration to the effect that they have made a full inquiry into the Company's affairs and that, having done so, they have formed the opinion that the Company will be able to pay its debts in full within such period, not exceeding twelve (12) months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such declarations shall be made within the five (5) weeks immediately preceding the date the resolution for winding up was passed, or on the same date as long as the declaration was made prior to the passing of the resolution, and contain a statement of the Company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) The declarations shall be delivered to the Registrar and where the Company is an Authorised Person to the DFSA before the expiration of thirty (30) days immediately following the date on which the resolution for winding up is passed.
- (4) A Director making a declaration under this Article 59 without having reasonable grounds for the opinion that the Company will be able to pay its debts in full, together with any interest within the period specified, commits a contravention and is liable to a fine, as set out in Schedule 5.
- (5) If the Company is wound up pursuant to a resolution passed within five (5) weeks after the making of the declarations, and its debts are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the Director did not have reasonable grounds for his opinion.

60. Members' Voluntary Winding Up

A winding up in the case of which a Directors' statutory declaration under Article 59 has been made is a solvent winding up.

CHAPTER 3 – MEMBERS' VOLUNTARY WINDING UP**61. Appointment of Liquidator**

- (1) In a Members' Voluntary Winding Up, the Shareholders of the Company, by Ordinary Resolution in accordance with the Articles of Association or any applicable laws, shall appoint one (1) or more Liquidators for the purpose of winding up the Company's affairs and distributing its assets.
- (2) On the appointment of a Liquidator all the powers of the Directors cease, except so far as the Company, by Ordinary Resolution in accordance with Articles of Association or any applicable laws, or the Liquidator sanctions their continuance.

62. Liquidator's report at each year's end

- (1) In the event that the winding up continues for more than one (1) year, the Liquidator shall provide the Shareholders of the Company with an account of his acts and dealings, and of the conduct of the winding up, during the previous year:
 - (a) at the end of the first year from the commencement of the winding up, and of each succeeding year; or
 - (b) at the first convenient date within three (3) months from the end of the year or such longer period as the Court may allow.
- (2) If the Liquidator fails to comply with this Article 62(1), he is liable to a fine, as set out in Schedule 5.

63. Final account

- (1) As soon as the Company's affairs are fully wound up, the Liquidator shall make up an account of the winding up, showing:
 - (a) how it has been conducted and how the Company's property has been disposed of;
 - (b) details of the remuneration charged and expenses incurred by the Liquidator during the period since the last report (if any);
 - (c) a description of the work done by the Liquidator during the period since the last report (if any) in respect of which the remuneration was charged and the expenses incurred; and
 - (d) a summary of the receipts and payments during that period.
- (2) The Liquidator shall send a copy of the account referred to in Article 63(1) to the Shareholders of the Company within fourteen (14) days beginning on the day the account is made up. The Liquidator shall send the account to the last known addresses of the Shareholders of the Company as recorded by the Company. If there is no known address for a Shareholder of the Company, the Liquidator shall not be required to send a copy of the account to that Shareholder, and shall not be liable pursuant to Article 63(4).
- (3) The Liquidator shall send a copy of the account to the Registrar and where the Company is an Authorised Person to the DFSA, before the end of that period (but not before sending it to the Shareholders of the Company).
- (4) If the Liquidator fails to comply with each requirement of this Article 63. as set out in Schedule 5.

64. Effect of Company's Insolvency

- (1) This Article 64 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 59.
- (2) The Liquidator shall within seven (7) days of the day on which the Liquidator formed that opinion:
 - (a) make out a statement as to the affairs of the Company; and
 - (b) send it to the Company's creditors.
- (3) The statement as to the affairs of the Company shall show:
 - (a) particulars of the Company's assets, debts and liabilities;
 - (b) the names and addresses of the Company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates on which the securities were respectively given; and
 - (e) such further or other information as may be prescribed.
- (4) The Company's creditors may in accordance with the Regulations nominate a person to be the Liquidator.
- (5) The Liquidator shall in accordance with the Regulations seek such a nomination from the Company's creditors.

65. Conversion to Creditors' Voluntary Winding Up

- (1) The winding up becomes a Creditors' Voluntary Winding Up as from the day on which:

- (a) the Company's creditors under Article 64 nominate a person to be Liquidator; or
 - (b) the procedure by which the Company's creditors were to have made such a nomination concludes without a nomination having been made.
- (2) As from that day this Law has effect as if the Directors' declaration under Article 59 had not been made.
- (3) The Liquidator in the Creditors' Voluntary Winding Up is to be the person nominated by the Company's creditors under Article 64(4) or, where no person has been so nominated, the existing Liquidator.
- (4) In the case of the creditors nominating a person other than the existing Liquidator any Director, Shareholder or creditor of the Company may, within seven (7) days after the date on which the nomination was made by the creditors, apply to the Court for an order either:
 - (a) directing that the existing Liquidator is to be the 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.
- (5) The "existing Liquidator" is the person who is the Liquidator immediately before the winding up becomes a Creditors' Voluntary Winding Up.

CHAPTER 4– CREDITORS' VOLUNTARY WINDING UP

66. Application of this Chapter

- (1) Subject as follows, this Chapter applies in relation to a Creditors' Voluntary Winding Up.
- (2) Articles 67 and 68 do not apply where, under Article 65, a Members' Voluntary Winding Up has become a Creditors' Voluntary Winding Up.

67. Directors to lay statement of affairs before creditors

- (1) The Directors of the Company shall, within seven (7) days beginning the day on which the Company passes a Resolution for Voluntary Winding Up:
 - (a) make a statement as to the affairs of the Company, and
 - (b) send the statement to the Company's creditors.
- (2) The statement as to the affairs of the Company shall show:
 - (a) particulars of the Company's assets, debts and liabilities;
 - (b) the names and addresses of the Company's creditors;
 - (c) the securities held by them respectively;
 - (d) the dates on which the securities were respectively given; and
 - (e) such further or other information as may be prescribed.

68. Appointment of Liquidator

- (1) The Company may nominate a person to be Liquidator at the same time at which the Resolution for Voluntary Winding Up is passed.

- (2) The Company's creditors may in accordance with the Regulations nominate a person to be the Liquidator.
- (3) The Liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the Company.
- (4) In the case of different persons being nominated, any Director, Shareholder or creditor of the Company may, within seven (7) days after the date on which the nomination was made by the creditors, apply to the Court for an order either:
 - (a) directing that the person nominated as Liquidator by the Company shall be the 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.

69. Appointment of Liquidation Committee

- (1) The creditors may in accordance with the Regulations appoint a committee ("the Liquidation Committee") of not more than five (5) persons to exercise the functions conferred on it by or under this Law.
- (2) If such a Liquidation Committee is appointed, the Company may, either at the time at which the Resolution for Voluntary Winding Up is passed or at any time subsequently by Ordinary Resolution, appoint such number of persons as they think fit to act as members of the committee, not exceeding five (5).
- (3) However, the creditors may, if they think fit, decide 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 decide:
 - (a) those persons are not then, unless the Court otherwise directs, qualified to act as members of the committee; and
 - (b) on any application to the Court under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of those persons.

70. 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.

71. Power to disclaim onerous property and vesting of property

- (1) Subject to Article 71(4), when the Liquidator (other than a provisional Liquidator) has been appointed, he may, by the giving of the prescribed notice, disclaim any onerous property of the Company and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it
- (2) For the purposes of this Article 71, onerous property is:
 - (a) any unprofitable contract; and
 - (b) any other property of the Company which is unsaleable, not readily saleable, may give rise to a liability to pay money or perform any other onerous act.
- (3) The Liquidator shall not disclaim only part of an unprofitable contract. The disclaimer of any Lease under Article 71(1) shall not take effect unless a copy of the disclaimer has been served on every person (so far as the Liquidator is aware of their addresses) claiming an interest in the Lease or being under any Liability in respect of the Lease, that is not a Liability discharged by the disclaimer and the

Court orders that the disclaimer shall take effect. Where the Court orders that the disclaimer shall take effect it may also make such other orders as it sees fit with respect to fixtures, Lessee's improvements and other matters arising out of the Lease.

