INSOLVENCY REGULATIONS

In force on 13 June 2019

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The Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Article 128 of the Insolvency Law 2019, hereby make these Regulations.

1. INTRODUCTION

1.1 Application and Interpretation

1.1.1 These Regulations apply to any person to whom the Law applies.

1.1.2 Defined terms are identified throughout these Regulations by the capitalisation of the initial letter of a word or phrase. Where capitalisation of the initial letter is not used, an expression has its natural meaning.

1.1.3 The following defined terms have the meaning given below:

Defined Term	Definition
Account Holder	has the meaning set out in the Personal Property Law.
Business Rules	has the meaning set out in the Glossary.
Collateral	has the meaning set out in the Security Law.
Consent of the DFSA	means the prior consent of the DFSA, which includes the exercise of discretion by the DFSA, its decision making procedures and any applications made to the Financial Markets Tribunal.
Convener	in respect of any meeting, the person who summons the meeting.
Debt	has the meaning set out in Regulation 1.1.4.
DFSA Rules	the rules and guidance of the DFSA.
Excluded Property	in relation to a Company which is an Investment Intermediary, any property which is: (a) subject to Article 36 of the Personal Property Law; or (b) Money claims specified in Rules of the DFSA relating to the holding by Investment intermediaries of Monies belonging to third parties.
Financial Collateral	has the meaning given to the term in regulations issued under Article 44 of the Security Law.
Financial Collateral Arrangement	means an arrangement pursuant to which either: (i) title to the Financial Collateral passes to the secured party; (ii) Security Interest is created over the Financial Collateral in favour of the secured party, in each case, to secure payment or performance of an obligation.
Future	has the meaning set out in the Glossary.
Glossary	the Glossary module of the DFSA.
Insolvency Proceedings	any proceedings under the Law or these Regulations.
Insolvent Estate	all of the property (excluding for the avoidance of doubt Excluded Property) of the Company at the time of the commencement of the Insolvency Proceedings.
Investment	has the meaning set out in the Personal Property Law.
Investment Entitlement	has the meaning set out in the Personal Property Law.
Investment Intermediary	has the meaning set out in the Personal Property Law.
Law	the Insolvency Law DIFC Law No. 1 of 2019.

Defined Term	Definition
Money	includes money or a money claim (including a balance credited to an account or arising in connection with a close out netting arrangement) in any currency.
Netting Law	the Netting Law DIFC Law No. 2 of 2014.
Nominee	means the nominee in respect of a Voluntary Arrangement appointed under Article 7(2) of the Law.
Personal Property Law	the Personal Property Law No. 9 of 2005.
Preferential Creditor	any creditor who, in accordance with the Preferential Creditor Regulations is entitled to be paid in priority to ordinary creditors.
Proof and Proving	has the meaning set out in Regulation 6.16.1.
Regulatory Law	the Regulatory Law DIFC Law No. 1 of 2004.
Security Interest	has the meaning set out in the Security Law.
Statement of Affairs	means a statement having the content set out in Annex 3.

1.1.4 (a) "Debt", in relation to the winding up of a Company, means, subject to the next paragraph, any of the of the following:

(i) any Debt or Liability to which the Company is subject at the date on which it goes into Liquidation;

(ii) any Debt or Liability to which the Company may become subject after that date by reason of any obligation incurred before that date; and

(iii) any interest provable accrued on any such Debt, which is provable;

(iv) but excludes any obligation of a Company under or in respect of Excluded Property.

(b) In determining for the purposes of any provision of the Law or the Regulations about winding up, whether any Liability in tort is a Debt provable in the winding up, the Company is deemed to become subject to that Liability by reason of an obligation incurred at the time when the cause of action accrued.

(c) For the purposes of references in any provision of the Law or the Regulations about winding up to a Debt or Liability, it is immaterial whether the Debt or Liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a Debt are to be read accordingly.

(d) References to Articles are references to articles in the Law unless otherwise specified.

1.1.5 All other defined terms have the same meaning they have under the Law and the Companies Law except where the context otherwise requires.

1.1.6 The Rules of interpretation in the Law apply to these Regulations.

1.2 References to writing

1.2.1 If a provision in these Regulations refers to a communication, notice, agreement or other document 'in writing' then, unless the contrary intention appears, it means in legible form and capable of being reproduced on paper, irrespective of the medium used. Expressions related to writing must be interpreted accordingly.

1.2.2 Regulation 1.2.1 does not affect any other legal requirements which may apply in relation to the form or manner of executing a document or agreement.

1.3 General interpretative provisions

1.3.1 Where reference is made in the Regulations to a statutory provision, it is a reference to the provision as amended, and includes a reference to that provision as extended or applied by or under any other provision, unless the contrary intention appears.

1.3.2 Unless the contrary intention appears:

(a) words in the Regulations importing the masculine gender include the feminine and words importing the feminine gender include the masculine;

(b) words in the Regulations in the singular include the plural and words in the plural include the singular; and

(c) references to Chapters, Regulations and Annexes are to Chapters, Regulations and Annexes of these Regulations.

1.4 Disapplication of provisions in case of a voluntary winding up

1.4.1 Where a Company is the subject of a Members' Voluntary Winding-up, only Regulations 6.5, 6.6, 6.7, 6.16 to 6.30, 6.56 and 6.57 to 6.61 of Chapter 6 of these Regulations shall apply to the conduct of the winding-up.

1.4.2 Where a Company is the subject of a Creditors' Voluntary Winding up, Regulations 6.1 to 6.4 and 6.9 to 6.10 shall not apply.

1.5 Conduct of Meetings

1.5.1 Where the Law or these Regulations require or permit a meeting of creditors or Shareholders to be held, the provisions of Annex 1 shall govern the conduct of such meeting.

1.5.2 Where the Law or these Regulations require or permit a Creditors' Committee to be established, the provisions of Annex 2 shall govern the conduct of the meetings of such committee.

2. VOLUNTARY ARRANGEMENTS

2.1 Preparation of proposal

2.1.1 Where the Directors of a Company wish to propose a Voluntary Arrangement under Article 8 of the Law, they shall appoint a Nominee under Article 7(2) and prepare and deliver to that Nominee a proposal containing the following matters:

(a) an estimate of the value of the Company's assets (other than assets which are Excluded Property);

(b) the extent (if any) to which such assets are secured in favour of the Company's creditors;

(c) the extent (if any) to which particular assets of the Company are to be excluded from the Voluntary Arrangement;

(d) particulars of any property, other than assets of the Company itself, which is proposed to be included in the arrangement, the source of such property and the terms on which it is to be made available for inclusion;

(e) the nature and amount of the Company's Liabilities (other than Liabilities in respect of Excluded Property, and so far as within the Directors' immediate knowledge), the manner in which they are

proposed to be met, modified, postponed or otherwise dealt with by means of the arrangement, and (in particular):

(i) how it is proposed to deal with Preferential Creditors and creditors of the Company who are, or claim to be, secured;

(ii) how persons connected with the Company (being creditors) are proposed to be treated under the Voluntary Arrangement;

(iii) whether there are, to the Directors' knowledge, any circumstances giving rise to the possibility, in the event that the Company should go into Liquidation, of claims under Articles 133 (Preferences), 132 (Transactions at undervalue) or 134 (invalid Security Interests) of the Law and, where any such circumstances are present, whether, and if so how, it is proposed under the Voluntary Arrangement to make provision for wholly or partly indemnifying the Company in respect of such claims;

(f) the information required by paragraphs (a), (b), (d) and (e) above in relation to Excluded Property (if any) of the Company:

(g) whether any, and if so what, guarantees have been given of the Company's Debts by other persons, specifying which (if any) of the guarantors are persons connected with the Company;

(h) the proposed duration of the Voluntary Arrangement;

(i) the proposed dates of distributions to creditors, with estimates of their amounts;

(j) how it is proposed to deal with the claim of any persons who have not consented to the arrangement;

(k) the amount proposed to be paid to the Nominee (as such) by way of remuneration and expenses;

(l) the manner in which it is proposed that the Supervisor of the arrangement should be remunerated, and his expenses defrayed;

(m) whether, for the purposes of the arrangement, any guarantees are to be offered by Directors, or other persons, and whether (if so) any Security Interest is to be given or sought;

(n) the manner in which funds held for the purposes of the arrangement are to be banked, invested or otherwise dealt with pending distribution to creditors;

(o) the manner in which funds held for the purpose of payment to creditors, and not so paid on the termination of the arrangement, are to be dealt with;

(p) the manner in which the business of the Company is proposed to be conducted during the course of the arrangement;

(q) details of any further credit facilities which it is intended to arrange for the Company; and how the Debts so arising are to be paid;

(r) the functions which are to be undertaken by the Supervisor of the arrangement;

(s) the name, address and qualification of the person proposed as Supervisor of the Voluntary Arrangement, and confirmation that he is either qualified to act as an insolvency practitioner in relation to the Company or is an Authorised Person in relation to the Company; and

(t) whether it is likely that there will be other proceedings in other jurisdictions.

2.1.2 If the Company is an Authorised Person, the Directors must obtain the Consent of the DFSA before delivering a proposal under Regulation 2.1.1.

2.2 Statement of Affairs

2.2.1 The Directors shall, within seven (7) days after their proposal is delivered to the Nominee, or within such longer time as the Nominee may allow, deliver to him a statement of the Company's affairs.

2.2.2 The Statement of Affairs shall be made up to a date not earlier than two (2) weeks before the date of the notice by the Nominee under Regulation 2.4. However, the Nominee may allow an extension of that period to the nearest practicable date (not earlier than two (2) months before the date of the notice under Regulation 2.4); and if he does so, he shall give his reasons in his report to the Court on the Directors' proposal.

2.2.3 The statement shall be certified as correct, to the best of their knowledge and belief, by two (2) or more Directors of the Company.

2.3 Additional disclosure for assistance of Nominee

The Nominee may call on the Directors for such further information as the Nominee may require.

2.4 Convening of meetings under Article 9

The Nominee may summon a creditors' meeting and a Shareholders meeting to consider the Directors' proposal. With each notice of the meeting to be sent out there shall be sent:

(a) a copy of the Directors' proposal;

(b) a copy of the Statement of Affairs or, if the Nominee thinks fit, a summary of it (the summary to include a list of creditors and the amount of their Debts); and

(c) the Nominee's comments on the proposal.

2.5 Requisite majorities (creditors)

At the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three-quarters in value of the creditors present in person or by proxy and voting on the resolution.

2.6 Resolutions to follow approval

If the Voluntary Arrangement is approved (with or without modifications) by the creditors' meeting, that meeting must appoint a Supervisor. Where two (2) or more Supervisors are appointed, a decision must be made on the question whether acts to be done in connection with the arrangement may be done by any one or more of them, or must be done by all of them. In the absence of such a decision, the Nominee shall act as Supervisor.

2.7 Hand-over of property etc. to Supervisor

2.7.1 Where the decision approving the Voluntary Arrangement has effect under Article 11, the Directors and any other person connected with the Company having power to do so shall within a reasonable time do all that is required for putting the Supervisor into possession of the assets included in the Voluntary Arrangement, and (where applicable) in control of any Excluded Property included in the Voluntary Arrangement.

2.7.2 Where the Company is in Liquidation, the Supervisor shall on taking possession of the assets either discharge any balance due to the insolvency practitioner by way of remuneration or on account of fees, costs, charges and expenses properly incurred and payable under the Law or the Regulations or, before taking possession, give the responsible insolvency practitioner a written undertaking to discharge any such balance out of the first realisation of assets.

2.7.3 The Supervisor has a Security Interest in the assets (other than Excluded Property) included in the Voluntary Arrangement in respect of any sums due as above until they have been discharged, subject only to the deduction from realisations by the Supervisor of the proper costs and expenses of such realisations.

2.7.4 The Supervisor shall from time to time out of the realisation of assets (other than Excluded Property) discharge all guarantees properly given by the responsible insolvency practitioner for the benefit of the Company, and shall pay all the insolvency practitioner's expenses.

2.8 Duties with respect to Excluded Property

2.8.1 A receiver of a Company whose assets or Liabilities include Excluded Property must comply with any requirements imposed on the Company pursuant to the Personal Property Law or DFSA Rules with respect to such Excluded Property.

2.8.2 Without limitation to Regulation 2.8.1, a Supervisor must comply with an instruction made under Article 37 of the Personal Property Law.

2.9 Supervisor's accounts and reports

2.9.1 The Supervisor shall keep accounts and records of his acts and dealings in and in connection with the Voluntary Arrangement, including in particular records of all receipts and payments of Money.

2.9.2 The Supervisor shall, not less often than once in every twelve (12) months beginning with the date of his appointment, prepare an abstract of such receipts and payments, and send copies of it, accompanied by his comments on the progress and efficacy of the Voluntary Arrangement, to:

(a) the Court;

(b) the Registrar;

(c) the Company;

(d) all those of the Company's creditors who are bound by the arrangement;

(e) the Shareholders of the Company who are so bound; and

(f) if the Company is not in Liquidation, the Company's auditors for the time being.

If in any period of (twelve) 12 months the Supervisor has made no payments and had no receipts, he shall at the end of that period send a statement to that effect to all those specified in sub-paragraphs (a) to (f) above.

2.10 Fees, costs, charges and expenses

The fees, costs, charges and expenses that may be incurred for any of the purposes of the Voluntary Arrangement are:

(a) any disbursements made by the Nominee prior to the decision approving the arrangement taking effect, and any remuneration for his services as such agreed between himself and the Company (or, as the case may be, the office-holder); and

(b) any fees, costs, charges or expenses which:

(i) are sanctioned by the terms of the arrangement; or

(ii) would be payable, or correspond to those which would be payable, in a winding up.

2.11 Completion or termination of the arrangement

2.11.1 Not more than twenty-eight (28) days after the final completion or termination of the Voluntary Arrangement, the Supervisor shall send to creditors and Shareholders of the Company who are bound by it a notice that the Voluntary Arrangement has been fully implemented or (as the case may be) has terminated.

2.11.2 With the notice there shall be sent to each creditor and member of the Company a copy of a report by the Supervisor summarising all receipts and payments made by him in pursuance of the arrangement, and explaining in relation to implementation of the arrangement any departure from the proposals as they originally took effect, or (in the case of termination of the arrangement) explaining the reasons why the arrangement has terminated.

2.11.3 The Supervisor shall, within the twenty-eight (28) days mentioned above, send to the Registrar and to the Court a copy of the notice to creditors and Shareholders under Regulation 2.11.1, together with a copy of the report under Regulation 2.11.2, and the Supervisor shall not vacate office until after such copies have been sent.

3. REHABILITATION

3.1 Information to be included in the Rehabilitation Plan

3.1.1 In proposing a Rehabilitation Plan under Part 3 the Company shall include:

(a) an explanation of the effect of the Rehabilitation Plan;

(b) an explanation of the potential alternative outcomes for creditors of the Company in the event that the Rehabilitation Plan is not approved in accordance with the Law.

(c) all the information specified in Regulation 2.1. For these purposes any reference to Voluntary Arrangement shall be taken as a reference to Rehabilitation Plan; and

(d) any other matters which have a material impact on the Company, its creditors and Shareholders resulting from the Rehabilitation Plan.

3.1.2 If the Company is an Authorised Person, the Directors must obtain the Consent of the DFSA before delivering a Rehabilitation Plan at the Court.

