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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	
	)	Case No. 20-10712
Olinda Star Ltd. (In Provisional Liquidation),[1]	)	
	)	
Debtor in a Foreign Proceeding.	)	Chapter 15

DECLARATION OF GRANT CARROLL PURSUANT TO 28 U.S.C. § 1746

1. I, Grant Carroll, hereby submit this Declaration (the "**BVI Law Declaration**") in support of the *Verified Petition for Recognition of BVI Proceeding and Request for Relief Pursuant to 11 U.S.C. §§ 105(a), 1507(a), 1521(a), and 1525(a)* (the "**Chapter 15 Petition**").[2]

[1] The Debtor in this Chapter 15 case, and the last four identifying digits of the tax number of the jurisdiction in which it pays taxes, is Olinda Star Ltd. (In Provisional Liquidation) (BVI – 9761).

[2] Except as otherwise stated herein, "Ex." shall refer to exhibits to this BVI Law Declaration.

2. The facts and matters contained in this Declaration are true and correct to the best of my information, knowledge and belief.

3. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge or based upon my review of relevant documents. To the extent matters stated in this Declaration are statements of legal opinion, such statements represent my view of the law of the British Virgin Islands (the "**BVI**") as a practicing BVI attorney.

BACKGROUND AND QUALIFICATIONS

4. I am a partner of the law firm Ogier. Ogier is a law firm that advises clients worldwide on the laws of the BVI, the Cayman Islands, Jersey, Guernsey and Luxembourg. I have practiced law in the BVI since 2013 and I advise on the laws of the BVI.

5. I practice in Ogier's BVI Dispute Resolution team as a partner. I have considerable experience advising court-appointed liquidators, banks, multinational corporations and financial services institutions in the restructuring, liquidation and winding-up of BVI companies and funds.

6. I completed my academic legal training with BPP Law School in London in 2005. Thereafter I was called to the bar of England and Wales, with the Honourable Society of the Middle Temple, in 2005. I moved to the BVI in 2013 and was similarly called to the Bar of the BVI in 2013 where I have practiced ever since.

7. I have practised law for over a decade and during that time have been involved in many liquidation and insolvency related proceedings as mentioned above. I regularly appear as lead counsel before all levels of the BVI court system, including the BVI High Court, Commercial Court and the Court of Appeal of the Eastern Caribbean Supreme Court. My appearances often concern aspects of the BVI Insolvency Act, 2003 (the "**Insolvency Act**"), the Insolvency Rules, 2005, and other laws governing restructuring and insolvency of BVI entities.

8. Although I am not admitted in the United States, I am familiar with the provisions of Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**") as a consequence of my BVI practice.

STATEMENTS OF BVI LAW AND PRACTICE

A. Sources of Law of the BVI

9. The BVI is an Overseas Territory of the United Kingdom. The legal system of the BVI is an English-style common-law system based upon the doctrine of precedent. The Common Law (Declaration of Application) Act (Cap 13) extends the common law of England to the BVI. Equitable principles of English jurisprudence also apply in the BVI. It follows that the common law of the BVI is largely identical to that of England (except insofar as modified by statute, or BVI jurisprudence).

10. Decisions by the Judicial Committee of the Privy Council in the United Kingdom are binding on the BVI Courts. Decisions from other UK Courts are highly persuasive and are routinely followed. In the absence of any authority from the BVI Court on any issue of law, which is often the case, decisions of other common law courts, and in particular decisions of the English courts, are of strong persuasive authority.

11. The BVI has its own legislature called the House of Assembly, which enacts statutory legislation. However, the United Kingdom retains the power to adopt legislation for the BVI and maintains the ability to extend the implementation of international treaties to the BVI. Therefore, certain legislation and treaties adopted by the United Kingdom form part of the laws of the BVI.

B. Overview of BVI Law Governing Olinda's Joint Provisional Liquidation

12. On December 7, 2018, Olinda Star Ltd. ("**Olinda**"), a company incorporated on 7 September 2006 as a Business Company in the BVI,[3] filed an application in the BVI Commercial Court (the "**BVI Court**") under section 170 of the Insolvency Act seeking the appointment of Ms. Eleanor Fisher and Mr. Paul Pretlove as joint provisional liquidators (**"JPLs**"). Attached hereto as Exhibit B are copies of the order and decision of the BVI Court appointing the JPLs and thereby commencing the BVI Proceeding.