- (4) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article 71 is deemed a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.
- (5) In addition where the Company was a Lessee in respect of a Lease that has been surrendered, forfeited or otherwise terminated prior to the appointment of the Liquidator or where such Lease has been disclaimed:
 - (a) the Liquidator shall remove any assets of the Company from the property that was formerly subject to the Lease and take physical custody of those assets as soon as possible and in any event within twenty eight (28) days of his appointment (unless a longer period is agreed with the former Lessor of the Company in respect of the Lease); or
 - (b) if the Liquidator:
 - (i) does not or cannot (for whatever reason) remove all such assets of the Company from the property within twenty eight (28) days of his appointment (or such longer period as may be agreed with the former Lessor, or
 - (ii) notifies the former Lessor in writing that he does not intend to remove some or all of the asserts of the Company from the property within twenty eight (28) days from the date of his appointment,

the former Lessor may apply to the Court for an order permitting it to sell such assets of the Company that remain at the property on the open market and account to the Liquidator for the proceeds of such sale of assets excluding the reasonable costs it incurred in selling the assets and any rent arrears or other payments that may be owed to it by the Company in respect of the Lease.

- (6) Within seven (7) days of the date of the former Lessor making an application to the Court pursuant to Article 71(5)(b), the Liquidator shall deliver to the former Lessor and the Court a list of the Company's assets situated at the property that were formerly subject to the Lease, and shall publish the list on the Company's website or (if it does not have a website) in an Appointed Publication.
- (7) Interested parties may attend Court and make representations to the extent that they consider that any assets included in the list prepared by the Liquidator pursuant to Article 71(5)(i) above are owned in whole or in part by persons other than the Company, and the Court may make such orders in respect of such assets as it thinks just.
- (8) The Court may, on the application of the Liquidator, order 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.
- (9) 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.

72. Vacancy in office of Liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a Liquidator (other than a Liquidator appointed by the Court) the creditors may fill the vacancy.

73. Liquidator's report at each year's end

- (1) In the event of the winding up continuing for more than one (1) year, the Liquidator shall provide the creditors and the Shareholders of the Company with an account of his acts and dealings, and of the conduct of the winding up, during the previous year:
 - (a) at the end of the first year from the commencement of the winding up, and of each succeeding year; or
 - (b) at the first convenient date within three (3) months from the end of the year or such longer period as the Court may allow.
- (2) If the Liquidator fails to comply with Article 73(1), he is liable to a fine, as set out in Schedule 5.
- (3) Where under Article 65 a Members' Voluntary Winding Up has become a Creditors' Voluntary Winding Up, and the Liquidator sends a statement of affairs to the Company's creditors under Article 64(2) three (3) months or less before the end of the first year from the commencement of the winding up, the Liquidator is not required by this Article to report to the creditors at the end of that year.

74. Final account

- (1) As soon as the Company's affairs are fully wound up the Liquidator shall make up an account of the winding up, showing:
 - (a) how it has been conducted and how the Company's property has been disposed of;
 - (b) details of the remuneration charged and expenses incurred by the Liquidator during the period since the last report (if any);
 - (c) a description of the work done by the Liquidator during the period since the last report (if any) in respect of which the remuneration was charged and the expenses incurred; and
 - (d) a summary of the receipts and payments during that period.
- (2) The Liquidator shall, before the end of the period of fourteen (14) days beginning with the day on which the account is made up:
 - (a) send a copy of the account to the Company's Shareholders, and
 - (b) send a copy of the account to the Company's creditors.
- (3) The Liquidator shall send the account to the last known addresses of the Shareholders and creditors of the Company as recorded by the Company. If there is no known address for a Shareholder or creditor (as applicable) of the Company, the Liquidator shall not be required to send a copy of the account to that Shareholder or creditor (as applicable).
- (4) The Liquidator shall, before the end of that period (but not before sending it to the Shareholders and creditors of the Company), send to the Registrar (and where the Company is an Authorised Person to the DFSA) a copy of the account.
- (5) If the Liquidator fails to comply with this Article, he is liable to a fine, as set out in Schedule 5.

CHAPTER 5 – PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

75. Distribution of Company's property

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

76. Appointment or removal of Liquidator by the Court

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

77. Reference of questions to Court

- (1) The Liquidator, 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 from 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.

78. Expenses of voluntary winding up

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

79. Saving for certain rights

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

80. Removal or resignation of Liquidator

- (1) This Article 80 applies with respect to the removal from office and vacation of office of the Liquidator of a Company which is being wound up voluntarily.
- (2) The Liquidator may be removed from office only by an order of the Court or:
 - (a) in the case of a Members' Voluntary Winding Up, by an Ordinary Resolution of the Shareholders of the Company, or
 - (b) in the case of a Creditors' Voluntary Winding Up, by a decision of a meeting of the Company's creditors summoned for that purpose.
- (3) A Liquidator shall vacate his office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the Company.
- (4) A Liquidator may resign from his office in the following circumstances:
 - (a) on grounds of ill health;
 - (b) because of the intention to cease to practice as an insolvency practitioner; or
 - (c) because the further discharge of the duties of Liquidator is prevented or made impracticable by a conflict of interest or a change in personal circumstances.
- (5) Before resigning, a Liquidator shall deliver a notice to the Court, creditors, Shareholders, the Registrar and where the Company is an Authorised Person to the DFSA and:
 - (a) in the case of a Members' Voluntary Winding Up, require the Shareholders to consider whether a replacement should be appointed by way of an Ordinary Resolution; or
 - (b) in the case of a Creditors' Voluntary Winding Up, summon the creditors to a meeting to consider whether a replacement should be appointed.
- (6) In the case of a Members' Voluntary Winding Up where the Liquidator has produced an account of the winding up under Article 63, the Liquidator vacates office as soon as the Liquidator has complied with Article 63(3).

- (7) In the case of a Creditors' Voluntary Winding Up where the Liquidator has produced an account of the winding up under Article 74, the Liquidator vacates office as soon as the Liquidator has complied with Article 74(3).

CHAPTER 6– COMPULSORY WINDING UP**81. Circumstances in which Company may be wound up by the Court**

A Company may be wound up by the Court if:

- (a) the Company has resolved that the Company be wound up by the Court;
- (b) the Company is unable to pay its debts;
- (c) at the time at which a moratorium for the Company under Article 8 comes to an end, no Voluntary Arrangement approved under Part 2 has effect in relation to the Company;
- (d) the Court is permitted to make such an order pursuant to DIFC Law; or
- (e) the Court is of the opinion that it is just and equitable that the Company should be wound up.

82. Definition of inability to pay debts

(1) A Company is deemed unable to pay its debts if:

- (a) a creditor to whom the Company is indebted a sum exceeding \$2,000.00 which is due and payable has served a written demand on the Company, by leaving it at the Company's registered office, requiring the Company to pay the sum due and the Company has for three (3) weeks thereafter, neglected to pay the sum or agree terms relating to its payment to the reasonable satisfaction of the creditor;
- (b) 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) 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.

83. Application for winding up

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

84. Application for winding up on grounds of interests of the DIFC

Where it appears to the DIFCA that it is in the interests of the DIFC that a Company should be wound up, it may apply to the Court for the Company to be wound up and the Court may make such an order if it is of the opinion that it is just and equitable for the Company to be wound up.