3.2 Completion or termination of the Plan

3.2.1 Not more than twenty-eight (28) days after the final completion or termination of the Rehabilitation Plan, the Company shall send to the creditors and Shareholders of the Company who are bound by it a notice that the Rehabilitation Plan has been fully implemented or terminated.

3.2.2 The Company shall send to the Registrar and to the Court a copy of the notice.

3.2.3 Mutual credits and set off in Liquidation which is preceded by Rehabilitation

3.2.4 For the purposes of Regulation 6.25.1 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 and

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

(b) any Debt arising out of an obligation incurred during Rehabilitation 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

(ii) during the Rehabilitation.

4. MORATORIUM

4.1 Preparation of proposal by Directors to obtain a moratorium

4.1.1 The document containing the proposal referred to in Article 8(1) of the Law shall contain an explanation by the Directors as to the reasons why they believe that a moratorium will be of benefit to creditors. The proposal may be accompanied by such documents as the Directors believe to be relevant. A proposal for a Voluntary Arrangement and a moratorium may be made in the same document.

4.1.2 The proposal and supporting documents shall be delivered to the Nominee himself or to a person authorised to take delivery of documents on his behalf. On receipt of the documents, the Nominee shall within a reasonable time issue an acknowledgement of receipt of the documents to the Directors which shall indicate the date on which the documents were received.

4.1.3 The Nominee shall apply to the Court for a moratorium.

4.2 Notice and advertisement of beginning of a moratorium

4.2.1 If the Court grants the application for a moratorium, as soon as reasonably possible thereafter the Nominee shall advertise the coming into force of the moratorium once in an Appointed Publication.

4.2.2 The Nominee shall within a reasonable time notify the Registrar, the Company and any petitioning creditor of the Company of whose claim he is aware of the coming into force of the moratorium and such notification shall specify the date on which the moratorium came into force.

4.3 Notice and advertisement of end of moratorium

4.3.1 After the moratorium comes to an end, the Nominee shall within a reasonable time advertise its coming to an end in an Appointed Publication, and such notice shall specify the date on which the moratorium came to an end.

4.3.2 The Nominee shall within a reasonable time give notice of the ending of the moratorium to the Registrar, the Court, the Company and any creditor of the Company of whose claim he is aware and such notice shall specify the date on which the moratorium came to an end.

4.4 Eligibility

4.4.1 A Company is eligible for a moratorium unless it is excluded from being eligible by virtue of Regulation 4.4.2.

4.4.2 A Company is not eligible if:

(a) it is an Authorised Person, and:

(i) effects or carries out contracts of insurance;

(ii) accepts deposits;

(iii) holds Investments, Investment Entitlements for Account Holders; or

(iv) holds Money or Money claims to which Rules of the DFSA relating to the holding of client Money apply;

(b) it is the debtor under a Financial Collateral Arrangement of a type specified in Regulations made under the Security Law;

(c) it or any of its property is subject to the clearing rules (including rules on default arrangements) of an Authorised Market Institution;

(d) it is the subject of any form of Insolvency Proceedings;

(e) it has incurred any Liability under an agreement of $20 million or more; or

(f) it is a party to a capital market arrangement.

4.4.3 For the purposes of Regulation 4.4.2 an arrangement is a capital market arrangement if, pursuant to the arrangement:

(a) a party to the arrangement has issued securities; and

(b) any of the following conditions is satisfied:

(i) a person holds a Security Interest as nominee or agent for a person who holds such securities; or

(ii) at least one party guarantees or provides a Security Interest in respect of the performance of obligations of another party; or

(iii) the arrangement involves a Future.

4.5 Effect of moratorium

During the period for which a moratorium is in force for a Company:

(a) no petition may be presented for the winding up of the Company;

(b) no meeting of the Company may be called or requisitioned except with the consent of the Nominee or the leave of the Court and subject (where the Court gives leave) to such terms as the Court may impose;

(c) no resolution may be passed or order made for the winding up of the Company;

(d) no Administrative Receiver of the Company may be appointed;

(e) no landlord or other person to whom rent is payable may exercise any right of forfeiture in relation to premises let to the Company in respect of a failure by the Company to comply with any term or condition of its tenancy of such premises, except with the leave of the Court and subject to such terms as the Court may impose,

(f) no other steps may be taken to enforce any Security Interest in the Company's property, or to repossess goods in the Company's possession under any hire-purchase agreement, except with the leave of the Court and subject to such terms as the Court may impose, and

(g) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the Company or its property except with the leave of the Court and subject to such terms as the Court may impose.

4.6 Security Interests

4.6.1 A secured party under a Security Interest over substantially all of the property of a Company must not take any step to enforce the Security Interest until after the moratorium has come to an end.

4.6.2 Security granted by a Company at a time when a moratorium is in force in relation to the Company may only be enforced if, at that time, there were reasonable grounds for believing that it would benefit the Company.

4.7 Requirement on invoices, credit, disposals and payments

4.7.1 Every invoice, order for goods or business letter which:

(a) is issued by or on behalf of the Company, and

(b) on or in which the Company's name appears,

shall also contain the Nominee's name and a statement that the moratorium is in force for the Company.

4.7.2 The Company may not obtain credit to the extent of US$1,000 or more from a person who has not been informed that a moratorium is in force in relation to the Company.

4.7.3 The reference to the Company obtaining credit includes the following cases:

(a) where goods are bailed to the Company under a hire-purchase agreement, or agreed to be sold to the Company under a conditional sale agreement; and

(b) where the Company is paid in advance (whether in Money or otherwise) for the supply of goods or services.

4.7.4 A Company which is the subject of a moratorium may only dispose of any of its property other than in the ordinary course of business if:

(a) there are reasonable grounds for believing that the disposal will benefit the Company, and

(b) the disposal is approved by the Nominee.

4.7.5 Subject to Regulation 4.7.6, the Company may only make any payment in respect of any Debt or other Liability of the Company in existence before the beginning of the moratorium if:

(a) there are reasonable grounds for believing that the payment will benefit the Company, and

(b) the payment is approved by the Nominee.

4.7.6 Regulation 4.7.5 does not apply to a payment of any fees or costs or reimbursement of expenses expressly permitted by these regulations.

4.7.7 Where, in respect of a Company which is the subject of a moratorium:

(a) any property of the Company is subject to a Security Interest; or

(b) any goods are in the possession of the Company under a hire-purchase agreement,

then if the holder of the Security Interest or owner of the goods (as the case may be) consents, or the Court gives leave, the Company may dispose of the property free of any interest of the secured party or owner under the hire purchase agreement (as the case may be).

4.7.8 Regulation 4.7.7 does not affect any right which the secured party may have in respect of the proceeds of such disposal.

A consent or leave under Regulation 4.7.7 may be made on condition that:

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be agreed, or determined by the Court, to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency

shall be applied towards discharging the sums secured by the Security Interest or payable under the hire purchase agreement.

4.7.9 Where a condition imposed in pursuance of Regulation 4.7.8 relates to two or more Security Interests; that condition requires proceeds and sums referred to in that Regulation to be applied towards discharging the sums secured by those Security Interests in the order of their priorities.

4.7.10 A Company which is the subject of a moratorium must not enter into any transaction or grant any Security Interest subject to the rules of an Authorised Market Institution.

4.7.11 The fact that a Company enters into a transaction in contravention of this Regulation 4.7 does not:

(a) make the transaction void, or

(b) make it to any extent unenforceable by or against the Company.

5. RECEIVERSHIP

5.1 Types of Receivership

5.1.1 The types of receivership and powers of receivers are as set out in Article 42 of the Law.

5.2 Notice and advertisement of appointment

5.2.1 Where a receiver is appointed in respect of an asset owned by the Company, or an Administrative Receiver is appointed in respect of the Company, the receiver or the Administrative Receiver (as applicable) must publish, in an Appointed Publication, the following information:

(a) the registered name of the Company, as at the date of the appointment, and its registered number;

(b) any other name with which the Company has been registered in the twelve (12) months preceding the date of the appointment;

(c) any name under which the Company has traded at any time in those twelve (12) months, if substantially different from its then registered name;

(d) the name and address of the receiver or Administrative Receiver, and the date of his appointment;

(e) the name of the person by whom the appointment was made;

(f) the date of the instrument conferring the power under which the appointment was made, and a brief description of the instrument;

(g) a brief description of the assets of the Company (if any) in respect of which the person appointed is not made the receiver.

5.2.2 Where the Company is an Authorised Person, the appointment of the receiver or Administrative Receiver shall not take effect until the DFSA has consented in writing to his appointment.

5.3 Notice requiring Statement of Affairs

5.3.1 An Administrative Receiver may require a Statement of Affairs to be made out and submitted to him by the Directors of the Company and by such other persons as he considers should be made responsible for that statement.

5.3.2 Where the Administrative Receiver has determined to require a Statement of Affairs, he shall serve a notice on each relevant person, requiring them to prepare and submit the statement within a specified period.

5.3.3 A person making or contributing to a Statement of Affairs shall be allowed, and paid by the Administrative Receiver out of his receipts, any expenses incurred by him in so doing which the Administrative Receiver thinks reasonable.

5.4 Creditors' Committee

A Creditor's Committee may be established under Article 50 of the Law. If such a committee is not so established a receiver or an Administrative Receiver may, but is not required to, appoint a Creditors' Committee.

5.5 Disposal of Collateral

If an order is made under Article 46, the Administrative Receiver shall immediately give notice of it to the person who is the secured party if such person has not been a party to the Court proceedings.

5.6 Duties with respect to Excluded Property

5.6.1 A receiver or Administrative Receiver of a Company whose assets or Liabilities include Excluded Property must comply with any requirements on the Company pursuant to the Personal Property Law or DFSA Rules with respect to that Excluded Property.

5.6.2 Without limitation to Regulation 5.6.1, a receiver or Administrative Receiver must comply with an instruction made under Article 37 of the Personal Property Law.

5.7 Abstract of receipts and payments

The Administrative Receiver shall:

(a) within two (2) months after the end of twelve (12) months from the date of his appointment, and after every subsequent period of twelve (12) months; and

(b) within two (2) months after he ceases to act as Administrative Receiver,

send to the Registrar, to the Company, to the person by whom he was appointed, and to each member of the Creditors' Committee (if there is one), the requisite accounts of his receipts and payments as Administrative Receiver.

5.8 Resignation

5.8.1 Subject as follows, before resigning or otherwise vacating his office an Administrative Receiver shall give at least seven (7) days' notice of his intention to do so to:

(a) the person by whom he was appointed;

(b) the Company or, if it is then in Liquidation, its Liquidator; and

(c) to the members of the Creditors' Committee.

5.8.2 A notice given under this Regulation 5.8 shall specify the date on which the receiver intends his resignation to take effect.

6. WINDING UP

6.1 The Statutory Demand

6.1.1 A written demand served by a creditor on a Company under Article 82(1)(a) of the Law is known in winding-up proceedings as "the statutory demand".

6.1.2 The statutory demand must be dated, and be signed either by the creditor himself or by a person stating himself to be authorised to make the demand on the creditor's behalf.

6.1.3 The statutory demand must state the amount of the Debt and the way in which it arises and include an explanation of the purpose of the demand, and the fact that, if the demand is not complied with, proceedings may be instituted for the winding up of the Company;

6.1.4 The statutory demand must provide information as to how the Debt may be paid, and give information as to the identity of a person whom the Company can contact, including an address and telephone number.

6.2 Presentation and filing of petition

6.2.1 A winding up order under Article 81 of the Law may be made by the Court upon the presentation by any relevant person of a petition.

6.2.2 The petition shall be served on the Company and filed in Court.

6.2.3 If the Company is an Authorised Person and the petitioner is not the DFSA, one copy must be sent by the petitioner to the DFSA.

6.2.4 If to the petitioner's knowledge any office-holder has been appointed in respect of the assets of the Company or any of them, a copy of the petition shall be sent by him to such office-holder.

6.2.5 If the Company intends to oppose the petition, it must notify the Court of this fact not less than seven (7) days before the date fixed for the hearing.

6.3 Advertisement of petition

6.3.1 Unless the Court otherwise directs, the petition shall be advertised once in an Appointed Publication not less than seven (7) business days after service of the petition on the Company.

6.3.2 The advertisement must state:

(a) that a petition has been presented for the winding up of the Company;

(b) the name and address of the petitioner;

(c) the date on which the petition was presented; and

(d) the venue fixed for the hearing of the petition.

6.4 Notice and settling of winding up order

6.4.1 When a winding up order has been made, the Court shall immediately give notice of the fact to the Company, the petitioner, the DFSA (in the case of an Authorised Person) and any other person represented at the hearing of the petition, and cause the fact that the order has been made to be advertised in an Appointed Publication.

6.4.2 A winding up order must name a person as the provisional Liquidator in respect of the conduct of the winding up. A provisional Liquidator shall have all of the powers of a Liquidator save where the order appointing him provides otherwise.

6.5 Notice requiring Statement of Affairs

6.5.1 The Liquidator may require a statement of the Company's affairs to be made out and submitted to him. If he requires such a statement, he shall send notice to each of the persons whom he considers should be made responsible under that Regulation, requiring them to prepare and submit the statement.

6.5.2 The Statement of Affairs shall be made publicly available, except where and to the extent that the Liquidator believes that the publication of the statement or any part thereof might reduce the amount to be recovered in the Liquidation.

6.5.3 The Liquidator may agree to authorise an allowance, payable out of the assets of the Company, towards expenses to be incurred in preparing the Statement of Affairs.

6.6 Submission of accounts

6.6.1 The Liquidator shall be entitled to demand access to and copies of the accounts and the books and records of the Company for such period as he sees fit.

6.6.2 Where a person is required to furnish accounts, the Liquidator may authorise an allowance, payable out of the assets of the Company, towards expenses to be incurred by that person in employing others to assist him in preparing the accounts.

6.7 Further disclosure

The Liquidator may at any time require any person to submit (in writing) further information amplifying, modifying or explaining any matter contained in the Statement of Affairs, or in accounts submitted in pursuance of the Law or the Regulations.

6.8 General rule as to reporting

6.8.1 The Court may, on the Liquidator's application, relieve him of any duty imposed on him by this Chapter, or authorise him to carry out the duty in a way other than there required.

6.8.2 In considering whether to act under Regulation 6.8.1, the Court shall have regard to the cost of carrying out the duty, to the amount of the assets available, and to the extent of the interest of creditors or Shareholders, or any particular class of them.

6.9 First meetings

6.9.1 If under Article 90(1) the Liquidator decides to summon meetings of the Company's creditors and Shareholders for the purpose of nominating a person to be Liquidator in place of himself, he shall fix a venue for each meeting, in neither case more than four (4) months from the date of the winding-up order.

6.9.2 The notice to creditors shall specify a time and date, not more than four (4) days before the date fixed for the meeting, by which they must lodge Proofs and (if applicable) proxies, in order to be entitled to vote at the meeting; and the same applies in respect of Shareholders and their proxies.

6.9.3 Notice of the meetings shall also be given in an Appointed Publication.

6.9.4 Meetings summoned by the Liquidator under this Regulation 6.9 are known respectively as "the first meeting of creditors" and "the first meeting of Shareholders", and jointly as "the first meetings in the Liquidation".

6.9.5 Where the Company is an Authorised Person a copy of the notice provided to creditors must be sent to the DFSA

6.10 First meeting of creditors

6.10.1 At the first meeting of creditors, no resolutions shall be taken other than the following:

(a) a resolution to appoint a named insolvency practitioner to be the Liquidator, or two or more insolvency practitioners as joint Liquidators;

(b) a resolution to establish a Liquidation Committee;

(c) a resolution specifying the terms on which the Liquidator is to be remunerated, or to defer consideration of that matter (unless it has been resolved to establish a Liquidation Committee);

(d) a resolution specifying whether acts are to be done by both or all of them, or by only one and, if so, which one of them (if, and only if, two (2) or more persons are appointed to act jointly as the liquidators);

(e) a resolution authorising payment out of the assets of the Company, as an expense of the Liquidation, of the cost of summoning and holding the meeting (where the meeting has been requisitioned);

(f) a resolution to adjourn the meeting for not more than three (3) weeks; and

(g) any other resolution which the chairman thinks is right to allow for special reasons.

6.10.2 The same applies as regards the first meeting of Shareholders, but that meeting shall not pass any resolution to the effect of Regulation 6.10.1(c) or (e).

6.11 Report by Director

6.11.1 At any meeting where the Statement of Affairs laid before the meeting does not state the Company's affairs as at the date of the meeting, the Directors of the Company shall cause to be presented to the meeting, either by the Director presiding at the meeting or by another person with knowledge of the relevant matters, a report (written or oral) on any material transactions relating to the Company occurring between the date of the making of the Statement of Affairs and that of the meeting.

6.11.2 Any such report shall be recorded in the minutes of the meeting.

6.12 Venue

6.12.1 In fixing the venue for a meeting of creditors or Shareholders, the Convener shall have regard to the convenience of the persons (other than whoever is to be chairman) who are invited to attend.

6.12.2 Meetings shall in all cases be summoned for commencement between the hours of 10.00 and 16.00 hours on a business day in the DIFC, unless the Court otherwise directs.

6.12.3 With every notice summoning a meeting of creditors or Shareholders there shall be sent out forms of proxy.

6.13 Specific Provisions Regarding Creditors' Meetings in a Liquidation

6.13.1 In the case of a resolution for the appointment of the Liquidator:

(a) if there is more than one (1) nominee, and one of them has a clear majority over the others together, that one is appointed; and

(b) in any other case, the chairman of the meeting shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one (1) nominee.

6.13.2 The chairman may at any time put to the meeting a resolution for the joint appointment of any two (2) or more nominees.

6.13.3 Where a resolution is proposed which affects a person in respect of his remuneration or conduct as Liquidator, or as proposed or former Liquidator, the vote of that person, and of any partner or employee of his, shall not be reckoned in the majority required for passing the resolution. This Regulation 6.13.3 applies with respect

to a vote given by a person (whether personally or on his behalf by a proxy-holder) either as creditor or member or as proxy-holder for a creditor or a member.

6.13.4 Subject as follows in this Regulation 6.13 and the next, at a meeting of creditors a person is entitled to vote as a creditor only if:

(a) there has been duly lodged (in a winding up by the Court by the time and date stated in the notice of the meeting) a Proof and the claim has been admitted under Regulation 6.14 for the purpose of entitlement to vote; and

(b) there has been lodged, by the time and date stated in the notice of the meeting, any proxy requisite for that entitlement.

6.13.5 The Court may, in exceptional circumstances, by order declare the creditors, or any class of them, entitled to vote at creditors' meetings, without being required to Prove their Debts.

6.13.6 Where a creditor is so entitled, the Court may, on the application of the Liquidator, make such consequential orders as it thinks fit (as for example an order treating a creditor as having Proved his Debt for the purpose of permitting payment of a dividend).

6.13.7 A creditor shall not vote in respect of a Debt for an unliquidated amount, or any Debt whose value is not ascertained, except where the chairman agrees to put upon the Debt an estimated minimum value for the purpose of entitlement to vote and admits his Proof for that purpose.

6.13.8 A secured creditor is entitled to vote only in respect of the balance (if any) of his Debt after deducting the value of his Security Interest as estimated by him.

6.13.9 At a creditors' meeting, the chairman may allow a creditor to vote, notwithstanding that he has failed to comply with Regulation 6.13.4, if satisfied that the failure was due to circumstances beyond the creditor's control.

6.14 Admission and rejection of Proof (creditors' meeting)

6.14.1 At any creditors' meeting the chairman has power to admit or reject a creditor's Proof for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the Proof.

6.14.2 The chairman's decision under this Regulation 6.14, or in respect of any matter arising under Regulation 6.16, is subject to appeal to the Court by any creditor or member.

6.14.3 If the chairman is in doubt whether a Proof should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote, subject to his vote being subsequently declared invalid if the objection to the Proof is sustained.

6.14.4 If on an appeal the chairman's decision is reversed or varied, or a creditor's vote is declared invalid, the Court may order that another meeting be summoned, or make such other order as it thinks just.

6.14.5 The chairman is not personally liable for costs incurred by any person in respect of an application under this Regulation 6.14; and the chairman (if other than the Liquidator or a person so nominated) is not so liable unless the Court makes an order to that effect.

6.15 Additional provisions as regards certain meetings

6.15.1 This Regulation 6.15 applies where a Company goes, or proposes to go, into Liquidation and it is an Authorised Person.

6.15.2 Notice of any meeting of the Company at which it is intended to propose a resolution for its winding up shall be given by the Directors to the DFSA and any other regulator which the DFSA may specify (the "Authorities").

6.15.3 Where a creditors' meeting is summoned by the Liquidator, notice of the meeting must be given to the Authorities.

6.15.4 Where the Company is being wound up by the Court, notice of the first meeting of creditors and Shareholders of the Company shall be given to the Authorities.

6.15.5 Where in the winding up (whether voluntary or by the Court) a meeting of creditors or Shareholders of the Company is summoned for the purpose of:

(a) receiving the Liquidator's resignation; or

(b) removing the Liquidator; or

(c) appointing a new Liquidator,

the person summoning the meeting and giving notice of it shall also give notice to the Authorities.

6.15.6 The Authorities are entitled to be represented at any meeting of which they are required by this Regulation 6.15 to be given notice. Where the Authorities are to compensate any creditor of the Company, they shall be entitled to exercise the votes of such creditors. If the DFSA has determined to compensate any investor in respect of only part of his claim, that part shall be deemed to be a separate claim and this Regulation applies in respect of it.

6.16 Proof of Debts in a Liquidation

6.16.1 Where a Company is being wound up by the Court, a person claiming to be a creditor of the Company and wishing to recover his Debt in whole or in part must submit his claim in writing to the Liquidator. A creditor who makes a claim is referred to as "Proving" his Debt; and a document by which he seeks to establish his claim is his "Proof". The creditor's Proof may be in any form.

6.16.2 The following matters shall be stated in a creditor's Proof:

(a) the creditor's name and address, and, if a Company, its Company registration number or equivalent;

(b) the total amount of his claim (including any sales or value added tax) as at the date on which the Company went into Liquidation;

(c) whether or not that amount includes outstanding uncapitalised interest;

(d) particulars of how and when the Debt was incurred by the Company;

(e) particulars of any Security Interest held, the date when it was given and the value which the creditor puts upon it;

(f) details of any reservation of title in respect of goods to which the Debt refers; and

(g) the name, address and authority of the person signing the Proof (if other than the creditor himself).

6.16.3 There shall be specified in the Proof any documents by reference to which the Debt can be substantiated.

6.16.4 The Liquidator, or the chairman or Convener of any meeting, may call for any document or other evidence to be produced to him, where he thinks it necessary for the purpose of substantiating the whole or any part of the claim made in the Proof.

6.17 Particulars of creditor's claim

6.17.1 The Liquidator, or the Convener or chairman of any meeting, may, if he thinks it necessary for the purpose of clarifying or substantiating the whole or any part of a creditor's claim made in his Proof, call for details

of any matter specified in paragraphs (a) to (g) of Regulation 6.16.2, or for the production to him of such documentary or other evidence as he may require.

6.17.2 Subject as follows, every creditor bears the cost of Proving his own Debt, including such as may be incurred in providing documents or evidence under Regulation 6.17.1. Costs incurred by the Liquidator in estimating the quantum of a Debt under Regulation 6.22 (Debts not bearing a certain value) are payable out of the assets, as an expense of the Liquidation.

6.18 Liquidator to allow inspection of Proofs

6.18.1 The Liquidator shall, so long as Proofs lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by any of the following persons:

(a) any creditor who has submitted his Proof (unless his Proof has been wholly rejected for purposes of dividend or otherwise);

(b) any member of the Company;

(c) any person acting on behalf of either of the above.

6.19 Admission and rejection of Proofs for dividend

6.19.1 A Proof may be admitted for a dividend either for the whole amount claimed by the creditor, or for part of that amount.

6.19.2 If the Liquidator rejects a Proof in whole or in part, he shall prepare a written statement of his reasons for doing so, and send it immediately to the creditor.

6.20 Appeal against decision on Proof

6.20.1 If a creditor is dissatisfied with the Liquidator's decision with respect to his Proof (including any decision on the question of preference), he may apply to the Court for the decision to be reversed or varied.

6.20.2 The application must be made within twenty-one (21) days of his receiving the statement sent under Regulation 6.19.2.

6.20.3 A member or any other creditor may, if dissatisfied with the Liquidator's decision admitting or rejecting the whole or any part of a Proof, make such an application within twenty-one (21) days of becoming aware of the Liquidator's decision.

6.21 Withdrawal or variation of Proof

A creditor's Proof may at any time, by agreement between himself and the Liquidator, be withdrawn or varied as to the amount claimed.

6.22 Estimate of quantum

6.22.1 The Liquidator shall estimate the value of any Debt which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value, and he may revise any estimate previously made, if he thinks fit by reference to any change of circumstances or to information becoming available to him.

6.22.2 He shall inform the creditor as to his estimate and any revision of it.

6.22.3 Where the value of a Debt is estimated under this Regulation 6.22, or by the Court, the amount provable in the winding up in the case of that Debt is that of the estimate for the time being.

6.23 Secured creditors

6.23.1 If a secured creditor realises his Security Interest (including under any Financial Collateral Arrangements), he may prove for the balance of his Debt, after deducting the amount realised.

6.23.2 If a secured creditor voluntarily surrenders his Security Interest (including under any Financial Collateral Arrangements) for the general benefit of creditors, he may prove for his whole Debt, as if it were unsecured.

6.24 Discounts

There shall in every case be deducted from the claim all trade and other discounts which would have been available to the Company but for its Liquidation, except any discount for immediate, early or cash settlement.

6.25 Mutual credits and set-off

6.25.1 This Regulation 6.25 applies where, before the Company goes into Liquidation, there have been mutual credits, mutual Debts or other mutual dealings between the Company and any creditor of the Company Proving or claiming to Prove for a Debt in the Liquidation. In relation to a Company which is an Authorised Market Institution, this Regulation 6.25 takes effect subject to the Business Rules of such Authorised Market Institution.

This Regulation 6.25 also takes effect subject to the Netting Law. In particular, Debts for these purposes will not include those which arise from the termination or close-out of qualified financial instruments as defined in the Netting Law.

6.25.2 The reference in Regulation 6.25.1 above to mutual credits, mutual Debts or other mutual dealings does not include:

(a) any Debt arising out of an obligation incurred at a time when the creditor:

(i) received the Statement of Affairs sent to creditors pursuant to Article 67; or

(ii) had actual notice that a petition for the winding up of the Company was pending;

(b) any Debt which has been acquired by a creditor by assignment or otherwise, pursuant to an agreement between the creditor and any other party where that agreement was entered into:

(i) after the Company went into Liquidation;

(ii) at a time when the creditor had actual notice that a meeting of creditors had been summoned under the Law; or

(iii) at a time when the creditor had actual notice that a winding up petition was pending;

(c) any credit, Debt or dealing in Excluded Property.

6.25.3 An account shall be taken of what is due from each party to the other in respect of the mutual dealings, and the sums due from one party shall be set off against the sums due from the other.

6.25.4 A sum shall be regarded as being due to or from the Company for the purposes of Regulation 6.25.3 whether:

(a) it is payable at present or in the future;

(b) the obligation by virtue of which it is payable is certain or contingent; or

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.

6.25.5 For the purpose of Regulation 6.25.3, credits and Debts arising under or pursuant to Business Rules to which Article 38 of the Personal Property Law applies shall be determined in accordance with such Business Rules, notwithstanding any provision of these Regulations or of the Law to the contrary.

6.25.6 Regulation 6.22 shall also apply for the purposes of this Regulation 6.25 to any obligation to or from the Company which, by reason of its being subject to any contingency or for any other reason, does not bear a certain value.

6.25.7 Regulations 6.26 to 6.28 shall apply for the purposes of this Regulation 6.25 in relation to any sums due to the Company which:

(a) are payable in a currency other than US Dollars;

(b) are of a periodical nature; or

(c) bear interest.

6.25.8 Regulation 6.29 shall apply for the purposes of this Regulation 6.25 to any sum due to or from the Company which is payable in the future.

6.25.9 Only the balance (if any) of the account owed to the creditor is provable in the Liquidation. Alternatively the balance (if any) owed to the Company shall be paid to the Liquidator as part of the assets except where all or part of the balance results from a contingent or prospective Debt owed by the creditor and in such a case the balance (or that part of it which results from the contingent or prospective Debt) shall be paid if and when that Debt becomes due and payable.

6.25.10 In this Regulation 6.25 and Regulation 3.2.4 "obligation" means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise.

6.26 Debt in foreign currency

6.26.1 For the purpose of Proving a Debt incurred or payable in a currency other than US Dollars, the amount of the Debt shall be converted into US Dollars at the official exchange rate prevailing on the date when the Company went into Liquidation.

6.26.2 "The official exchange rate" is the middle exchange rate on the New York Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the Court determines.

6.27 Payments of a periodical nature

6.27.1 In the case of rent and other payments of a periodical nature, the creditor may Prove for any amounts due and unpaid up to the date when the Company went into Liquidation.

6.27.2 Where at that date any payment was accruing due, the creditor may Prove for so much as would have fallen due at that date, if accruing from day to day.

6.28 Interest

Where a Debt Proved in the Liquidation bears interest, that interest is provable as part of the Debt except in so far as it is payable in respect of any period after the Company went into Liquidation.

6.29 Debt payable at future time

A creditor may Prove for a Debt of which payment was not yet due on the date when the Company went into Liquidation. For the purpose of the dividend, the Liquidator may discount the value of the Debt to take into account the fact that it is being paid in advance of its due date.

6.30 Secured Creditors

6.30.1 A secured creditor may, with the agreement of the Liquidator or the leave of the Court, at any time alter the value which he has, in his Proof, put upon his Security Interest.

6.30.2 If a secured creditor omits to disclose his Security Interest in his Proof, he shall surrender his Security Interest for the general benefit of creditors, unless the Court, on application by him, relieves him for the effect of this Regulation on the ground that the omission was inadvertent or the result of honest mistake. If the Court grants that relief, it may require or allow the creditor's Proof to be amended, on such terms as may appear to the Court just.

6.30.3 The Liquidator may at any time give notice to a creditor whose Debt is secured that he proposes, at the expiration of twenty-eight (28) days from the date of the notice, to redeem the Security Interest at the value put upon it in the creditor's Proof.