85. Voiding of property dispositions

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

86. Voiding of attachments

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

87. Commencement of winding up by the Court

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

88. Consequences of winding-up order

- (1) On the making of a winding-up order by the Court, a copy of the order shall immediately be forwarded by the Company (or as otherwise ordered by the Court) to the Registrar and where the Company is an Authorised Person to the DFSA.
- (2) When a winding-up order has been made by the Court, no action or proceeding shall be commenced or continued against the Company or its property, except by leave of the Court and subject to such terms as the Court may impose.

89. Investigation procedures

Where a winding-up order is made by the Court, it is the duty of the Liquidator to investigate:

- (a) if the Company has failed, the causes of the failure; and
- (b) generally, the promotion, formation, business, dealings and affairs of the Company,

and make such report (if any) to the Court as he thinks fit.

90. Choice of Liquidator by creditors and Contributories

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

91. Appointment of provisional Liquidator

The Court may, at any time after an application for winding-up has been made, appoint a Provisional Liquidator. The powers of the Provisional Liquidator may be limited by the order appointing him.

92. Liquidation Committee

- (1) This Article applies where a winding-up order has been made by the Court.
- (2) If both the Company's creditors and the Company's Contributories decide that a Liquidation Committee (as defined in Article 92(4)) should be established, it shall be established in accordance with the Regulations.
- (3) If only the Company's creditors, or only the Company's Contributories, decide that a Liquidation Committee is to be established, it shall be established in accordance with the Regulations unless the Court orders otherwise.
- (4) A "Liquidation Committee" is a committee having such functions as are conferred on it by or under this Law.
- (5) The Liquidator shall seek a decision from the Company's creditors and Contributories as to whether a Liquidation Committee should be established if requested, in accordance with the Regulations, to do so by one-tenth (1/10) in value of the Company's creditors.

93. General functions in winding up by the Court

The functions of the Liquidator of a Company which is being wound up by the Court is 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.

94. Vesting of Company property in Liquidator

- (1) When a winding up order has been made, or where a provisional Liquidator has been appointed, the Liquidator or the provisional Liquidator (as the case may be) shall take into his custody or under his control all the property and things in actions to which the Company is or appears to be entitled.
- (2) In circumstances where the Company was a Lessee in respect of a Lease that has been surrendered, forfeited or otherwise terminated prior to the making of a winding up order in respect of the Company or where such Lease has been disclaimed:
 - (a) the Liquidator or the provisional Liquidator (as the case may be) shall remove any assets of the Company from the property that was formerly subject to the Lease and take physical custody of those assets within twenty eight (28) days from the date of the winding up order (unless a longer period is agreed with the former Lessor of the Company in respect of the Lease); or
 - (b) if the Liquidator or the provisional Liquidator (as the case may be):
 - (i) does not or cannot (for whatever reason) remove all such assets of the Company from the property within twenty eight (28) days of the winding up order (or such longer period as may be agreed with the former Lessor, or
 - (ii) notifies the former Lessor in writing that he does not intend to remove some or all of the asserts of the Company from the property within twenty eight (28) days from the date of the winding up order,

the former Lessor may apply to the Court for an order permitting it to sell such assets of the Company that remain at the property on the open market and account to the Liquidator or the provisional Liquidator (as the case may be) for the proceeds of such sale of assets, excluding the reasonable costs it incurred in selling the assets and any rent arrears or other payments that may be owed to it by the Company in respect of the Lease.
- (3) Within seven (7) days of an application to the Court pursuant to Article 94(2)(b), the Liquidator or the provisional Liquidator (as the case may be) shall deliver to the former Lessor and the Court a list of the Company's assets situated at the property that were formerly subject to the Lease, and shall publish the list on the Company's website or (if it does not have a website) in an Appointed Publication.
- (4) Interested parties may attend Court and make representations to the extent that they consider that any assets included in the list prepared by the Liquidator or the provisional Liquidator (as the case may be) pursuant to Article 94(3) are owned in whole or in part by persons other than the Company, and the Court may make such orders in respect of such assets as it thinks fit.
- (5) When a Company is being wound up the Court may on the application of the Liquidator, order that all or any part of the property of whatever description belonging to the Company or held by trustees on its behalf shall vest in the Liquidator.
- (6) The Liquidator may bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the Company and recovering its property.

95. Final account

- (1) If it appears to the Liquidator that how the winding up of the Company is for practical purposes complete the Liquidator shall make up an account of the winding up, showing:
 - (a) how it has been conducted and the Company's property has been disposed of;

- (b) details of the remuneration charged and expenses incurred by the Liquidator during the period since the last report (if any);
 - (c) a description of the work done by the Liquidator during the period since the last report (if any) in respect of which the remuneration was charged and the expenses incurred; and
 - (d) a summary of the receipts and payments during that period.
- (2) The Liquidator shall, within fourteen (14) days beginning with the day on which the account is made up send a copy of the account to the Company's creditors.
 - (3) The Liquidator shall send the account to the last known addresses of the creditors of the Company as recorded by the Company. If there is no known address for a particular creditor of the Company, the Liquidator shall not be required to send a copy of the account to that particular creditor.
 - (4) The Liquidator shall, before the end of that period (but not before sending it to the creditors of the Company), send to the Registrar and where the Company is an Authorised Person to the DFSA a copy of the account.

96. Power to stay proceedings

- (1) At any time after an application for winding-up has been made, and before a winding-up order has been issued, the Company, creditor or other person liable to Contribute to the assets of the Company, may:
 - (a) where any action or proceeding against the Company is pending in the Court, apply to the Court for a stay of proceedings therein; and
 - (b) where any other action or proceeding is pending against the Company, apply to the Court to restrain any further action or proceeding,
 and the Court may stay, desist or restrain the proceedings accordingly on such terms as it thinks fit.
- (2) The Court may at any time after an order for winding up, on the application either of the Liquidator or any creditor or Shareholder or other person liable to Contribute to the assets of the Company, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.
- (3) A copy of every order made under this Article shall immediately be forwarded by the Company to the Registrar and where the Company is an Authorised Person to the DFSA.

97. Power to exclude creditors not proving in time

Provided that it is satisfied that all necessary steps have been taken by the Liquidator 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.

98. Payment of expenses of winding up

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

99. Preferential debts

- (1) In a winding up the Company's preferential debts shall be paid in priority to all other debts, subject to the application of any other laws as described in Article 136.
- (2) The Board of Directors of the DIFCA may make such Regulations as it sees fit to designate certain types of claims on a Company as preferential debts and to prescribe any priorities as to their payment.

100. Power to disclaim onerous property

- (1) Subject to Article 100(4), the Liquidator (but not a provisional Liquidator) may, by the giving of the prescribed notice, disclaim any onerous property of the Company and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.
- (2) For the purposes of this Article 100, onerous property is:
 - (a) any unprofitable contract; and
 - (b) any other property of the Company which is unsaleable, not readily saleable, may give rise to a liability to pay money or perform any other onerous act.
- (3) The Liquidator shall not disclaim only part of an unprofitable contract.
- (4) The disclaimer of any Lease under Article 100(1) shall not take effect unless a copy of the disclaimer has been served on every person (so far as the Liquidator is aware of their addresses) claiming an interest in the Lease or being under any Liability in respect of the Lease, that is not a Liability discharged by the disclaimer and the Court orders that the disclaimer shall take effect. Where the Court orders that the disclaimer shall take effect it may also make such orders with respect to fixtures, Lessee's improvements and other matters arising out of the Lease as it thinks fit.
- (5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article 100 is deemed to be a creditor of the Company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

101. Rescission of contracts by the Court

- (1) The Court may, on the application of a person who is, as against the Liquidator, entitled to the benefit of or subject to the burden of a contract made with the Company, make an order rescinding the contract on such terms as to payment by or to either party to the contract of damages for the non-performance of the contract, or otherwise as the Court thinks fit.
- (2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

102. Notification that Company is in Liquidation

When a Company is being wound up, whether by the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the Company, a Liquidator of the Company, 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.

103. Information as to pending Liquidations

If the winding up of a Company is not concluded within one (1) year after its commencement, the Liquidator shall, at such intervals as may be prescribed, until the winding up is concluded, send to the Registrar and where the Company is an Authorised Person to the DFSA, 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.

104. Reference of questions to Court

- (1) The Liquidator, 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 a person.

105. Dissolution and early dissolution

- (1) Where a Company is being wound up, Articles 105(2) and 105(3) apply, where the Liquidator has sent his final account and return to creditors and the Registrar.
- (2) On the expiration of three (3) months from the date of dispatch of the final account and return the Company is deemed to be dissolved.
- (3) However, the Court may, on the application of the Liquidator or any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the Company is to take effect for such time as the Court thinks fit.
- (4) If it appears to the Liquidator that the realisable assets of the Company are insufficient to cover the expenses of the winding up, and the affairs of the Company do not require any further investigation, the Liquidator may at any time apply, to the Registrar and where the Company is an Authorised Person to the DFSA for the early dissolution of the Company.
- (5) Before making an application under Article 105(4), the Liquidator shall give at least twenty eight (28) days' notice of his intention to do so to the Company's creditors and Contributories.
- (6) On receipt of the application made under Article 105(4), the Registrar shall within a reasonable time register it on the Public Register and, at the end of the period of three (3) months beginning on the day of the registration, the Company shall be dissolved.
- (7) Where a notice has been given under Article 105(4), the Liquidator, any creditor or Contributory of the Company, or the Administrative Receiver of the Company (if there is one) (1) may apply to the Registrar and where the Company is an Authorised Person to the DFSA for directions on the grounds that:
 - (a) the realisable assets of the Company are sufficient to cover the expenses of the winding up;
 - (b) the affairs of the Company do require further investigation; or
 - (c) for any other reason the early dissolution of the Company is inappropriate.
- (8) Directions from the Registrar or DFSA under Article 105(7):
 - (a) are directions making such provision as the Registrar or DFSA thinks fit for enabling the winding up of the Company to proceed as if no notice has been given under Article 105(4); and
 - (b) may include a direction deferring the date at which the dissolution of the Company is to take effect for such period as the Registrar or DFSA thinks fit.
- (9) It is the duty of the person on whose application any directions are given under this Article, within seven (7) days of the directions, to deliver them to the Registrar and where the Company is an Authorised Person to the DIFC for registration.

106. Removal or resignation of Liquidator

- (1) This Article 106 applies with respect to the removal from office and vacation of office of the Liquidator or a Provisional Liquidator of a Company that is being wound up by the Court.
- (2) The Liquidator may be removed from office only by an order of the Court or by a decision of a meeting of the Company's creditors and in accordance with the Regulations, and a provisional Liquidator may be removed from office only by an order of the Court.

- (3) A Liquidator or a provisional Liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the Company.
- (4) A Liquidator may resign his office in the following circumstances:
 - (a) on grounds of ill health;
 - (b) because of the intention to cease to practice as an insolvency practitioner; or
 - (c) because the further discharge of the duties of Liquidator is prevented or made impracticable by a conflict of interest or a change in personal circumstances.
- (5) Before resigning, a Liquidator shall deliver a notice to the Court, creditors, the Registrar and where the Company is an Authorised Person to the DFSA, and shall summon the creditors to a meeting to consider whether a replacement should be appointed.
- (6) Where the Liquidator has produced an account of the winding up under Article 95, the Liquidator vacates office as soon as the Liquidator has complied with Article 95(3).

CHAPTER 7: PROTECTION OF ASSETS IN LIQUIDATION**107. Fraud in anticipation of winding up**

When a Company is ordered to be wound up by the Court, or passes a Resolution for Voluntary Winding Up, or an Administrator is appointed, Article 115 shall apply in respect of any person, being a past or present Officer of the Company, who, within the twelve (12) months immediately preceding the commencement of the winding up, or the appointment of an Administrator has:

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

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

108. Transactions in fraud of creditors

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

109. Falsification of Company's books

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

110. Material omissions from statement relating to Company's affairs

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

111. False representations to creditors

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

112. Fraudulent trading

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

113. Wrongful trading

- (1) Subject to Article 113(2) below, if in the course of the winding up of a Company:
 - (a) the Company has gone into insolvent Liquidation;
 - (b) the Court is satisfied that at some time before the commencement of the winding up of the Company one (1) or more Directors of the Company knew or ought to have known that there was no reasonable prospect of the Company avoiding going into insolvent Liquidation; and
 - (c) that person was a Director of the Company at that time,

Article 115 shall apply to such person.

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

114. Misconduct in course of winding-up

- (1) Where a Company is being wound up, whether by the Court or voluntarily, Article 115 shall apply to any person, being a past or present Director of the Company, if he:
 - (a) does not to the best of his knowledge and belief, fully and truthfully disclose to the Liquidator all the Company's property, and how, to whom, for what consideration and when the Company disposed of any part of that property (except such part as has been disposed of in the ordinary way of the Company's business);

- (b) does not deliver up to the Liquidator (or as he directs) all or such part of the Company's property that is in his custody or under his control;
 - (c) does not deliver up to the Liquidator (or as he directs) all books and papers in his custody or under his control belonging to the Company;
 - (d) knowing or believing that a false debt has been proved by any person in the winding up, fails to inform the Liquidator as soon as practicable; or
 - (e) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the Company's property or affairs.
- (2) It is a defence:
- (a) for a person charged under Articles 114(1)(a), (b) or (c) to prove that he had no intention to defraud; and
 - (b) for a person charged under Article 114(1) to prove that he had no intent to conceal the state of affairs of the Company or deliberately circumvent or contravene this Law.

115. Remedy

The Court may, on application by any aggrieved person including an Administrator, Liquidator, Administrative Receiver, creditor, Shareholder or other person liable to Contribute to the assets of the Company, make any orders as the Court sees fit in relation to a person to whom this Article 115 applies, including one (1) or more of the following orders:

- (a) an order to repay, restore or account for the money or other property of the Company which he has misapplied or retained or become accountable for, with interest at such rate as the Court determines;
- (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 fit; or
- (d) an order requiring the person to do, or not to do, any act or thing.

116. Restriction on re-use of Company names

- (1) Where a Company (the "Liquidating Company") has gone into insolvent Liquidation and a person was a Director or shadow Director of that Company at any time in the period of twelve (12) months ending with the day before it went into Liquidation, that person may not, except with leave of the Court or in such circumstances as may be prescribed, within the period of five (5) years following the Liquidation of the Liquidating Company:

- (a) be a Director of;
- (b) in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of; or
- (c) in any way, whether directly or indirectly, be concerned or take part in the carrying on of a business by,

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

- (2) A person who fails to comply with Article 116(1) commits a contravention and is liable to a fine, as set out in Schedule 5.

PART 7: RECOGNISED AND FOREIGN COMPANIES**117. Proceedings in respect of Foreign Companies**

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

118. Application of this Part in relation to Recognised Companies

- (1) This Part 7 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 applicable to the Foreign Company, 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 7 notwithstanding that it is being wound up or has been dissolved, deregistered or otherwise ceased to exist as a body corporate under laws applicable to it in the place it was incorporated.
- (3) In the case of a Recognised Company which is an Authorised Person, the DFSA administered regime applies to the winding up of that Company.