6.30.4 The creditor then has twenty-one (21) days (or such longer period as the Liquidator may allow) in which, if he so wishes, to exercise his right to revalue his Security Interest. If the creditor re-values his Security Interest, the Liquidator may only redeem at the new value. If the Liquidator redeems the Security Interest, the cost of transferring it is payable out of the assets.

6.30.5 A secured creditor may at any time, by a notice in writing, call on the Liquidator to elect whether he will or will not exercise his power to redeem the Security Interest at the value then placed on it; and the Liquidator then has six (6) months in which to exercise the power or determine not to exercise it.

6.30.6 Subject as follows, the Liquidator, if he is dissatisfied with the value which a secured creditor puts on his Security Interest (whether in his Proof or by way of re-valuation under 6.30.4, may require any property comprised in the Security Interest to be offered for sale. The terms of sale shall be such as may be agreed, or as the Court may direct; and if the sale is by auction, the Liquidator on behalf of the Company, and the creditor on his own behalf, may appear and bid.

6.30.7 If a creditor who has valued his Security Interest subsequently realises it (whether or not at the instance of the Liquidator):

(a) the net amount realised shall be substituted for the value previously put by the creditor on the Security Interest; and

(b) that amount shall be treated in all respects as an amended valuation made by him.

6.31 Appointment of Liquidator

6.31.1 Where a person is appointed as Liquidator by a meeting of creditors or a meeting of Shareholders:

(a) the chairman of the meeting shall certify the appointment;

(b) the Liquidator's appointment is effective from the date on which the appointment is certified, that date to be endorsed on the certificate; and

(c) the chairman of the meeting (if not himself the Liquidator) shall send the certificate to the Liquidator and in any event file a copy of it at the Court.

6.31.2 Subject as follows, where the Liquidator is appointed by a creditors' or Shareholders' meeting or by the Court, he shall, on receiving his certificate of appointment, deliver such certificate to the Registrar and where the Company is an Authorised Person to the DFSA and each creditor and member of which he is aware, and also give notice of his appointment in an Appointed Publication.

6.31.3 The expense of giving notice under this Regulation 6.31 shall be borne in the first instance by the Liquidator; but he is entitled to be reimbursed out of the assets, as an expense of the Liquidation.

6.32 Final meeting

6.32.1 The Liquidator shall call a final meeting of creditors.

6.32.2 The Liquidator's report laid before the meeting shall contain an account of the Liquidator's administration of the winding up, including a summary of his receipts and payments and a statement as to the amount paid to unsecured creditors.

6.32.3 At the final meeting, the creditors may question the Liquidator with respect to any matter contained in his report, and may resolve against him having his release.

6.32.4 The Liquidator shall give notice to the Court that the final meeting has been held; and the notice shall state whether or not he has been given his release, and be accompanied by a copy of the report laid before the final meeting. A copy of the notice shall be sent by the Liquidator to the Court.

6.32.5 If there is no quorum present at the final meeting, the Liquidator shall report to the Court that a final meeting was summoned in accordance with the Regulations, but there was no quorum present; and the final meeting is then deemed to have been held, and the creditors not to have resolved against the Liquidator having his release.

6.32.6 If the creditors at the final meeting have not so resolved, the Liquidator is released when the notice under 6.32.4 is filed in Court. If they have so resolved, the Liquidator must obtain his release from the Court.

6.33 Fixing of remuneration

6.33.1 The Liquidator is entitled to receive remuneration for his services as such.

6.33.2 The remuneration shall be fixed either:

(a) as a percentage of the value of the assets which are realised or distributed, or of the one and the other in combination; or

(b) by reference to the time properly given by the insolvency practitioner (as Liquidator) and his staff in attending to matters arising in the winding up.

6.33.3 It is for the Liquidation Committee (if there is one) or a creditors' meeting (if there is not) to determine whether the remuneration is to be fixed under Regulation 6.33.2(a) or (b) and, if under Regulation 6.33.2(a), to determine any percentage to be applied as there mentioned.

6.33.4 If no remuneration is fixed, the Liquidator shall be entitled by way of remuneration for his services as such, to a sum equal to five per cent (5%) of the amounts realised plus two and a half per cent (2.5%) of the amounts distributed.

6.34 Recourse to the Court

6.34.1 If the Liquidator considers that the remuneration fixed for him by the Liquidation Committee, or by resolution of the creditors, or under Regulation 6.33.4, is insufficient, he may apply to the Court for an order increasing its amount or rate.

6.34.2 Any creditor of the Company may, with the concurrence of any other creditor or creditors who together hold at least twenty-five per cent (25%). of the total value of the assets of the Company, apply to the Court for an order that the Liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.

6.34.3 If the Court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

6.34.4 Unless the Court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

6.35 Power of Court to set aside certain transactions

6.35.1 If in the administration of the Insolvency Estate the Liquidator enters into any transaction with a person who is an associate of his, the Court may, on the application of any person interested, set the transaction aside and order the Liquidator to compensate the Company for any loss suffered in consequence of it. This does not apply if either:

(a) the transaction was entered into with the prior consent of the Court; or

(b) it is shown to the Court's satisfaction that the transaction was for value, and that it was entered into by the Liquidator without knowing, or having any reason to suppose, that the person concerned was an associate.

6.35.2 Nothing in this Regulation 6.35 is to be taken as prejudicing the operation of any rule of law or equity with respect to the Liquidator's dealings with trust property, or the fiduciary obligations of any person.

6.36 Rule against solicitation

6.36.1 Where the Court is satisfied that any improper solicitation has been used by or on behalf of the Liquidator in obtaining proxies or procuring his appointment, it may order that no remuneration out of the assets be allowed to any person by whom, or on whose behalf, the solicitation was exercised.

6.36.2 An order of the Court under this Regulation 6.36 overrides any resolution of the Liquidation Committee or the creditors, or any other provision of the Regulations relating to the Liquidator's remuneration.

6.37 The Liquidation Committee

6.37.1 The Liquidation Committee shall assist the Liquidator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

6.37.2 The Liquidation Committee may consent on behalf of creditors and, where applicable, Shareholders to any proposal put forward by the liquidator. Where a Liquidation Committee consents to a proposal on behalf of the creditors and, where applicable, Shareholders, the proposal shall be binding on all creditors and, where applicable, Shareholders.

6.37.3 A Liquidation Committee may withdraw its consent to a proposal. However, such withdrawal will take effect as from its date, and shall not invalidate the original consent.

6.37.4 A Liquidation Committee in a Creditors' Voluntary Winding Up appointed pursuant to Article 69 must have at least three (3) members.

6.37.5 A Liquidation Committee in a winding up by the Court established under Article 92 must have:

(a) at least three (3) and not more than five (5) members elected by the creditors; and

(b) where the grounds on which the Company was wound up do not include inability to pay its Debts, and where the Shareholders of the Company so decide, up to three members elected by the Shareholders.

6.37.6 A creditor is eligible to be a member of a Liquidation Committee if:

(a) the person has proved for a Debt;

(b) the Debt is not fully secured; and

(c) neither of the following apply:

(i) the Proof has been wholly disallowed for voting purposes; or

(ii) the Proof has been wholly rejected for the purpose of distribution or dividend.

6.37.7 No person can be a member as both a creditor and a Shareholder.

6.37.8 A creditor of the Company which is a body corporate may only act through a named representative.

6.37.9 Membership of the Liquidation Committee does not prevent a person from dealing with the Company while the Liquidator is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

6.37.10 The Court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this Regulation 6.37, and may give such consequential orders as it thinks fit for compensating the Company for any loss which it may have incurred in consequence of the transaction.

6.38 Obligations of Liquidator to committee

6.38.1 Subject as follows, it is the duty of the Liquidator to report to the members of the Liquidation Committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up.

6.38.2 In the case of matters so indicated to him by the committee, the Liquidator need not comply with any request for information where it appears to him that:

(a) the request is frivolous or unreasonable; or

(b) the cost of complying would be excessive, having regard to the relative importance of the information; or

(c) there are not sufficient assets to enable him to comply.

6.38.3 Where the Liquidation Committee has come into being more than twenty-eight (28) days after the appointment of the liquidator, he shall report to them, in summary form, what actions he has taken since his appointment, and shall answer all such questions as they may put to him regarding his conduct of the winding up hitherto.

6.38.4 A person who becomes a member of the Liquidation Committee at any time after its first establishment is not entitled to require a report to him by the Liquidator, otherwise than in summary form, of any matters previously arising.

6.38.5 Nothing in this Regulation 6.38 disentitles the Liquidation Committee, or any member of it, from having access to the Liquidator's records of the Liquidation, or from seeking an explanation of any matter within the Liquidation Committee's responsibility.

6.39 Meetings of the Liquidation Committee

6.39.1 Subject as follows, meetings of the Liquidation Committee shall be held when and where determined by the Liquidator.

6.39.2 The Liquidator shall call a first meeting of the Liquidation Committee to take place within six (6) weeks of his appointment or of the committee's establishment (whichever is the later), and thereafter he shall call a meeting:

(a) if so requested by a member of the Liquidation Committee or his representative (the meeting then to be held within twenty-one (21) days of the request being received by the Liquidator); and

(b) for a specified date, if the Liquidation Committee has previously resolved that a meeting be held on that date.

6.39.3 The Liquidator shall give seven (7) days' written notice of the venue of a meeting to every member of the Liquidation Committee (or his representative, if designated for that purpose), unless in any case the requirement of the notice has been waived by or on behalf of a member. Waiver may be signified either at or before the meeting.

6.39.4 The chairman at any meeting of the Liquidation Committee shall be the Liquidator, or a person nominated by him to act as chairman.

6.39.5 A person so nominated must be either:

(a) one who is qualified to act as an insolvency practitioner in relation to the Company; or

(b) an employee of the Liquidator or his firm who is experienced in insolvency matters.

6.39.6 A meeting of the committee is duly constituted if due notice of it has been given to all the members, and at least two (2) of the members are in attendance or represented.

6.39.7 A member of the Liquidation Committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

6.39.8 The chairman at any meeting of the Liquidation Committee may call on a person claiming to act as a member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

6.39.9 No person shall:

(a) on the same Liquidation Committee, act at one and the same time as representative of more than one committee-member; or

(b) act both as a member of the Liquidation Committee and as representative of another member.

6.39.10 Where a member's representative authenticates any document on the member's behalf, the fact that he so authenticates must be stated below the authentication.

6.39.11 A member of the Liquidation Committee may resign by notice in writing delivered to the Liquidator.

6.39.12 A person's membership of the Liquidation Committee is automatically terminated if:

(a) he becomes bankrupt;

(b) at three (3) consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this Regulation 6.39 is not to apply in his case); or

(c) he ceases to be a creditor or a Shareholder (as applicable) or is found never to have been a creditor or Shareholder.

6.39.13 A creditor member of the Liquidation Committee may be removed by resolution at a meeting of creditors; and a Shareholder member may be removed by a resolution of a meeting of Shareholders. In either case, fourteen (14) days' notice must be given of the intention to remove a creditor member or a Shareholder member.

6.40 Vacancy

6.40.1 If there is a vacancy among the creditor members of the Liquidation Committee, the vacancy need not be filled if the Liquidator and a majority of the remaining creditor members so agree, provided that the total number of creditor members does not fall below three.

6.40.2 The Liquidator may appoint any creditor (being qualified under the Regulations to be a member of the Liquidation Committee) to be a member of the Liquidation Committee or to fill the vacancy, if a majority of the other creditor members agree to the appointment, and the creditor concerned consents to act.

6.40.3 Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least fourteen (14) days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

6.40.4 If there is a vacancy among the Shareholder members of the Liquidation Committee, the vacancy need not be filled if the Liquidation and a majority of the remaining Shareholder members agree, provided that, in the case of a committee of Shareholders only, the number of members does not fall below three.

6.40.5 The Liquidator may appoint a Shareholder to be a member of the Liquidation Committee or to fill the vacancy, if a majority of the other Shareholder members agree to the appointment, and the Shareholder concerned consents to act.

6.40.6 Alternatively, a meeting of Shareholders may resolve that a Shareholder be appointed (with his consent) to fill the vacancy. In this case, at least fourteen (14) days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

6.41 Voting rights and resolutions

6.41.1 At any meeting of the committee, each member of it (whether in attendance, or represented by a representative) has one (1) vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

6.41.2 Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. The record shall be signed by the chairman and kept with the records of the Liquidation.

6.41.3 The Liquidator may seek to obtain the agreement of the Liquidation Committee to a resolution by delivering to every member (or their designated representative) details of the proposed resolution. The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately. The resolution is passed by the Liquidation Committee if a majority of the members deliver notice to the Liquidator that they agree with the resolution.

6.41.4 Where the Liquidator considers it appropriate, a meeting may be conducted and held in such a way that persons who are not present together in the same place may attend it.

6.41.5 A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.

6.41.6 A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting to all those attending the meeting any information or opinions which that person has on the business of the meeting.

6.41.7 A person is able to exercise the right to vote at a meeting when:

(a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the vote of all the other persons attending the meeting.

6.42 Liquidator's reports

6.42.1 The Liquidator shall, as and when directed by the Liquidation Committee (but not more often than once in any period of two (2) months), send a written report to every member of the Liquidation Committee setting out the position generally as regards the progress of the winding up and matters arising in connection with it, to which the Liquidator considers the Liquidation Committee's attention should be drawn.

6.42.2 In the absence of such directions by the committee, the Liquidator shall send such a report not less often than once in every period of six (6) months.

6.43 Expenses of members

The Liquidator must pay, as an expense of the Liquidation, any reasonable travelling expenses directly incurred by members of the Liquidation Committee or their representatives in respect of their attendance at the Liquidation Committee's meetings, or otherwise on the Liquidation Committee's business.

6.44 Formal defects

The acts of the Liquidation Committee established for any winding up are valid notwithstanding any defect in the appointment, election or qualifications of any member of the Liquidation Committee or any Liquidation Committee member's representative or in the formalities of its establishment.

6.45 General duties of Liquidator and duties with respect to Excluded Property

6.45.1 The duties imposed on the Court by the Law with regard to the collection of the Company's assets and their application in discharge of its Liabilities are discharged by the Liquidator as an Officer of the Court subject to its control.

6.45.2 In the discharge of his duties the Liquidator, for the purposes of acquiring and retaining possession of the Company's property, has the same powers as a receiver appointed by the Court, and the Court may on his application enforce such acquisition or retention accordingly.

6.45.3 A Liquidator of a Company whose assets or Liabilities include Excluded Property must ensure compliance with any requirements on the Company pursuant to the Personal Property Law or DFSA Rules with respect to that Excluded Property.

6.45.4 Without limitation to Regulation 6.45.3 a Liquidator must comply with an instruction made under Article 37 of the Personal Property Law.

6.46 Manner of distributing assets

6.46.1 Whenever the Liquidator has sufficient funds in hand for the purpose he shall, subject to the retention of such sums as may be necessary for the expenses of the winding up, declare and distribute dividends among the creditors in respect of the Debts which they have respectively Proved.

6.46.2 The Liquidator shall give notice of his intention to declare and distribute a dividend.

6.46.3 Where the Liquidator has declared a dividend, he shall give notice of it to the creditors, stating how the dividend is proposed to be distributed. The notice shall contain such particulars with respect to the Company, and to its assets and affairs, as will enable the creditors to comprehend the calculation of the amount of the dividend and the manner of its distribution.

6.46.4 In the calculation and distribution of a dividend the Liquidator shall make provision:

(a) for any Debts which appear to him to be due to persons who, by reason of the distance of their place of residence, may not have had sufficient time to tender and establish their Proofs;

(b) for any Debts which are the subject of claims which have not yet been determined; and

(c) for disputed Proofs and claims.

6.46.5 A creditor who has not Proved his Debt before the declaration of any dividend is not entitled to disturb, by reason that he has not participated in it, the distribution of that dividend or any other dividend declared before his Debt was Proved, but:

(a) when he has Proved that Debt he is entitled to be paid, out of any Money for the time being available for the payment of any further dividend, any dividend or dividends which he has failed to receive; and

(b) any dividend or dividends payable under sub-paragraph (a) of this Regulation 6.46.5 shall be paid before that Money is applied to the payment of any such further dividend.

6.46.6 No action lies against the Liquidator for a dividend, but if he refuses to pay a dividend which he has declared the Court may, if it thinks fit, order him to pay it and also to pay, out of his own Money:

(a) interest on the dividend, at the rate payable on judgment Debts, from the time when it was withheld; and

(b) the costs of the proceedings in which the order to pay is made.

6.46.7 Without prejudice to provisions of the Law about disclaimer, the Liquidator may, with the permission of the Liquidation Committee, divide in its existing form amongst the Company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

6.46.8 Where a creditor has Proved for a Debt of which payment is not due at the date of the declaration of a dividend, he is entitled to a dividend equally with other creditors, but for the purpose of dividend (and no other purpose), the amount of the creditor's admitted Proof (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted Proof) shall be reduced to the net present value of the amount due to him assessed as at the relevant date. In this Regulation 6.46.8 "relevant date" means the date that the Company went into Liquidation.

6.47 Debts of insolvent Company to rank equally

6.47.1 Debts other than Debts due to Preferential Creditors rank equally between themselves in the winding up and, after the Debts due to Preferential Creditors, shall be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

6.47.2 Regulation 6.47.1 applies whether or not the Company is unable to pay its Debts.

6.48 Enforced delivery up of Company's property

6.48.1 The powers conferred on the Court by Article 129 (Getting in the Company's property) are exercisable by the Liquidator or, where a provisional liquidator has been appointed, by him.

6.48.2 Any person on whom a requirement under Article 129 is imposed by the Liquidator or provisional Liquidator shall, without avoidable delay, comply with it.

6.49 Final distribution

6.49.1 When the Liquidator has realised all the Company's assets or so much of them as can, in his opinion, be realised without needlessly protracting the Liquidation, he shall give notice either:

(a) of his intention to declare a final dividend; or

(b) that no dividend, or further dividend, will be declared.

6.49.2 The notice shall contain all such particulars as are required by Annex 3 of the Regulations and shall require claims against the assets to be established by a date specified in the notice.

6.49.3 After that date, the Liquidator shall:

(a) defray any outstanding expenses of the winding up out of the assets; and

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

6.49.4 The Court may, on the application of any person, postpone the date specified in the notice.

6.49.5 No final distribution shall be made until all Excluded Property has been divested by the Company.

6.50 Disclaimer

6.50.1 Where the Liquidator disclaims property under Article 71 and Article 100, the notice of disclaimer shall contain such particulars of the property disclaimed as enable it to be easily identified and be filed with the Court.

6.50.2 Within seven (7) days after the day on which the notice of disclaimer is filed, the Liquidator shall send or give copies of the notice (showing the date endorsed as required by that Regulation) to the persons mentioned in Regulations 6.50.3 to 6.50.5 below.

6.50.3 Where the property disclaimed is of a leasehold nature, he shall send or give a copy to every person who (to his knowledge) has an interest under the Lease including a Lessor, claims under the Company as underlessee or secured party.

6.50.4 He shall in any case send or give a copy of the notice to every person who (to his knowledge):

(a) claims an interest in the disclaimed property; or

(b) is under any Liability in respect of the property, not being a Liability discharged by the disclaimer.

6.50.5 If the disclaimer is of an unprofitable contract, he shall send or give copies of the notice to all such persons as, to his knowledge, are parties to the contract or have interests under it.

6.50.6 If subsequently it comes to the Liquidator's knowledge, in the case of any person, that he has such an interest in the disclaimed property as would have entitled him to receive a copy of the notice of disclaimer in pursuance of Regulations 6.50.3 to 6.50.4, the Liquidator shall then immediately send or give to that person a copy of the notice. But compliance with this Regulation 6.50.6 is not required if:

(a) the Liquidator is satisfied that the person has already been made aware of the disclaimer and its date; or

(b) the Court, on the Liquidator's application, orders that compliance is not required in that particular case.

6.50.7 The Liquidator disclaiming property may at any time give notice of the disclaimer to any persons who in his opinion ought, in the public interest or otherwise, to be informed of it.

6.50.8 If, in the case of property which the Liquidator has the right to disclaim, it appears to him that there is some person who claims, or may claim, to have an interest in the property, he may give notice to that person calling on him to declare within fourteen (14) days whether he claims any such interest and, if so, the nature and extent of it. Failing compliance with the notice, the Liquidator is entitled to assume that the person concerned has no such interest in the property as will prevent or impede its disclaimer.

6.50.9 Where the Liquidator has disclaimed the property, the Court may, upon receiving an application from any person mentioned in Regulation 6.50.4, make an order on such terms as it thinks fit, for the vesting of the disclaimed property in, or for its delivery to:

(a) a person entitled to it; or

(b) a person subject to such a Liability as is mentioned in Regulation 6.50.4(b).

6.50.10 The Court shall not make an order under Regulation 6.50.9 except where it appears to the Court that it would be just to do so for the purpose of compensating the person subject to the Liability in respect of the disclaimer.

6.50.11 The effect of any order made under Regulation 6.50.9 shall be taken into account in assessing, for the purpose of Article 71 and Article 100, the extent of any loss or damage sustained by any person in consequence of the disclaimer.

6.51 Contributories

6.51.1 Subject as follows, the Liquidator shall, as soon as may be after his appointment, settle a list of the Company's Contributories.

6.51.2 The Liquidator may make any call which may be outstanding in respect of any obligations owed by Contributories and may, with the Court's approval, rectify the register of Shareholders.

6.51.3 The Liquidator shall include in the list of Contributories any member, and person who is liable to contribute to the assets of the Company by reason of Article 115. The Liquidator may, subject to confirmation by the Court, add the name of any person to the list on this basis. His duties under this Regulation 6.51 are performed by him as an officer of the Court subject to the Court's control.

6.51.4 The list shall identify:

(a) the several classes of the Company's shares (if more than one);

(b) the several classes of Shareholders; and

(c) any Contributories who are not Shareholders.

6.51.5 Having settled the list, the Liquidator shall within a reasonable time give notice, to every person included in the list, that he has done so. The notice given to each person shall state:

(a) in what character, and for what reason, he is included in the list;

(b) the amounts due from him;

(c) that his inclusion in the list may result in the unpaid capital being called; and

(d) that, if he objects to any entry in, or omission from, the list he should so inform the Liquidator in writing within twenty-one (21) days from the date of the notice.

6.51.6 On receipt of any such objection, the Liquidator shall within fourteen (14) days give notice to the objector either:

(a) that he has amended the list (specifying the amendment); or

(b) that he considers the objection to be not well-founded and declines to amend the list.

6.51.7 If a person objects to any entry in, or exclusion from, the list of Contributories as settled by the Liquidator and, notwithstanding notice by the Liquidator declining to amend the list, maintains his objection, he may apply to the Court for an order removing the entry to which he objects or (as the case may be) otherwise amending the list. The application must be made within twenty-one (21) days of the service on the applicant of the Liquidator's notice under Regulation 6.51.5.

6.51.8 The Liquidator may from time to time vary or add to the list of Contributories as previously settled by him, but subject in all respects to the preceding Regulations.

6.51.9 The Liquidator is not personally liable for any costs incurred by a person in respect of an application to set aside or vary his act or decision in settling the list of Contributories, or varying or adding to the list; and the Liquidator (if other than the Liquidator) is not so liable unless the Court makes an order to that effect.

6.51.10 Subject as follows, the powers conferred by the Law with respect to the making of calls on Contributories are exercisable by the Liquidator as an officer of the Court subject to the Court's control.

6.51.11 Where the Liquidator proposes to make a call on Contributories, and there is a Liquidation Committee, he may summon a meeting of the committee for the purpose of obtaining its sanction.

6.51.12 Notice of the call under Regulation 6.51.11 shall be given to each of the Contributories concerned, and shall specify:

(a) the amount or balance due from him in respect of it; and

(b) whether the call is made with the sanction of the Court or the Liquidation Committee.

6.51.13 Payment of the amount due from any Contributory may be enforced by order of the Court.

6.52 General rule as to priority

The expenses of the Liquidation are payable out of the assets in the following order of priority:

(a) expenses or costs which are properly chargeable or incurred by the Liquidator in preserving, realising or getting in any of the assets of the Company or otherwise relating to the conduct;

(b) of any legal proceedings which he has power to bring or defend whether in his own name or the name of the Company;

(c) any other expenses incurred or disbursements made by the Liquidator or under his authority, including those incurred or made in carrying on the business of the Company;

(d) the fees payable to the Court or to any official body in relation to the proceedings;

(e) any repayable deposit lodged under these Regulations;

(f) the cost of any Security Interest provided by a provisional Liquidator or Liquidator in accordance with the Law or the Regulations;

(g) the remuneration of the provisional Liquidator (if any);

(h) any deposit lodged on an application for the appointment of a provisional Liquidator;

(i) the costs of the petitioner, and of any person appearing on the petition whose costs are allowed by the Court;

(j) any amount payable to a person employed to assist in the preparation of a Statement of Affairs or of accounts;

(k) any allowance made, by order of the Court, towards costs on an application for release from the obligation to submit a Statement of Affairs, or for an extension of time for submitting such a statement;

(l) any necessary disbursements by the Liquidator in the course of his administration (including any expenses incurred by members of the Liquidation Committee or their representatives and allowed by the Liquidator under paragraph 2.4 of Annex 2 , and any amounts payable by the Company to any person in respect of any assets or property that the Liquidator uses or retains for the purpose or benefit of the Liquidation, but not including any payment of tax in circumstances referred to in sub-paragraph (n) below);

(m) the remuneration or emoluments of any person who has been employed by the Liquidator to perform any services for the Company, as required or authorised by or under the Law or the Regulations;

(n) the remuneration of the Liquidator;

(o) the amount of any tax on chargeable gains accruing on the realisation of any asset of the Company (without regard to whether the realisation is effected by the Liquidator, a secured creditor, or a receiver or manager appointed to deal with a Security Interest);

(p) the balance, after payment of any sums due under sub-paragraph (m) above, of any remuneration due to the Liquidator;

(q) any other expenses properly chargeable by the Liquidator in carrying out his functions in the Liquidation.

6.53 Winding up commencing as voluntary

In a winding up by the Court which follows immediately on a voluntary winding up (whether Members Voluntary Winding Up or Creditors Voluntary Winding Up), such remuneration of the voluntary liquidator and costs and expenses of the voluntary Liquidation as the Court may allow are to rank in priority with the expenses specified in Regulation 6.52(a).

6.54 Saving for powers of the Court

6.54.1 In a winding up by the Court, the priorities laid down by Regulations 6.52 are subject to the power of the Court to make orders under Article 98, where the assets are insufficient to satisfy the Liabilities.

6.54.2 Nothing in these Regulations applies to or affects the power of any Court, in proceedings by or against the Company, to order costs to be paid by the Company, or the Liquidator; nor do they affect the rights of any person to whom such costs are ordered to be paid.

6.55 Proxies

6.55.1 For the purposes of the Regulations, a proxy is an authority given by a person ("the principal") to another person ("the proxy-holder") to attend a meeting and speak and vote as his representative.

6.55.2 Only one proxy may be given by a person for any one meeting at which he desires to be represented; and it may only be given to one person, being an individual aged 18 or over. But the principal may specify one or more other such individuals to be proxy-holder in the alternative, in the order in which they are named in the proxy.

6.55.3 A proxy for a particular meeting may be given to whoever is to be the chairman of the meeting.

6.55.4 A person given a proxy under Regulation 6.55.3 cannot decline to be the proxy-holder in relation to that proxy.

6.55.5 A proxy requires the holder to give the principal's vote on matters arising for determination at the meeting, or to abstain, or to propose, in the principal's name, a resolution to be voted on by the meeting, either as directed or in accordance with the holder's own discretion.

6.55.6 Proxies used for voting at any meeting shall be retained by the chairman of the meeting, and delivered, within a reasonable time after the meeting, to the responsible insolvency practitioner (where that is someone other than himself).

6.56 Miscellaneous and General

6.56.1 Winding up all claims by creditors (other than claims in relation to Excluded Property) are provable as Debts against the Company whether they are present or future, certain or contingent, ascertained or sounding only in damages.

6.56.2 All notices required or authorised by or under the Law or the Regulations to be given must be in writing, unless it is otherwise provided, or the Court allows the notice to be given in some other way.

6.56.3 Where in any proceedings a notice is required to be sent or given by the Liquidator or by the responsible insolvency practitioner, the sending or giving of it may be Proved by means of a certificate:

(a) in the case of the Liquidator, by him or a member of his staff; and

(b) in the case of the insolvency practitioner, by him, or his solicitor, or a partner or an employee of either of them, that the notice was duly posted.

6.57 Confidentiality of documents

6.57.1 Where in Insolvency Proceedings the responsible insolvency practitioner considers, in the case of a document forming part of the records of the insolvency, that:

(a) it should be treated as confidential; or

(b) it is of such a nature that its disclosure would be calculated to be injurious to the interests of the Shareholders or the creditors of the Company in its winding up, he may decline to allow it to be inspected by a person who would otherwise be entitled to inspect it.

6.57.2 The persons to whom the insolvency practitioner may under this Regulation 6.57 refuse inspection include the members of a Liquidation Committee or a Creditors' Committee.

6.57.3 Where under this Regulation 6.57 the insolvency practitioner determines to refuse inspection of a document, the person wishing to inspect it may apply to the Court for that determination to be overruled; and the Court may either overrule it altogether, or sustain it subject to such conditions (if any) as it thinks fit to impose.

6.58 "Give notice", etc.

6.58.1 A reference in the Regulations to giving notice, or to delivering, sending or serving any document, means that the notice or document may be sent by certified post, unless under a particular Regulation personal service is expressly required.

6.58.2 Personal service of a document is permissible in all cases.

6.58.3 Where two or more persons are acting jointly as the responsible insolvency practitioner in any proceedings, delivery of a document to one of them is to be treated as delivery to them all.

6.58.4 References to the "venue" for any proceeding or attendance before the Court, or for a meeting, are to the time, date and place for the proceeding, attendance or meeting.

6.59 "Responsible insolvency practitioner", etc.

6.59.1 In relation to any Insolvency Proceedings, "the responsible insolvency practitioner" means the person acting in a Company insolvency, as Supervisor of a Voluntary Arrangement under Part 2 of the Law, or as Administrative Receiver, Liquidator or provisional Liquidator.