119. Winding up Recognised Companies

- (1) Subject to this Part 7, a Recognised Company may be wound up under this Law and this Law applies accordingly to a Recognised Company with such adaptations as are necessary, including the following:
 - (a) the place of business of a Recognised Company in the DIFC is taken, for all the purposes of the winding up, to be the registered office of the Recognised Company;
 - (b) a Recognised Company is not to be wound up voluntarily under this Law; and
 - (c) a Recognised Company may be wound up by the Court if:
 - (i) the Recognised Company is unable to pay its debts, has been dissolved or deregistered in its place of origin, has ceased to carry on business in the DIFC, or has a place of business in the DIFC only for the purpose of winding up its affairs; or
 - (ii) the Court is of the opinion that it is just and equitable that the Recognised Company should be wound up.
- (2) On a Recognised Company being wound up, every person who:
 - (a) 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 Shareholders among themselves; or
 - (iii) the costs and expenses of the winding up; or

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

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

- (3) Any provisions of this and any other DIFC Law with respect to staying and restraining actions and other civil proceedings against a Company, apply to a Recognised Company or Contributory of a Recognised Company, where the application to stay or restrain is made by a creditor, at any time after the filing of an application for winding up and before the making of a winding up order.
- (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.

120. Outstanding property of a defunct Recognised Company

- (1) This Article applies where, after the dissolution or deregistration of a Recognised Company, outstanding property of the Recognised Company remains in the DIFC.
- (2) The estate and interest in the property of the Recognised Company or of its Liquidator at the time, together with all claims, rights and remedies that the Recognised Company or the Liquidator then had in respect of the property, vests by force of this Article with the DIFCA or if the Recognised Company is an Authorised Person with the DFSA.
- (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 DIFCA or DFSA (as applicable) may, for the purpose of this Article, make, exercise or avail itself of the claim, right or remedy without such approval or concurrence.

PART 8: OTHER TYPES OF COMPANY**121. Application of the Law to other types of Company**

- (1) Where, pursuant to Part 11 of the Companies Law, 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, Rehabilitation, Administration, 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, Rehabilitation, Administration, Receivership and winding up of such a Company; and
 - (b) extending, excluding, waiving or modifying the application of provisions of this Law or the Regulations, where considered necessary or desirable to facilitate the orderly application of this Law in relation to such types of Companies.
- (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 9: APPLICATION OF THE LAW TO LIMITED LIABILITY PARTNERSHIPS**122. Application to Limited Liability Partnerships**

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

- (a) references to a Company shall include references to a Limited Liability Partnership;
- (b) references to a Director or to an Officer of a Company shall include references to a member of a Limited Liability Partnership;
- (c) references to a Shareholder of a Company shall include references to a member of a Limited Liability Partnership;
- (d) references to the Companies Law or Operating Law 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;
- (e) references to the Articles of Association of a Company shall include references to the Limited Liability Partnership agreement of a Limited Liability Partnership;
- (f) references to a resolution of a Company shall include references to a determination of a Limited Liability Partnership;
- (g) the following specific modifications shall apply:
 - (i) in Article 7(1), for “The Directors of a Company” substitute “A Limited Liability Partnership” and delete “to the Company and”;
 - (ii) in Article 7(2), for “The Directors” substitute “A Limited Liability Partnership”;
 - (iii) for Article 54, substitute the following:
 - (iv) “A Limited Liability Partnership may be wound up voluntarily when it determines that it is to be wound up voluntarily”;
 - (v) in Article 59, for “Directors” (wherever it appears) substitute “Designated Members”, and for “Director” (wherever it appears) substitute “Designated Member”;
 - (vi) in Article 60, for “Directors” substitute “Designated Members”;
 - (vii) in Article 64(1), for “Directors” substitute “Designated Members”;
 - (viii) in Article 67(1), for “Directors” substitute “Designated Members”;
 - (ix) in Article 85, for “any transfer of shares” substitute “any transfer by a member of the Limited Liability Partnership of his interest in the property of the Limited Liability Partnership”; and
 - (x) in Article 109, substitute “an Officer or Shareholder” for “an Officer or member”.
- (h) such further modifications as the context requires for the purpose of giving effect to that legislation as applied by this Law.

PART 10: INSOLVENCY PRACTITIONERS**123. Restrictions on service as Liquidator or Receiver**

- (1) No person may be appointed as or serve as a Nominee, Administrator, 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 123(1), no insolvency practitioner may be appointed by the Court as:
 - (a) Liquidator under Articles 61, 76 or 90 of the Law; or
 - (b) provisional Liquidator under Article 91 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.

124. Qualification and registration of insolvency practitioners

- (1) In this Law, unless expressed otherwise, a reference to:
 - (a) an insolvency practitioner is a reference to an insolvency practitioner who is registered under this Law; and
 - (b) an official 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 shall meet before such application can be accepted and registration granted by the Registrar. Such Regulations may include requirements relating to the qualifications, experience and fitness and propriety of applicants, and any bonding arrangements that they must put in place.
- (3) The Board of Directors of the DIFCA may make Regulations providing for such requirements referred to in Article 124(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 of an insolvency practitioner or an official Liquidator.
- (5) The Registrar may cancel the registration of an insolvency practitioner or an official Liquidator on that person's request or as otherwise provided under this Law.

125. 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 on the website of the DIFC.

126. Obligation of disclosure to the Registrar

- (1) Subject to Article 126(2), an insolvency practitioner appointed to a Company shall disclose to the Registrar, and where the Company is an Authorised Person to the DFSA, any matter which reasonably tends to show one (1) of the following:

- (a) a breach, or likely breach of a provision of the Law, Regulations, other Legislation administered by the Registrar or other legislation administered by the DFSA as applicable;
 - (b) a failure, or likely failure, to comply with any obligation that a person is subject to 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 126(1) shall not apply to the extent that compliance with such requirement would disclose a Privileged Communication.
 - (3) Any provision in an agreement between a Company and an Officer, employee, agent or insolvency practitioner is void in so far as it purports to hinder any person from causing or assisting a Company to comply with an obligation under Article 126(1).
 - (4) No person shall be subjected to detriment or loss or damage merely by reason of undertaking any act to cause or assist an insolvency practitioner to comply with an obligation under Article 126(1).
 - (5) A Court may, on application of an aggrieved person, make any order for relief where the person has been subjected to any such detriment or loss or damage referred to in Article 126(4).
 - (6) Without limiting the application of any other provision of this Law, an insolvency practitioner does not contravene any duty to which he is subject merely, because he gives the Registrar or the DFSA (as applicable):
 - (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 or to the DFSA (as applicable).

127. Supervision of insolvency practitioners

- (1) The Court may, on application of the Registrar, and upon being satisfied that an insolvency practitioner:
 - (a) has contravened a provision of the Law, Regulations, or other Legislation administered by the Registrar; or
 - (b) has failed, whether within or outside the DIFC, to carry out or perform duties or functions adequately or properly; or
 - (c) is otherwise not a fit and proper person to remain registered as an insolvency practitioner or, where applicable, as an official Liquidator,
 make one or more of the following orders:
 - (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 11: MISCELLANEOUS**128. Power to make Regulations**

- (1) The Board of Directors of the DIFCA may make Regulations for the purposes of this Law to facilitate the administration of, or further the objects of, this Law;
- (2) Without limiting the generality of Article 128(1), such Regulations may be made in respect of:
 - (a) 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 the Board of Directors of DIFCA to be necessary or desirable to amend the powers, duties or responsibilities of any person under this Law.
- (3) Without limiting the generality of Article 128(1), Regulations under this Article 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;
 - (c) require the doing of an act or thing, the default of which may result in a fine payable under the Operating Law; and
 - (d) make transitional provision and savings.
- (4) Article 128(2) shall apply not only in relation to Regulations made under Article 128(1) on or after the date on which this Law comes into force, but also in relation to Regulations made under a provision equivalent to Article 128(1) before that date.
- (5) Where any legislation made for the purposes of this Law purports to be made in exercise of a particular power or powers, it shall be taken also to be made in the exercise of all powers under which it may be made.
- (6) Articles 46 and 47 of the Operating Law apply to the making of Regulations in the manner prescribed under Article 141 of this Law.