6.59.2 In relation to any Insolvency Proceedings, "the office-holder" means (unless otherwise defined in any provision of the Law or these Regulations) the person acting in a Company insolvency, as Supervisor of a Voluntary Arrangement under Part 2 of the Law, or as Administrative Receiver, Liquidator or provisional Liquidator.

6.60 Provisions relating to office-holders generally

6.60.1 Where the Court appoints an office-holder under the Law, the office-holder's appointment takes effect from the date specified in the order.

6.60.2 The office-holder shall, within twenty-eight (28) days of his appointment, give notice of it to all creditors and Shareholders of the Company of whom he is aware in that period. Alternatively, if the Court allows, he may advertise his appointment in accordance with the Court's order.

6.61 Hand-over of assets to new office-holder

6.61.1 Where an office-holder intends to vacate office, whether by resignation or otherwise, he shall give notice of his intention to the Court, and to all relevant parties.

6.61.2 Where there remains any property of the Company which has not been realised, applied, distributed or otherwise fully dealt with in the winding up, the office-holder shall include in his notice details of the nature of that property, its value (or the fact that it has no value), its location, any action taken by the him to deal with that property or any reason for his not dealing with it, and the current position in relation to it.

6.61.3 Where an office-holder ceases to be in office as such he is under obligation within a reasonable time to deliver up to the person succeeding him as office-holder the assets (after deduction of any expenses properly incurred, and distributions made by him) and further to deliver to that person:

(a) the records of his tenure including correspondence, Proofs and other related papers appertaining to the administration while it was within his responsibility; and

(b) the Company's books, papers and other records.

6.61.4 Where the Liquidator vacates office after a final meeting of creditors, he shall deliver up to the Court the Company's books, papers and other records which have not already been disposed of in accordance with general regulations in the course of the Liquidation.

6.61.5 Where an office-holder (O2) is appointed in succession to another office-holder (O1) (including a provisional liquidator), on taking possession of the assets, O2 shall discharge any balance due to O1 on account of:

(a) expenses properly incurred by him and payable under the Law or the Regulations; and

(b) any advances made by him in respect of the assets, together with interest on such advances as may be appropriate.

Alternatively, the O2 may (before taking office) give to O1 a written undertaking to discharge any such balance out of the first realisation of assets.

6.61.6 O1 has a Security Interest in the assets in respect of any sums due to him under Regulation 6.61.5. But, where O2 has realised assets with a view to making those payments, O1's Security Interest does not extend in respect of sums deductible by the Liquidator from the proceeds of realisation, as being expenses properly incurred therein.

6.61.7 O2 shall from time to time out of the proceeds of realisation of Company property discharge all guarantees properly given by O1 for the benefit of the Company.

6.61.8 O1 shall give to O2 all such information relating to the affairs of the Company and the course of the winding up as he (O1) considers to be reasonably required for the effective discharge by O2 of his duties as such.

7. QUALIFICATION OF INSOLVENCY PRACTITIONERS

7.1 Recognition of Institutions

Any person who is a member of a professional body recognised by the DIFCA for the purpose is qualified to act as an insolvency practitioner under the Law.

7.2 Individual recognition by the Court

The Court may make an order to the effect that a person may act as an insolvency practitioner. If such an order is made the person is deemed to have been a qualified insolvency practitioner at all material times.

7.3 Individual recognition by the DIFCA

7.3.1 A person may apply to the DIFCA to be approved as an insolvency practitioner. An application for approval shall be made in such form as the DIFCA may prescribe from time to time.

7.3.2 The DIFCA may prescribe such conditions to, or restrictions on, the grant of an approval as it sees fit. A person in respect of whom an approval is in force shall comply with such conditions or restrictions.

7.3.3 A person who has received an approval is qualified as an insolvency practitioner, subject to the terms of such approval, provided that such approval has not been suspended, revoked or lapsed.

7.3.4 The DIFCA may suspend or revoke an approval under this Regulation 7.3 if it considers suspension or revocation to be in the best interests of the DIFC.

7.4 Requirements in respect of security for insolvency practitioners

The requirements for registration of an insolvency practitioner shall include security for the proper performance of his duties for the purposes of Article 123(2) and shall be as set out in Regulations 7.5 to 7.9.

7.5 Requirements for bonding – terms of the bond

7.5.1 Where an insolvency practitioner is appointed to act in respect of an insolvent entity there shall be in force a bond in a form approved by the DIFCA, Registrar, DFSA (as appropriate) which:

(a) contains provision whereby a surety undertakes to be jointly and severally liable for losses in relation to the insolvent caused by:

(i) the fraud or dishonesty of the insolvency practitioner or any of his employees whether acting alone or in collusion with one or more persons; or

(ii) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner and

(b) otherwise conforms to the requirements of this Regulation 7.

7.5.2 The terms of the bond shall provide:

(a) for the payment, in respect of each case where the insolvency practitioner acts, of claims in respect of liabilities for losses of the kind mentioned in Regulation 7.5 up to an aggregate maximum sum in respect of that case ("the specific penalty sum") calculated in accordance with the provisions of this Regulation 7.5;

(b) in the event that any amounts payable under (a) are insufficient to meet all claims arising out of any case, for a further sum of $2,500,000 ("the general penalty sum") out of which any such claims are to be met;

(c) for a schedule containing the name of the insolvent entity and the value of the insolvent entity's assets to be submitted to the surety within such period as may be specified in the bond;

(d) that where at any time before the insolvency practitioner obtains his release or discharge in respect of his acting in relation to an insolvent entity, he forms the opinion that the value of that insolvent entity's assets is greater than the current specific penalty sum, a revised specific penalty sum shall be applicable on the submission within such time as may be specified in the bond of a cover schedule containing a revised value of the insolvent's assets;

(e) for the payment of losses of the kind mentioned in Regulation 7.5, whether they arise during the period in which the insolvency practitioner holds office in the capacity in which he was initially appointed or a subsequent period where he holds office in a subsequent capacity.

7.5.3 The terms of the bond must also provide:

(a) that total claims in respect of the insolvency practitioner under all bonds relating to him are to be limited to a maximum aggregate sum (which shall not be less than $25,000,000);

(b) for a time limit within which claims must be made which may not be less than three (3) years from the date of discharge or replacement whichever is the later; and

(c) that any costs relating to the investigation of the fraud will be no more than fifty per cent (50%) of the security, unless otherwise agreed by the surety or creditors.

7.5.4 Subject to Regulations 7.5.5 to 7.5.7 below the amount of the specific penalty in respect of a case in which the insolvency practitioner acts, shall equal at least the value of the insolvent's assets as estimated by the insolvency practitioner as at the date of his appointment but ignoring the value of any assets:

(a) charged to a third party to the extent of any amount which would be payable to that third party; or

(b) held on trust by the insolvent entity to the extent that any beneficial interest in those assets does not belong to the insolvent entity.

7.5.5 In a case where an insolvency practitioner acts as a Nominee or Supervisor of a Voluntary Arrangement or Rehabilitation under Part 2 or Part 3 of the Law or Administrator under Part 4, the amount of the specific penalty shall be equal to at least the value of those assets subject to the terms of the arrangement (whether or not those assets are in his possession) including, where under the terms of the arrangement the debtor or a third party is to make payments, the aggregate of any payments to be made.

7.5.6 Where the value of the insolvent's assets is less than $5,000 the specific penalty sum shall be $5,000.

7.5.7 Where the value of the insolvent's assets is more than $5,000,000 the specific penalty sum shall be $5,000,000.

7.5.8 In estimating the value of an insolvent's assets, unless he has reason to doubt their accuracy, the insolvency practitioner may rely upon any Statement of Affairs produced in relation to that insolvent entity pursuant to any provision of the Law.

7.6 Requirements for bonding – records of all specific penalty sums

7.6.1 An insolvency practitioner shall maintain a record of all specific penalty sums that are applicable in relation to any case where he is acting and such record shall contain the name of each entity to whom the specific penalty sum relates and the amount of each penalty sum that is in force.

7.6.2 Any record maintained by an insolvency practitioner pursuant to this paragraph shall, on the giving of reasonable notice, be made available for inspection by:

(a) any professional body recognised under Regulation 7.1 of which he is or was a member and the rules of membership of which entitle or entitled him to act as an insolvency practitioner;

(b) any competent authority by whom the insolvency practitioner is or was authorised to act pursuant to these Regulations; and

(c) the DIFCA, Registrar and the DFSA (as appropriate).

7.7 Retention of bond by recognised professional body or competent authority

7.7.1 The bond referred to in Regulation 7.5 shall be sent by the insolvency practitioner to:

(a) any professional body recognised under Regulation 7.1 of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner; or

(b) any competent authority by whom the insolvency practitioner is authorised to act pursuant these Regulations.

7.8 Information for recognised professional body or competent authority

7.8.1 Every insolvency practitioner shall submit to his authorising body not later than twenty (20) days after the end of each month during which he holds office in a case:

(a) the information submitted to a surety in any cover schedule related to that month;

(b) where no cover schedule is submitted in relation to the month, a statement either that there are no relevant particulars to be supplied or, as the case may be, that it is not practicable to supply particulars in relation to any appointments taken in that month; and

(c) a statement identifying any case in respect of which he has been granted his release or discharge.

7.8.2 In this regulation "authorising body" means in relation to an insolvency practitioner:

(a) any professional body recognised under Regulation 7.1 of which he is a member and the rules of membership of which entitle him to act as an insolvency practitioner; or

(b) any competent authority by whom he is authorised to act as an insolvency practitioner pursuant to these Regulations.

7.9 Retention of cover schedule

7.9.1 This Regulation 7.9 applies to an insolvency practitioner appointed in Insolvency Proceedings under the Law to act.

7.9.2 The insolvency practitioner shall retain a copy of the cover schedule submitted by him in respect of his acting in relation to the Company or until the second anniversary of the date on which he is granted his release or discharge in relation to that Company.

7.9.3 The copy of a schedule kept by an insolvency practitioner in pursuance of Regulation 7.9.2 shall be produced by him on demand for inspection by:

(a) any creditor of the person to whom the schedule relates;

(b) any Contributory or Director or other Officer of the entity; and

(c) the DIFCA, the Registrar and the DFSA (as appropriate),

for those proceedings, the principal copy of any cover schedule containing entries in relation to his so acting.

8. FINANCIAL MARKETS

8.1 Business Rules of Authorised Market Institutions: claims determination and prevalence over the Law

8.1.1 In accordance with Article 38 of the Personal Property Law, any provision of the Business Rules of an Authorised Market Institution relating to the finality of acquisitions or dispositions effected pursuant to such Business Rules:

(a) shall, to the extent of any inconsistency, prevail in respect of determining claims to Investment Entitlements subject to the control of the Authorised Market Institution; and

(b) shall have effect and prevail over any applicable law of insolvency notwithstanding the commencement of an insolvency proceeding in respect of the Authorised Market Institution or any

party to a contract for the acquisition or disposal of an Investment or Investment Entitlement to which such Business Rules apply.

8.1.2 Notwithstanding anything to the contrary in these Regulations, in any proceedings under the Law or these Regulations, to the extent that a claim:

(a) is to an Investment Entitlement subject to the control of an Authorised Market Institution; and

(b) is subject of a provision of the Business Rules of such Authorised Market Institution relating to the finality of acquisitions or dispositions effected pursuant to such Business Rules,

such claim shall be determined in accordance with such provision.

8.1.3 In any proceedings under the Law or these Regulations, a transaction made by, or claim by or against, a person under such a provision shall not be subject to any provision of the Law or of these Regulations reversing, voiding, disclaiming or staying, or enabling or empowering a reversal, voiding, disclaimer, or stay relating to, such transaction.

8.2 Financial Collateral

8.2.1 Financial Collateral may be enforced notwithstanding any provision of the Law or of these Regulations reversing, voiding, disclaiming or staying, or enabling or empowering a reversal, voiding, disclaimer, or stay relating to, or imposing any other requirement on, enforcement, provided that:

(a) in the case of a Financial Collateral Arrangement pursuant to which title to the Financial Collateral passes to the secured party, such Arrangement had been created; or

(b) in the case of a Financial Collateral Arrangement pursuant to which a Security Interest is created over the Financial Collateral, the Security Interest attaches to the relevant Financial Collateral,

in each case prior to the commencement of Insolvency Proceedings (whether within the DIFC or otherwise) of the debtor.

8.2.2 The provision by a debtor of Financial Collateral which is:

(a) after-acquired Collateral; or

(b) Collateral which (or the proceeds of which) the debtor has used, commingled, disposed of, or dealt with

shall not of itself give rise to any presumption that the provision of the Collateral constitutes a preference or transaction at an undervalue for the purpose of Part 11 of the Law.

8.2.3 Without prejudice to the foregoing of this Regulation 8.2 and in relation to any winding-up:

(a) Article 85 of the Law (voiding of property dispositions) shall not apply (if it would otherwise do so) to any Financial Collateral subject to a disposition or created or otherwise arising under a Financial Collateral Arrangement, whether in relation to the winding up of a collateral-taker or a collateral-provider;

(b) Article 58 of the Law (avoidance of share transfers after winding-up resolution) shall not apply (if it would otherwise do so) to any transfer of shares under a Financial Collateral Arrangement;

(c) Article 71 and Article 100 of the Law (power to disclaim onerous property) shall not apply where the collateral-provider or collateral-taker under the arrangement is subject to winding up proceedings, to any Financial Collateral Arrangement.

8.2.4 Regulation 4 of these Regulations shall not apply (if it would otherwise do so) to any Security Interest created or otherwise arising under a Financial Collateral Arrangement.

8.2.5 Where any of the following events occur on the day of, but after the moment of commencement of, winding-up proceedings or rehabilitation measures, those events, arrangements and obligations shall be legally enforceable and binding on third parties if the collateral-taker can show that he was not aware, nor should have been aware, of the commencement of such proceedings or measures:

(a) a Financial Collateral Arrangement coming into existence;

(b) a relevant financial obligation secured by a Financial Collateral Arrangement coming into existence; or

(c) the delivery, transfer, holding or other designation of Financial Collateral so as to be under the control of the collateral-taker.

9. PROTECTED CELL COMPANIES

9.1 Interpretation

9.1.1 The Regulations in this Chapter 9 may be referred to as the Insolvency (PCC) Regulations.

9.1.2 In these Insolvency (PCC) Regulations:

(a) "cell receiver" has the meaning given in Regulation 9.2.3;

(b) "cell receivership order" has the meaning given in Regulation 9.2.1; and

(c) "Company (PCC) Regulations" means the Regulations contained in the Protected Cell Company Regulations 2018.

9.2 Cell receivership orders

9.2.1 Subject to the provisions of this Regulation 9.2, if in relation to a Protected Cell Company the Court is satisfied:

(a) that the cellular assets attributable to a particular cell of the Company are or are likely to be insufficient to discharge the claims of creditors in respect of that cell; and

(b) that the making of an order under this Regulation 9.2 would achieve one or more of the purposes set out in Regulation 9.2.3 below;

the Court may make an order (a "cell receivership order") under this Regulation 9.2 in respect of that cell.

9.2.2 A cell receivership order may be made in respect of one or more cells.

9.2.3 A cell receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order (the "cell receiver") for one or more of the purposes of:

(a) the survival as a going concern of the cell;

(b) the more advantageous realisation of the business and assets of or attributable to the cell than would be achieved by the winding up of the cell; or

(c) the orderly winding up of the business of or attributable to the cell and the distribution of the cellular assets attributable to the cell to those entitled to have recourse thereto.

9.2.4 Where a receiver, an Administrative Receiver or a Liquidator has been appointed to a Protected Cell Company, the Court may not make a cell receivership order in relation to a cell of the Company unless the Court is satisfied that it is desirable to do so in order to protect the interests of Shareholders or creditors, or potential Shareholders or creditors, of the cell.

9.2.5 A cell receivership order in relation to a cell of a Protected Cell Company shall cease to be of effect, but without prejudice to prior acts, upon the appointment of a receiver, an Administrative Receiver or Liquidator to act in respect of the Company unless the Court orders otherwise on being satisfied that it is desirable to do so in order to protect the interests of Shareholders or creditors, or potential Shareholders or creditors, of the cell.

9.2.6 A cell receiver appointed under this Regulation 9.2 must be a person who is registered as an insolvency practitioner under Part 10 of the Law.

9.3 Applications for cell receivership orders

9.3.1 An application for a cell receivership order in respect of a cell of a Protected Cell Company may be made by:

(a) the Company;

(b) the Directors of the Company;

(c) any creditor of the Company in respect of that cell;

(d) a member in respect of cell shares of that cell;

(e) the DFSA; or

(f) the Registrar.

9.3.2 The Court, on hearing an application for a cell receivership order, may make an interim order or adjourn the hearing, conditionally or unconditionally.

9.3.3 Notice of an application to the Court for a cell receivership order in respect of a cell of a Protected Cell Company shall be served upon:

(a) the Company;

(b) a Liquidator, receiver or Administrative Receiver, if any, appointed in relation to the Company;

(c) the Registrar;

(d) the DFSA; and

(e) such other persons, if any, as the Court may direct;

who shall each be given an opportunity of making representations to the Court before the order is made.

9.4 Functions and powers of a cell receiver

9.4.1 The cell receiver of a cell:

(a) may do all such things as may be necessary for one or more of the purposes set out in Regulation 9.2.3; and

(b) shall have all the functions and powers of the Directors in respect of the business and cellular assets of or attributable to the cell.

9.4.2 The cell receiver may at any time apply to Court:

(a) for an order setting out the extent or exercise of any function or power;

(b) for the cell receivership order to be discharged or varied; or

(c) for an order as to any matter arising in the course of his cell receivership.

9.4.3 In exercising his functions and powers the cell receiver is deemed to act as the agent of the Protected Cell Company, and shall not incur personal liability except to the extent that he is fraudulent, reckless, grossly negligent, or acts in bad faith.

9.4.4 Any person dealing with the cell receiver in good faith need not enquire whether the cell receiver is acting within his powers.

9.4.5 When an application has been made for, and during the period of operation of, a cell receivership order:

(a) no proceedings may be instituted or continued by or against the Protected Cell Company in relation to the relevant cell; and

(b) no steps may be taken to enforce any security or in execution of legal process in respect of the business or cellular assets of or attributable to the relevant cell;

except by leave of the Court, which may be conditional or unconditional.

9.4.6 During the period of operation of a cell receivership order the functions and powers of the Directors of the Protected Cell Company shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made.

9.5 Discharge and variation of cell receivership orders

9.5.1 The Court shall not discharge a cell receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

9.5.2 The Court, on hearing an application for the discharge or variation of a cell receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

9.5.3 Upon the Court discharging a cell receivership order in respect of a cell of a Protected Cell Company on the grounds that the purpose for which the order was made has been achieved or substantially achieved:

(a) the Court may direct that any payment made by the cell receiver to any creditor of the Company in respect of that cell shall be deemed full satisfaction of the liabilities of the Company to that creditor in respect of that cell; and

(b) the creditor's claims against the Company in respect of that cell shall be thereby deemed extinguished but nothing in this Regulation 9.5.3 shall operate so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the Company.

9.5.4 Subject to the provisions of:

(a) these Insolvency (PCC) Regulations and the Company (PCC) Regulations; and

(b) any agreement between the Protected Cell Company and any creditor thereof as to the subordination of the Debts due to that creditor to the Debts due to the Company's other creditors;

(c) the Company's cellular assets attributable to any cell of the Company in relation to which a cell receivership order has been made shall, in the winding up of the business of or attributable to that cell, be realised and used to satisfy the liabilities attributable to that cell, and for this purpose all such liabilities rank equally and abate proportionately until the cellular assets have all been exhausted.

9.5.5 Any surplus shall thereafter be distributed, unless the articles provide otherwise:

(a) among the holders of the cell shares or the person otherwise entitled to the surplus; or

(b) where there are no cell shares and no such persons, among the holders of the non- cellular shares,

in each case according to their respective rights and interests in or against the Company.

9.5.6 The Court may, upon discharging a cell receivership order in respect of a cell of a Protected Cell Company, direct that the cell shall be dissolved on such date as the Court may specify.

9.5.7 Immediately upon the dissolution of a cell of a Protected Cell Company, the Company may not undertake business or incur liabilities in respect of that cell.

9.6 Remuneration of a cell receiver

9.6.1 The remuneration of a cell receiver and any expenses properly incurred by him shall be payable, in priority to all other claims, from the cellular assets attributable to the cell in respect of which the cell receiver was appointed but not from any other assets of the Protected Cell Company.

9.7 Appointment of receivers and Liquidators to a Protected Cell Company

9.7.1 Subject to Regulation 9.7.2 and any other provisions of these Regulations, Parts 5, 6, 7, 10 and 11 of the Law, and any other regulations made by the Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Article 151 of the Companies Law, shall apply to a Protected Cell Company and, in so doing, to the cells of such Company as if, where the context admits:

(a) each cell were a separate Company;

(b) the members of each cell were the members of that separate Company; and

(c) the cellular assets attributable to a cell were the assets of that separate Company.

9.7.2 A receiver, Administrative Receiver, or Liquidator shall not be appointed in respect of a Protected Cell Company except by order of the Court.

9.7.3 Without limiting the application of any other provisions of the Law and the Regulations, a receiver or administrative receiver of a Protected Cell Company may in accordance with Article 42 of the Law, and a liquidator may in accordance with Article 104 of the Law, apply to the Court for:

(a) directions as to the extent or exercise of any function or power;

(b) a cell transfer order under Company (PCC) Regulation 1.20, in an appropriate case, the transfer of the cellular assets and liabilities of a cell to another person, wherever resident or incorporated, and whether or not a Protected Cell Company; or

(c) an order as to any matter arising in the course of his administration, including in relation to any cell within the Company.

9.8 Remuneration of receivers and Liquidators

9.8.1 The remuneration of a receiver, an Administrative Receiver or a Liquidator of a Protected Cell Company and any expenses properly incurred by him shall be payable, in priority to all other claims:

(a) where the appointment involves the continuation of business of a cell within the Company, and not the winding up of that cell – from the cellular assets attributable to that cell but not from any other assets of the Company;

(b) where the appointment involves the winding up of a cell within the Company – from:

(i) the cellular assets attributable to the cell; and

(ii) to the extent these may be insufficient, the non-cellular assets of the Company; and

(c) in all other cases – from:

(i) the non-cellular assets of the Company; and

(ii) to the extent these may be insufficient, the relevant cellular assets, in such shares or proportions as the Court may direct.

9.9 Winding up of Protected Cell Companies and cells generally

9.9.1 Subject to these Regulations and any other provisions of these Regulations, Parts 5, 6, 7, 10 and 11 of the Law, and any other regulations made by the Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Article 151 of the Companies Law in the winding up of a cell of a Protected Cell Company, whether under a cell receivership order or by the appointment of a receiver, Administrative Receiver or Liquidator to the Company, the cellular assets attributable to a particular cell of the Company shall be used to satisfy the liabilities attributable to that cell, and for this purpose all such liabilities rank equally and abate proportionately until the cellular assets have all been exhausted.

9.9.2 Notwithstanding any law applicable in the DIFC to the contrary, in the winding up of a Protected Cell Company or of a cell of such a Company, a cell receiver, receiver, Administrative Receiver or Liquidator shall:

(a) be bound to deal with the assets of the Company or of the cell, as the case may be, in accordance with the duties and requirements set out in Regulation 12.13 of the Company (PCC) Regulations; and

(b) in discharge of the claims of creditors of the Company or of the cell, apply assets to those entitled to have recourse thereto in conformity with the provisions of the Company (PCC) Regulations.

9.9.3 The Regulations in this Regulation 9.9 apply notwithstanding any provisions to the contrary in or under the Law, and are subject to the power of the Court to make orders relating in particular to fraud or to inability to satisfy liabilities entirely.

10. PERMISSION TO ACT AS DIRECTOR ETC. OF COMPANY WITH A PROHIBITED NAME

10.1 First Excepted Case

10.1.1 This Regulation 10.1 applies where:

(a) a person ("the person") was within the period mentioned in Article 116(1) a Director of an insolvent Company that has gone into insolvent Liquidation; and

(b) the person acts in all or any of the ways specified in Article 116(1) in connection with, or for the purposes of, the carrying on (or proposed carrying on) of the whole or substantially the whole of the business of the insolvent Company where that business (or substantially the whole of it) is (or is to be) acquired from the insolvent Company under arrangements:

(i) made by its Liquidator, or

(ii) made before the insolvent Company entered into insolvent Liquidation by an office-holder acting in relation to it as Administrative Receiver or Supervisor of a Voluntary Arrangement.

10.1.2 The person will not be taken to have contravened Article 116 if, prior to that person acting in the circumstances set out in Regulation 10.1.1, a notice is:

(a) given by the person, to every creditor of the insolvent Company whose name and address:

(i) is known by that person, or

(ii) is ascertainable by that person on the making of such enquiries as are reasonable in the circumstances; and

(b) published in an Appointed Publication.

10.1.3 Notice may not be given under this Regulation 10.1 by a person who has already acted in breach of Article 116.

10.2 Second Excepted Case

10.2.1 Where a person to whom Article 116 applies as having been a Director of the Liquidating Company applies for permission of the Court under Article 116 not later than seven (7) days from the date on which the Company went into Liquidation, the person may, during the period specified in Regulation 10.2.2 below, act in any of the ways mentioned in Article 116(1), notwithstanding that the person does not have the permission of the Court under Article 116.

10.2.2 The period referred to in Regulation 10.2.1 begins with the day on which the Company goes into liquidation and ends either on the day falling six (6) weeks after that date or on the day on which the Court disposes of the application for permission under Article 116, whichever of those days occurs first.

ANNEX 1

Regulation 1.5.1

1. MEETINGS

1.1 General power to call meetings

1.1.1 The office-holder may at any time summon and conduct meetings of creditors or of Shareholders for the purpose of ascertaining their wishes in all matters relating to the proceedings; and in relation to any meeting summoned under the Law or the Regulations, the person summoning it is referred to as "the Convener".

1.1.2 When a venue for the meeting has been fixed, notice of it shall be given by the Convener:

(a) in the case of a creditors' meeting, to every creditor who is known to him or is identified in the Company's Statement of Affairs; and

(b) in the case of a Shareholders' meeting, to every person recorded in the Company's register as a Shareholder;

1.1.3 Notice of the meeting shall be given at least twenty-one (21) days before the date fixed for it, and shall specify the purpose of the meeting.

1.1.4 The notice referred to in paragraphs 1.1.2 and of this Annex 1 shall specify a time and date, not more than four (4) days before the date fixed for the meeting, by which, and the place at which, creditors must lodge Proofs and proxies, in order to be entitled to vote at the meeting; and the same applies in respect of members and their proxies.

1.1.5 Additional notice of the meeting may be given by in an Appointed Publication if the Convener thinks fit, and shall be so given if the Court orders.

1.1.6 The chairman at any meeting may at his discretion, and shall if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances.

1.2 Quorum at meeting of creditors or Shareholders

1.2.1 Any meeting of creditors or Shareholders in Insolvency Proceedings is competent to act if a quorum is in attendance.

1.2.2 Subject to the next paragraph, a quorum is:

(a) in the case of a creditors' meeting, at least one (1) creditor entitled to vote;

(b) in the case of a meeting of Shareholders, at least two (2) Shareholders so entitled, or all the Shareholders, if their number does not exceed two (2).

1.2.3 For the purposes of this paragraph 1.2 of Annex 1, the reference to the creditor or Shareholders necessary to constitute a quorum is to those persons in attendance or represented by proxy by any person (including the chairman).

1.2.4 Where at any meeting of creditors or Shareholders:

(a) the provisions of this paragraph 1.2 of this Annex 1 as to a quorum being in attendance are satisfied by the attendance of:

(i) the chairman alone; or

(ii) one other person in addition to the chairman; and

(b) the chairman is actually aware, by virtue of Proofs and proxies received or otherwise, that one or more additional persons would, if attending, be entitled to vote,

the meeting shall not commence until at least the expiry of fifteen (15) minutes after the time appointed for its commencement.

1.3 **Report of meetings**

1.3.1 A report of a meeting under this Annex 1 shall be prepared by the person who was chairman of it.

1.3.2 The report shall:

(a) state whether a proposal was approved by the meeting and whether such approval was with any modifications;

(b) set out the resolutions which were taken at each meeting, and the decision on each one;

(c) list the creditors or Shareholders of the Company (with their respective values) who were in attendance or represented at the meetings, and how they voted on each resolution; and

(d) include such further information (if any) as the chairman thinks it appropriate to make known to the Court.

1.3.3 A copy of the chairman's report shall, within four (4) days of the meetings being held, be filed in Court; and the Court shall cause that copy to be endorsed with the date of filing.

1.3.4 In respect of each of the meetings, the persons to whom notice of its result is to be sent by the chairman are all those who were sent notice of the meeting.

1.3.5 The notice shall be sent immediately after a copy of the chairman's report is filed in Court under paragraph 1.3.3 of this Annex 1.

1.4 **Attendance at meetings of Company's personnel**

1.4.1 Whenever a meeting is summoned, the Convener shall give at least twenty-one (21) days' notice to such of the Company's personnel as he thinks should be told of, or be in attendance at, the meeting. "The Company's personnel" means present and past Officers, employees, contractors or any other person involved in the Administration or management of the Company.

1.4.2 The Convener may, if he thinks fit, give notice to any one or more of the Company's personnel that he is, or they are, required to be present at the meeting, or to be in attendance.

1.4.3 In the case of any meeting, any one or more of the Company's personnel, and any other persons, may be admitted, but:

(a) they must have given reasonable notice of their wish to be in attendance; and

(b) it is a matter for the chairman's discretion whether they are to be admitted or not; and

(c) his decision is final as to what (if any) intervention may be made by any of them.

1.4.4 If it is desired to put questions to any one of the Company's personnel who is not in attendance, the chairman may adjourn the meeting with a view to obtaining his attendance.

1.4.5 Where one of the Company's personnel is in attendance at a meeting, only such questions may be put to him as the chairman may in his discretion allow.