129. Getting in the Company's property

- (1) This Article 129 applies in the case of a Company where:
 - (a) a Receiver or Administrative Receiver is appointed;
 - (b) an Administrator is appointed;
 - (c) the Company goes into Liquidation; or
 - (d) a provisional Liquidator is appointed,

and the "office-holder" means the Receiver, the Administrative Receiver, the Administrator, 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 within a reasonable period (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.

130. Duty to co-operate with office-holder

(1) This Article 130 applies in the cases mentioned in Article 129(1).

(2) Each of the persons mentioned in Article 130(3) shall:

- (a) give to the office-holder such information concerning the Company and its promotion, formation, business, dealings, affairs or property as the office-holder may at any time after the effective date (as defined in Article 130(4)) reasonably require;
- (b) attend on the office-holder at such times as the latter may reasonably require.

(3) The persons referred to in Article 130(2) are:

- (a) those who are or have at any time been Officers of the Company;
- (b) those who have taken part in the formation of the Company at any time up to one (1) year before the effective date (as defined in Article 130(4));
- (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 a Receiver, Administrative Receiver, Administrator, provisional Liquidator or Liquidator of the Company.

(4) For the purposes of Articles 130(2) and (3), the "effective date" is whichever is applicable of the following dates:

- (a) the date on which the Receiver or Administrative Receiver 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 Administrator was appointed;
- (c) the date on which the provisional Liquidator was appointed; and
- (d) the date on which the Company went into Liquidation.

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

131. Inquiry into Company's dealings

- (1) The Court may order:
- (a) any Officer of the Company;
 - (b) any persons known or suspected to:
 - (i) have in his possession any property of the Company or
 - (ii) be indebted to the Company; or
 - (c) any person whom the Court thinks capable of giving information concerning the promotion, formation, business, dealings, affairs or property of the Company,
- to produce to it or to the office holder an account of his dealings with the Company or any books, papers or records in his possession relating to the Company or to any such dealings.
- (2) Any person that fails to comply with the obligations in this Article shall be liable to a fine, as set out in Schedule 5.

132. Transactions at an undervalue

- (1) This Article 132 applies in the case of a Company where:
- (a) an Administrator is appointed; or
 - (b) the Company goes into Liquidation; or
 - (c) a provisional Liquidator is appointed,
- and the "office-holder" means the Administrator, Liquidator or the provisional Liquidator, as the case may be.
- (2) Where the Company has at a relevant time (defined in Article 135) entered into a transaction with any person at an undervalue, the Court may, on application of the office-holder, make an order restoring the position to what it would have been if the Company had not entered into that transaction.
- (3) A Company enters into a transaction with a person at an undervalue if it makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the Company to receive no consideration, or consideration the value of which, in money or money's worth, that 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 132 in respect of a transaction at an undervalue if it is satisfied:
- (a) that the Company which entered into the transaction did so in good faith and for the purpose of carrying on its business; and
 - (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the Company.

133. Preferences

- (1) This Article applies in the circumstances prescribed in Article 132(1).

- (2) Where the Company has at a relevant time (defined in Article 135) given a preference to any person, the Court may, on application of an office-holder (as defined in Article 132), make an order restoring the position to what it would have been if the Company had not given that preference.
- (3) For the purposes of this Article 133 a Company gives a preference to a person if:
 - (a) that person is one (1) 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 133 in respect of a preference given to any person unless the Company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in Article 133(3)(b).
- (5) A Company which has given a preference to a person connected with the Company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in Article 133(4).

134. Invalid security interests

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

135. Relevant time under Articles 132 and 133

- (1) The time at which a Company enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into, or the preference given:
 - (a) in the case of a transaction at an undervalue or of a preference which is given to a person who is connected with the Company (otherwise than by reason only of being its employee), at a time in the period of two (2) years ending with the date on which the Company goes into Liquidation or an Administrator is appointed pursuant to a rehabilitation proposal; and
 - (b) in the case of a preference which is not such a transaction and is not so given, within a period of six (6) months ending with the date on which the Company goes into Liquidation or an Administrator is appointed.

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

- (1) The provisions of this Law and Regulations 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 relation to companies.
- (2) In particular, and without limiting the generality of Article 136(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.

137. Power of Court to declare dissolution of Company void

- (1) Where a Company has been dissolved under this Law or the Operating Law, the Court may at any time within six (6) 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 determination as it thinks 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 Court making an order under Article 137(1), such proceedings may be taken which might have been taken if the Company had not been dissolved.

138. Contraventions and administrative notice of fine

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

the Registrar may impose by written notice given to the person a fine, in respect of the contravention, of such amount as he considers appropriate but not exceeding the prescribed maximum amount in respect of each contravention. The imposition of a fine under this Law and Regulations is subject to the Decision Making Procedures.
- (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 138(1).
- (3) If, within the period specified in the notice issued under Article 138(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 138(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 Operating Law applies 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 138(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 138(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 or Operating Law, to issue and enforce a direction to a Company or any Officer of it to make good a failure.

139. Remote attendance at meetings

- (1) Subject to Article 139(2), this Article applies to:
 - (a) any meeting of the creditors of a Company summoned under this Law or the Regulations; or
 - (b) any meeting of the Shareholders of a Company summoned by the Office-holder (as defined in Article 139(10) under this Law or Regulations, other than a meeting of the Shareholders of the Company in a Members' Voluntary Winding Up.
- (2) This Article does not apply where a Receiver or an Administrative Receiver is appointed under Part 5 of the Law.
- (3) Where the person summoning a meeting ("the convener") considers it appropriate, the meeting may be conducted and held in such a way that persons who are not present together at the same place may attend it.
- (4) Where a meeting is conducted and held in the manner referred to in Article 139(3), a person attends the meeting if that person is able to exercise any rights which that person may have to speak and vote at the meeting.
- (5) For the purposes of this Article:
 - (a) a person is able to exercise the right to speak at a meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting; and
 - (b) a person is able to exercise the right to vote at a meeting when:
 - (i) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and
 - (ii) that person's vote can be taken into account in determining whether or not such resolutions are passed at the same time as the votes of all the other persons attending the meeting.
- (6) The convener of a meeting which is to be conducted and held in the manner referred to in Article 139(3) shall make whatever arrangements the convener considers appropriate to:
 - (a) enable those attending the meeting to exercise their rights to speak or vote, and
 - (b) ensure the identification of those attending the meeting and the security of any electronic means used to enable attendance.
- (7) Where in the reasonable opinion of the convener:
 - (a) a meeting will be attended by persons who will not be present together at the same place, and
 - (b) it is unnecessary or inexpedient to specify a place for the meeting,

any requirement under this Law or the Regulations to specify a place for the meeting may be satisfied by specifying the arrangements the convener proposes to enable persons to exercise their rights to speak or vote.

- (8) In making the arrangements referred to in Article 139(6) and in forming the opinion referred to in Article 139(7)(b), the convener shall have regard to the legitimate interests of the members and others attending the meeting and to the efficient dispatch of the business of the meeting.

- (9) If:

- (a) the notice of a meeting does not specify a place for the meeting,
- (b) the convener is requested in accordance with the Regulations to specify a place for the meeting, and
- (c) that request is made by members representing not less than ten percent (10%) of the total voting rights of all the members having at the date of the request a right to vote at the meeting,

it shall be the duty of the convener to specify a place for the meeting.

- (10) In this Article 139, "the office-holder", in relation to a Company, means:

- (a) its Liquidator or provisional Liquidator of a Company, or
- (b) its Rehabilitation Nominee; or
- (c) its Administrator; or
- (d) its Nominee or Supervisor.