1.5 **Summoning of meetings**

1.5.1 Meetings shall in each case be summoned for commencement between 10.00 and 16.00 hours on a business day.

1.5.2 With the notice summoning the meeting there shall be sent out forms of proxy.

1.6 **The chairman at meetings**

1.6.1 The Convener shall be chairman. If for any reason he is unable to attend, he may nominate another person to act as chairman in his place;

1.6.2 The chairman shall not by virtue of any proxy held by him vote to increase or reduce the amount of the remuneration or expenses of an office-holder (including a Nominee or Supervisor) unless the proxy specifically directs him to vote in that way.

1.6.3 The chairman may, if he thinks fit, exclude any present or former Director or Officer from attendance at a meeting, either completely or for any part of it.

1.7 **Entitlement to vote (creditors' meetings)**

1.7.1 Subject as follows, every creditor who has notice of the creditors' meeting is entitled to vote at the meeting or any adjournment of it.

1.7.2 Votes are to be calculated pro rata according to the amount of each creditor's Debt as at the date of the meeting (after deducting any repayment of Debt made by the Company).

1.7.3 A creditor may vote in respect of a Debt for an unliquidated amount or any Debt whose value is not ascertained and for the purposes of voting (but not otherwise) his Debt shall be valued at USD 1 unless the chairman agrees to put a higher value on it.

1.7.4 A secured creditor may vote only in respect of the unsecured portion of his Debt.

1.7.5 At the creditors' meeting a person is entitled to vote only if he has given, not later than 12.00 hours on the business day before the day fixed for the meeting, details in writing of the Debt that he claims to be due to him from the Company, and the claim has been duly admitted.

1.7.6 The chairman of the meeting may allow a creditor to vote, notwithstanding that he has failed to comply with paragraph 1.7.5 of this Annex 1 if satisfied that the failure was due to circumstances beyond the creditor's control.

1.7.7 The chairman of the meeting may call for any document or other evidence to be produced to him where he thinks it necessary for the purpose of substantiating the whole or any part of the claim.

1.8 **Procedure for admission of creditors' claims for voting purposes**

1.8.1 Subject as follows, at any creditors' meeting the chairman shall ascertain the entitlement of persons wishing to vote and shall admit or reject their claims accordingly.

1.8.2 The chairman may admit or reject a claim in whole or in part.

1.8.3 The chairman's decision on any matter under this paragraph 1.8 of this Annex 1 is subject to appeal to the Court by any creditor or member of the Company.

1.8.4 If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.

1.8.5 If on an appeal the chairman's decision is reversed or varied, or votes are declared invalid, the Court may order another meeting to be summoned, or make such order as it thinks just. The Court's power to make an order under this paragraph 1.8.5 of Annex 1 is exercisable only if it considers that the circumstances giving rise to the appeal give rise to unfair prejudice or material irregularity.

1.8.6 The chairman is not personally liable for any costs incurred by any person in respect of an appeal under this paragraph 1.8 of this Annex 1.

1.9 **Requisite majorities (creditors)**

1.9.1 Except where these Regulations otherwise require, at the creditors' meeting for any resolution to pass there must be a majority in excess of one half in value of the creditors in attendance in person or by proxy and voting on the resolution.

1.9.2 The chairman's decision on any matter under this Regulation is subject to appeal to the Court by any creditor or member.

1.10 **Entitlement to Vote (Shareholders)**

1.10.1 Subject as follows, Shareholders of the Company at their meeting vote according to the rights attaching to their shares respectively in accordance with the articles. References in this paragraph 1.10 of this Annex 1 to a person's shares include any other interest which he may have as a member of the Company.

1.10.2 At a meeting of Shareholders, a person who is liable to contribute to the assets of the Company but who has no voting rights under the articles shall have no vote, save that where he would ordinarily acquire voting rights under the articles if the contribution were to be made, he shall be entitled to such voting rights.

1.11 **Requisite majorities (Shareholders)**

Subject as follows, and to any express provision made in the articles, at a Company meeting any resolution is to be regarded as passed if voted for by more than one-half of the Shareholders present in person or by proxy and voting on the resolution. The value of Shareholders is determined by reference to the number of votes conferred on each member by the Company's articles. In the event of the votes for and against being equal, the chairman shall have a casting vote.

1.12 **Role of the Chairman**

1.12.1 If the chairman thinks fit, a creditors' meeting and a Shareholders' meeting may be held together.

1.12.2 The chairman may, and shall if it is so resolved at the meeting in question, adjourn that meeting for not more than fourteen (14) days.

1.12.3 If there are subsequently further adjournments, the final adjournment shall not be to a day later than fourteen (14) days after the date on which the meeting in question was originally held.

1.12.4 If following the final adjournment of a meeting, a proposal (with or without modifications) has not been approved by the meeting, it is deemed rejected.

1.12.5 The chairman of the meeting shall cause a record to be made of the proceedings, and kept as part of the records of the proceedings. The record shall include a list of the persons who attended (personally or by

proxy) and, if a Creditors' Committee has been established, the names and addresses of those elected to be members of the committee.

1.12.6 Where the chairman at a meeting of creditors or Shareholders holds a proxy which requires him to vote for a particular resolution, and no other person proposes that resolution:

(a) the chairman shall himself propose it, unless he considers that there is good reason for not doing so; and

(b) if the chairman does not propose it, he shall within a reasonable time after the meeting notify his principal of the reason why not.

1.13 **Expenses of summoning meetings**

1.13.1 Subject as follows, the expenses of summoning and holding a meeting of creditors or Shareholders at the instance of any person other than the office-holder shall be paid by that person, who shall deposit with the Liquidator security for their payment.

1.13.2 The sum to be deposited shall be such as the Liquidator or Liquidators (as the case may be) determines to be appropriate; and neither shall act without the deposit having been made.

1.13.3 Where a meeting of creditors is so summoned, it may vote that the expenses of summoning and holding it, and of summoning and holding any meeting of Shareholders requisitioned at the same time, shall be payable out of the assets, as an expense of the Liquidation.

1.13.4 Where a meeting of Shareholders is summoned on the requisition of Shareholders, it may vote that the expenses of summoning and holding it shall be payable out of the assets, but subject to the right of creditors to be paid in full, with interest.

1.13.5 To the extent that any deposit made under this paragraph 1.13 of Annex 1 is not required for the payment of expenses of summoning and holding a meeting, it shall be repaid to the person who made it.

1.14 **Requisitioning of meetings**

1.14.1 Any request by creditors to an office-holder for a meeting of creditors, or by Shareholders for a meeting of Shareholders to be summoned shall be accompanied by:

(a) a list of the creditors concurring with the request and the amount of their respective claims in the winding up;

(b) from each creditor concurring, written confirmation of his concurrence; and

(c) a statement of the purpose of the proposed meeting.

1.14.2 The office-holder shall, if he considers the request to be properly made in accordance with the Law, fix a venue for the meeting, not more than thirty-five (35) days from his receipt of the request.

1.14.3 The Liquidator shall give twenty-one (21) days notice of the meeting, and the venue for it, to creditors.

1.14.4 Paragraphs 1.14.1 to 1.14.3 above apply to the requisitioning by Shareholders of Shareholders' meetings, with the following modifications:

(a) for the reference in paragraph 1.14.1(a) to the creditors' respective claims substitute the Shareholders' respective votes (assessed in accordance with paragraph 1.10 of this Annex 1); and

(b) the persons to be given notice under paragraph 1.14.3 of this Annex 1 are those appearing (by the Company's books or otherwise) to be Shareholders of the Company.

ANNEX 2

Regulation 1.5.2

1. **THE CREDITORS' COMMITTEE**

1.1 **The Creditors' Committee**

1.1.1 A Creditor's Committee may be established:

(a) on the request of an office-holder; or

(b) by a creditors' meeting.

For the purposes of this Annex 2, "office-holder" shall mean a receiver or an Administrative Receiver.

1.1.2 The committee shall consist of at least three (3) and not more than five (5) creditors of the Company.

1.1.3 A creditor of the Company is eligible to be a member of the committee if:

(a) the person has proved for a Debt;

(b) the Debt is not fully secured; and

(c) neither of the following apply:

(i) the proof has been wholly disallowed for voting purposes; or

(ii) the proof has been wholly rejected for the purpose of distribution or dividend.

1.1.4 A creditor of the Company which is a body corporate may only act through a named representative.

1.1.5 The committee shall not be constituted unless and until at least three (3) of the persons who are to be members of the committee have agreed to act.

1.2 **Functions and meetings of the committee**

1.2.1 The Creditors' Committee shall assist the office-holder in discharging his functions, and act in relation to him in such manner as may be agreed from time to time.

1.2.2 The Creditors' Committee may consent on behalf of creditors to any proposal put forward by the office-holder. Where a Creditors' Committee consents to a proposal on behalf of the creditors, the proposal shall be binding on all creditors.

1.2.3 A Creditors' Committee may withdraw its consent to a proposal; however, such withdrawal will take effect as from its date, and shall not invalidate the original consent.

1.2.4 Subject as follows, meetings of the Creditors' committee shall be held when and where determined by the office-holder.

1.2.5 The office-holder shall call a first meeting of the committee to take place within six (6) weeks of his appointment or of the committee's establishment (whichever is the later), and thereafter he shall call a meeting:

(a) if requested by a member of the committee or his representative (the meeting then to be held within twenty-one (21) days of the request being received by the office-holder); and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

1.2.6 The office-holder shall give seven (7) days' written notice of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless in any case the requirement of notice has been waived by or on behalf of any member. Waiver may be signified either at or before the meeting.

1.3 **Proceedings at Meetings**

1.3.1 The chairman at any meeting of the Creditors' Committee shall be the office-holder, or a person nominated by him in writing to act.

1.3.2 A person so nominated must be either:

(a) one who is qualified to act as an insolvency practitioner in relation to the Company; or

(b) an employee of the Liquidator or his firm who is experienced in insolvency matters.

1.3.3 A meeting of the committee is duly constituted if due notice has been given to all the members, and at least two (2) members are present or represented.

1.3.4 A member of the committee may, in relation to the business of the committee, be represented by another person duly authorised by him for that purpose.

1.3.5 The chairman at any meeting of the committee may call on a person claiming to act as a committee-member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

1.3.6 No person shall:

(a) on the same committee, act at one and the same time as representative of more than one committee-member; or

(b) act both as a member of the committee and as representative of another member.

1.3.7 Where a member's representative authenticates any document on the member's behalf, the fact that he so authenticates must be stated below the authentication.

1.3.8 A member of the committee may resign by notice in writing delivered to the office-holder.

1.3.9 A person's membership of the Creditors' Committee is automatically terminated if:

(a) he becomes bankrupt;

(b) at three (3) consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this paragraph 1.3.9 of Annex 2 is not to apply in his case); or

(c) he ceases to be a creditor or is found never to have been a creditor.

1.3.10 A member of the committee may be removed by resolution at a meeting of creditors. At least fourteen (14) days' notice must be given of the intention to remove the member.

1.3.11 If there is a vacancy in the membership of the Creditors' Committee, the vacancy need not be filled if the office-holder and a majority of the remaining members of the committee so agree, provided that the total number of members does not fall below three.

1.3.12 The office-holder may appoint any creditor (being qualified under the Regulations to be a member of the committee) to be a member of the committee or to fill any such vacancy, if a majority of the other members of the committee agree to the appointment and the creditor concerned consents to act.

1.3.13 Alternatively, a meeting of creditors may resolve that a creditor be appointed (with his consent) to fill the vacancy. In this case, at least fourteen (14) days' notice must have been given of the resolution to make such an appointment (whether or not of a person named in the notice).

1.3.14 At any meeting of the committee, each member of it (whether present himself or by his representative) has one vote; and a resolution is passed when a majority of the members present or represented have voted in favour of it.

1.3.15 Every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. A record of each resolution shall be signed by the chairman and kept with the records of the receivership.

1.3.16 The office-holder may seek to obtain the agreement of members of the Creditors' Committee to a resolution by sending to every member (or his representative designated for the purpose) details of the proposed resolution. The details must be set out in such a way that the recipient may indicate agreement or dissent and where there is more than one resolution may indicate agreement to or dissent from each one separately. The resolution is passed by the committee if a majority of the members deliver notice to the office-holder that they agree with the resolution.

1.3.17 Where the office-holder considers it appropriate, a meeting may be conducted and held in such a way that persons who are not present together in the same place may attend it.

1.3.18 A person attends such a meeting who is able to exercise that person's right to speak and vote at the meeting.

1.3.19 A person is able to exercise the right to speak at a meeting when that person is in a position to communicate during the meeting for all those attending the meeting any information or opinions which that person has on the business of the meeting.

1.3.20 A person is able to exercise the right to vote at a meeting when:

(a) that person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

(b) that person's vote can be taken into account in determining whether or not such resolutions or determinations are passed at the same time as the vote of all the other persons attending the meeting.

1.4 **Expenses of members**

The office-holder must pay, as an expense of the receivership, any reasonable travelling expenses directly incurred by members of the Creditors' Committee or their representatives in relation to their attendance at the committee's meetings, or otherwise on the committee's business.

1.5 **Members' dealings with the Company**

1.5.1 Membership of the committee does not prevent a person from dealing with the Company while the office-holder is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

1.5.2 The Court may, on the application of any person interested, set aside a transaction which appears to it to be contrary to the requirements of this paragraph 1.5, and may give such consequential orders as it thinks fit for compensating the Company for any loss which it may have incurred in consequence of the transaction.

1.6 **Formal defects**

The acts of the Creditors' Committee are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or any committee-member's representative or in the formalities of its establishment.

ANNEX 3

1. REQUIRED CONTENT FOR A STATEMENT OF AFFAIRS

1.1 Assets and Liabilities

1.1.1 A summary of the assets of the Company, setting out the book value and the estimated realisable value of:

(a) any assets subject to a Security Interest;

(b) any assets not subject to a Security Interest;

(c) the total assets available to Preferential Creditors;

(d) the jurisdictions in which the assets are located.

1.1.2 A summary of the liabilities of the Company, setting out:

(a) the amounts owed to Preferential Creditors;

(b) an estimate of the deficiency with respect to the amounts due to Preferential Creditors or the surplus available after paying the Preferential Creditors;

(c) the amount of Debt subject to Security Interests (including under any Financial Collateral Arrangements);

(d) an estimate of the deficiency with respect to Debts subject to Security Interests or the surplus available after paying Debts subject to Security Interests;

(e) the amount of unsecured Debts (excluding Debts owed to Preferential Creditors and any deficiency with respect to Debts subject to Security Interests);

(f) an estimate of the deficiency with respect to unsecured Debts or the surplus available after paying unsecured Debts (excluding Debts owed to Preferential Creditors and any deficiency with respect to Debts subject to Security Interests);

(g) any issued and called up capital; and

(h) an estimate of the deficiency with respect to, or surplus available to, Shareholders of the Company.

1.2 Creditors and Shareholders

1.2.1 A list of the Company's creditors including, in respect of each creditor:

(a) the name and postal address;

(b) the amount of the Debt owed to the creditor;

(c) details of any Security Interest held by the creditor;

(d) the date the Security Interest was given; and

(e) the value of any such Security Interest.

1.2.2 A list of the Company's Shareholders including, in respect of each member, the name and postal address and details of their respective capital holdings.

1.3 **Antecedent Transactions**

Whether there are, to the knowledge of the person preparing the statement, any circumstances giving rise to the possibility, in the event that the Company should go into Liquidation, of claims under Articles 132 (Transactions at undervalue), 133 (Preferences) or 134 (Invalid Security Interests) of the Law.