140. Use of websites

- (1) Subject to Article 140(2), where any provision of this Law or the Regulations requires the office-holder (as defined in Article 139(10)) to give, deliver, furnish or send a notice or other document or information to any person, that requirement is satisfied by making the notice, document or information available on a website:

- (a) in accordance with the Regulations, and
- (b) in such circumstances as may be prescribed.

141. Public Register

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

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

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

SCHEDULE 1
INTERPRETATION

1. Rules of interpretation

- (1) In this Law, unless otherwise provided, 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) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in this Law, include publishing or causing to be published in printed or electronic form;
 - (d) a “day” means a calendar day, unless expressly stated otherwise. If an obligation falls on a calendar day which is either a Friday or Saturday, or an official public holiday, the obligation shall take place on the next calendar day which is a business day;
 - (e) a “week” shall mean a calendar week or seven (7) days, whichever is applicable in the circumstances;
 - (f) a “month” shall mean a period of thirty (30) days;
 - (g) a “year” shall mean a period of three hundred and sixty five (365) days and a “calendar year” shall mean a year of the Gregorian calendar;
 - (h) a reference to the masculine gender includes the feminine and vice versa;
 - (i) the singular shall include the plural and vice versa;
 - (j) “dollar” or “\$” is a reference to United States Dollars unless the contrary intention appears; and
 - (k) this Law includes any Regulations made under this Law.
- (2) The headings in the Law shall not affect its interpretation.
- (3) References in this Law to a body corporate include a company incorporated outside the DIFC.
- (4) A reference in this Law to a Part, Chapter, Article or Schedule by number only, and without further identification, is a reference to the Part, Chapter, Article or Schedule of that number in this Law.
- (5) A reference in an Article or other division of this Law to an Article by number or letter only, and without further identification, is a reference to the Article of that number or letter contained in the Article or other division of this Law in which that reference occurs.
- (6) Unless the context otherwise requires, where this Law refers to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.
- (7) References in this Law to writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means. For the avoidance of doubt, a

Company may, with the consent of a Shareholder, communicate with that Shareholder by electronic means.

2. Legislation in the DIFC

References to Legislation and Guidance in this 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, this Law), as applicable in the DIFC;
- (d) this Law is the Insolvency Law, DIFC Law No. 1 of 2019 made by the Ruler;
- (e) the Regulations are Legislation made by the Board of Directors of the DIFCA under this Law and are binding in nature;
- (f) the Enactment Notice is the enactment notice pursuant to which this Law is brought into force;
- (g) Guidance is indicative and non-binding and may comprise (i) guidance made and issued by the Registrar under this Law or the Regulations; and (ii) any standard or code of practice issued by the Board of Directors of the DIFCA which has not been incorporated into the Regulations; and
- (h) references to “Legislation administered by the Registrar” are references to any DIFC Law and regulations conferring functions and powers on the Registrar.

3. Defined terms

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

Term	Definition
Adequate Protection	shall mean an interest reasonably sufficient to protect the holder of a valid security interest against a diminution in the value of such security interest to the extent such diminution is occasioned by the moratorium, any grant of a Security Interest pursuant to Article 31 or the Company’s use, sale, or Lease of the property subject to such security interest following the Rehabilitation Plan Notification.
Administration	means the procedure under Part 4.
Administrative Receiver	has the meaning in Article 42(5).
Administrator	has the meaning given to it in Article 22(2) of Part 3.
Appointed Publication	has the meaning given to it in the Companies Law.
Articles of Association	has the meaning given to it in the Companies Law.
Authorised Firm	has the meaning set out in the Regulatory Law.
Authorised Market Institution	has the meaning set out in the Regulatory Law.
Authorised Person	has the meaning set out in the Glossary.
Board of Directors of the DIFCA	the governing body of the DIFCA.

Term	Definition
Companies Law	the Companies Law DIFC Law No. 5 of 2018.
Company	a company incorporated under the Companies Law.
Company Voluntary Arrangement	means the procedure under Part 2.
Contributory	any person who, on the commencement of any insolvency procedure in respect of a Company, was at the date of commencement of that procedure liable to contribute any amount to the share capital of the Company, either by way of unpaid calls on shares or otherwise.
Court	the DIFC Court as established under Dubai Law.
Creditors' Committee	means a committee of creditors established in accordance with Article 50.
Creditors' Voluntary Winding Up	a winding up other than a Members' Voluntary Winding Up.
Decision Making Procedures	has the meaning given to the term in the Operating Law.
Designated Members	has the meaning given to the term in the Limited Liability Partnership Law.
DFSA	the Dubai Financial Services Authority.
DIFC	the Dubai International Financial Centre.
DIFC Law	has the meaning given in Article 2 of Schedule 1 to the Law.
DIFCA	the DIFC Authority established under Dubai Law.
Directions Hearing	means the court hearing at which the classification creditors, proposed notice of meetings and voting procedures are considered in accordance with Article 24(3).
Director	has the meaning given to it in the Companies Law.
Dubai Law	has the meaning given in Paragraph 2 of Schedule 1 to the Law.
Financial Collateral	has the meaning given to the term in regulations issued under Article 44 of the Security Law.
Foreign Company	has the meaning given to it in the Companies Law.
General Meeting	has the meaning given to it in the Companies Law.
Glossary	the Glossary module of the DFSA.
Insolvency	has the meaning given in Article 4(1) of Schedule 1 to the Law.
Lease	has the meaning as defined in the Real Property Law DIFC Law No. 10 of 2018.
Lessee	has the meaning as defined in the Real Property Law DIFC Law No. 10 of 2018.
Lessor	has the meaning as defined in the Real Property Law DIFC Law No. 10 of 2018.
Liability	means a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restriction or as otherwise defined in the Law of Obligations DIFC Law No. 5 of 2005.
Limited Liability Partnership	a partnership with limited liability established under the Limited Liability Partnership Law (DIFC Law No. 5 of 2004).
Liquidating Company	has the meaning set out in Article 116(1).

Term	Definition
Liquidation	means the procedures under Part 6.
Liquidation Committee	a committee appointed in accordance with Article 69(1) or 92(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 59.
Nominee	a person appointed to act in relation to a Voluntary Arrangement in accordance with Article 7(2).
Notification Date	has the meaning given to it in Article 15(2).
Officer	has the meaning given to it in the Companies Law.
Operating Law	means the Operating Law No. 7 of 2018.
Ordinary Resolution	has the meaning given to it in the Companies Law.
Post Plan Hearing	means the hearing at which the Court considers whether or not to sanction the Rehabilitation Plan in accordance with Article 27.
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.
Public Register	has the meaning given to it in the Companies Law.
Receiver	has the meaning in Article 42(1).
Receivership	means the procedure under Part 5.
Recognised Company	has the meaning given to it the Companies Law.
Registrar	the Registrar of Companies appointed under the Companies Law.
Regulations	has the meaning given in Article 2 of Schedule 1 to the Law.
Regulatory Law	the Regulatory Law DIFC Law No. 1 of 2004.
Rehabilitation	means the procedure under Part 3.
Rehabilitation Nominee	means the insolvency practitioner appointed by the board of the company in accordance with Article 20.
Rehabilitation Plan	is the arrangement proposed to the creditors and/or Shareholders of the Company under Part 3.
Rehabilitation Plan Notification	has the meaning given to it in Article 15.
Resolution for Voluntary Winding Up	a resolution passed under Article 54.
Ruler	the ruler of the Emirate of Dubai.
Schedule	a schedule to the Law.
Security Interest	has the meaning set out in the Security Law.
Security Law	the Security Law DIFC No. 8 of 2005.
Shareholder	has the meaning given to it in the Companies Law.
Supervisor	has the meaning set out in Article 12(2).

Term	Definition
UNCITRAL Model Law	means the Model Law on cross border insolvency as adopted by the United Nations Commission on International Trade Law on 30 May 1997.
Unimpaired	means where a class of creditors or Shareholders, and each holder of a claim or interest of such class is unaffected under the terms of the Rehabilitation Plan.
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 81; and
 - (b) 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 under Part 5.
- (2) A Company goes into Liquidation if it passes a Resolution for Voluntary Winding Up or an order for its winding up is made by the Court at a time when it has not already gone into Liquidation by passing such a resolution.

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 Receiver is unable to do himself or which can more conveniently be done by an agent.
11. Power to do all such other things as may be necessary for the realisation of 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.
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. 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 act necessary for obtaining payment of any money due from such person's estate which cannot conveniently be done in the name of the Company.
11. In all such cases the money due is deemed, for the purpose of enabling the Liquidator to take out the letters of administration or recover the money, to be due to the Liquidator himself.
12. Power to appoint an agent to do any business which the Liquidator is unable to do himself.
13. Power to do all such other things as may be necessary for winding up the Company's affairs and distributing its assets.

SCHEDULE 4

UNCITRAL MODEL LAW

CHAPTER I - GENERAL PROVISIONS

1. Scope of application

- (1) This Model Law applies where:
- (a) Assistance is sought in the DIFC by a foreign court or a foreign representative in connection with a foreign proceeding; or
 - (b) Assistance is sought in a foreign State in connection with a proceeding under the Insolvency Law 2019; or
 - (c) A foreign proceeding and a proceeding under the Insolvency Law 2019 in respect of the same debtor are taking place concurrently; or
 - (d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the Insolvency Law 2019.
- (2) This Model Law does not apply to a proceeding concerning regulated entities including Authorised Persons that are subject to special insolvency regimes in the DIFC.

2. Definitions

For the purposes of this Model Law:

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

3. Conflicts

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

4. Competent court

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

5. Authorisation of insolvency office-holder to act in a foreign State

An insolvency office-holder is authorised to act in a foreign State on behalf of a proceeding under the Insolvency Law 2019, as permitted by the applicable foreign law.

6. Public policy exception

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

7. Additional assistance under other laws

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

8. Interpretation

- (1) In the interpretation of this Model Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- (2) In the interpretation of any provisions of this Model the following documents are relevant:
 - (a) The Guide to Enactment of the UNCITRAL Model Law on Cross Border Insolvency (UN document A/CN.9/442); and
 - (b) any document relating to the Model Law that is issued by or forms part of the record on preparation of the Model Law maintained by the United Nations Commission on International Trade Law and its working group for the preparation of the Model Law.

CHAPTER II - ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THE DIFC**9. Right of direct access**

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

10. Limited jurisdiction

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

11. Application by a foreign representative to commence a proceeding under the Insolvency Law 2019

A foreign representative is entitled to apply to commence a proceeding under the Insolvency Law 2019 if the conditions for commencing such a proceeding are otherwise met.

12. Participation of a foreign representative in a proceeding under the Insolvency Law 2019

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under the Insolvency Law 2019.

13. Access of foreign creditors to a proceeding under the Insolvency Law 2019

- (1) Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under the Insolvency Law 2019 as creditors in the DIFC.
- (2) Paragraph 1 of this article does not affect the ranking of claims in a proceeding under the Insolvency Law 2019, except that the claims of foreign creditors shall not be ranked lower than ordinary creditors as prescribed by the Insolvency Law 2019 and DIFC Regulations solely because the holder of such a claim is a foreign creditor.

14. Notification to foreign creditors of a proceeding under the Insolvency Law 2019

- (1) Whenever under the Insolvency Law 2019 notification is to be given to creditors in the DIFC, such notification shall also be given to the known creditors that do not have addresses in the DIFC. The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate.
- (3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:
 - (a) Indicate a reasonable time period for filing claims and specify the place for then filing;
 - (b) Indicate whether secured creditors need to file details of their secured claims; and
 - (c) Contain any other information required to be included in such a notification to creditors pursuant to the law of the DIFC and the orders of the Court.

CHAPTER III - RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

15. Application for recognition of a foreign proceeding

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

16. Presumptions concerning recognition

- (1) If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the Court is entitled to so presume.

- (2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

17. Decision to recognise a foreign proceeding

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

18. Subsequent information

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

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

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

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

- (2) Unless extended under paragraph 1 (f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.
- (3) The Court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

20. Effects of recognition of a foreign main proceeding

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding:
 - (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
 - (b) Execution against the debtor's assets is stayed; and
 - (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.
- (2) The scope, or termination, of the stay and suspension referred to in paragraph 1 of this article applies in the same scope and effect as the moratorium under Article 88(2) of the Insolvency Law 2019. It does not affect any rights to take steps to enforce security; to repossess goods in the debtor's possession; or a creditor's right to set off its claims.
- (3) Paragraph 1 of this article does not affect the right to request the commencement of a proceeding under the Insolvency Law 2019 or the right to file claims in such a proceeding.
- (4) The Court may upon the application of the foreign representative or a person affected by the stay or suspension, or of its own motion, modify or terminate such stay or suspension or any part of it, on such terms and conditions as the Court thinks fit.

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

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

foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in the DIFC are adequately protected.

- (3) In granting relief under this article to a representative of a foreign non-main proceeding, the Court must be satisfied that the relief relates to assets that, under the law of the DIFC, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

22. Protection of creditors and other interested persons

- (1) In granting or denying relief under Articles 19 or 21, or in modifying or terminating relief under Article 22(3) of this article, the Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (2) The Court may subject relief granted under article 19 or 21 to conditions it considers appropriate.
- (3) The Court may, at the request of the foreign representative or a person affected by the relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.

23. Actions to avoid acts detrimental to creditors

- (1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate any actions in accordance with Articles 129 to 138 of the Insolvency Law 2019.
- (2) When the foreign proceeding is a foreign non-main proceeding, the Court must be satisfied that the action relates to assets that, under the law of the DIFC, should be administered in the foreign non-main proceeding.

24. Foreign representatives right to intervene in other proceedings

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

CHAPTER IV - COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

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

- (1) In matters referred to in article 1, the Court may cooperate with foreign courts or foreign representatives, either directly or through a DIFC insolvency office-holder.
- (2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

26. Cooperation and direct communication between the DIFC insolvency office-holder and foreign courts or foreign representatives

- (1) In matters referred to in article 1, a DIFC insolvency office-holder may, in the exercise of its functions and subject to the supervision of the Court, cooperate with foreign courts or foreign representatives.
- (2) The DIFC insolvency office-holder is entitled, in the exercise of its functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

27. Forms of cooperation

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

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

- (b) Communication of information by any means considered appropriate by the Court;
- (c) Coordination of the administration and supervision of the debtor's assets and affairs;
- (d) Approval or implementation by courts of agreements concerning the coordination of proceedings;
and
- (e) Coordination of concurrent proceedings regarding the same debtor.

CHAPTER V - CONCURRENT PROCEEDINGS**28. Commencement of a proceeding under the Insolvency Law 2019 after recognition of a foreign main proceeding**

After recognition of a foreign main proceeding, a proceeding under the Insolvency Law 2019 may be commenced only if the debtor has assets in the DIFC; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the DIFC and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that, under the law of the DIFC, should be administered in that proceeding.

29. Coordination of a proceeding under the Insolvency Law 2019 and a foreign proceeding

Where a foreign proceeding and a proceeding under the Insolvency Law 2019 are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:

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

30. Coordination of more than one foreign proceeding

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

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

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

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under the Insolvency Law 2019, proof that the debtor is insolvent.

32. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign state may not receive a payment for the same claim in a proceeding under the Insolvency Law 2019 regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

SCHEDULE 5

FINES

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