13. The Insolvency Act is the governing law of corporate insolvency and, together with the BVI Business Companies Act, 2004 (the "**Business Companies Act**" and, together with the Insolvency Act, the "**BVI Acts**") legislate how the adjustment of debt is dealt with in the British Virgin Islands. A copy of the enacting legislation of the Insolvency Act is attached hereto as Exhibit C. The enacting legislation describes the Insolvency Act as "[a]n Act to reform the law relating to the insolvency of companies and foreign companies . . . and to provide, in particular, for a mechanism for insolvent persons to enter into arrangement with their creditors, an administration procedure for companies, the receivership of companies and foreign companies, [and] the liquidation of companies[.]" See Ex. C at 22.

14. The BVI Acts contain provisions broadly similar to those contained in the insolvency laws of England. The key principle of BVI insolvency is the *pari passu* principle (*i.e.*, that similarly situated creditors should be treated the same), which closely follows the English law tradition.

[3] Olinda maintains its registered office at Tortola Pier Park, Building 1, Second Floor, Wickhams Cay 1, Road Town, Tortola VG1110 in the BVI and its statutory books and records are held in Panama by its registered agent at Torre BjC SA Financial Center, Avenida Balboa y Calle Aquilino de la Guardia, Piso 40, officina 4003, Panama. Attached hereto as Exhibit A are copies of Olinda's Certificate of Incorporation and Certificate of Change of Name. Olinda's membership interests are also located in the BVI. See BVI Business Companies Act 2004, § 245 ("[f]or the purposes of determining matters relating to title and jurisdiction but not for the purposes of taxation, the situs of ownership of shares, debt obligations or other securities of a company is the [British] Virgin Islands.")

15. Pursuant to section 446 of the Insolvency Act, foreign creditors have equal rights as BVI-based creditors.

16. The BVI Acts provide for the following key insolvency and restructuring proceedings: (i) liquidation; (ii) provisional liquidation; (iii) schemes of arrangement; (iv) plans of arrangement; (v) receiverships; and (vi) administrative receiverships.

C. Overview of "soft-touch" provisional liquidation

17. There is no process or procedure under BVI law which is directly equivalent to Chapter 11 of the United States Bankruptcy Code. In the BVI, a company that requires the protection of a stay in order to present a compromise or arrangement to its creditors must seek the appointment of a provisional liquidator. Where a provisional liquidator is appointed there is no automatic stay of proceedngs, however an application may be made to seek a stay of any proceedings brought against the company.

18. At least one of the company's joint provisional liquidators must be a BVI resident and hold a BVI insolvency practitioners' licence. However, a foreign insolvency practitioner meeting the requirements of the BVI Financial Services Commission may be appointed to a company jointly with one or more qualified insolvency practitioners who are resident in the BVI.

19. Olinda filed an application for the appointment of joint provisional liquidators on 7 December 2018. Following a hearing on 13 December 2018, the BVI Court on 19 December 2018 issued an order (the "**Appointment Order**"), appointing Eleanor Fisher, a qualified insolvency practitioner resident in the Cayman Islands, and Paul Pretlove, a qualified insolvency practitioner resident in the BVI, as joint provisional liquidators of Olinda. A copy of the Appointment Order is attached hereto as Exhibit B.

D. The scope of the JPLs' authority and Olinda's insolvency protocol

20. Provisional liquidators are officers of the BVI Court and their authority to act is derived solely from BVI Court orders, as they may only exercise those powers that the BVI Court specifically confers upon them. In some cases, upon the appointment of a provisional liquidator, substantially all of the directors' powers will be suspended, and the provisional liquidator is given all powers necessary (subject to the supervision of the BVI Court) to operate the company. In other cases, for example, where there are no allegations of wrongdoing against the directors and officers of the company, the provisional liquidation may be conducted in a "soft-touch" manner.

21. In a "soft-touch" provisional liquidation, the directors typically retain day-to-day control of the company but the provisional liquidators are kept apprised of the company's ordinary operations. However, corporate authority to pursue a course of action that is *outside* the ordinary course of business (such as proposing an arrangement or compromise to creditors) typically must be approved by the provisional liquidator.

22. Olinda's provisional liquidation is being conducted in a "soft-touch" manner. The powers of the JPLs to oversee the affairs and restructuring of Olinda are set forth in the Appointment Order. See Ex. B, Appointment Order. The core powers conferred on the JPLs by the BVI Court are to oversee the exercise of power of the sole director outside the ordinary course of business, and ultimately implement the restructuring. Id. ¶ 6. More specifically, the JPLs have the authority to do all acts and execute, in the name and on behalf of Olinda, all deeds, receipts and other documents, and for those purposes, use the company seal of Olinda when necessary. Id. ¶ 5. The BVI Court has also required the sole director to include the JPLs in his decision-making process, and to meet with the JPLs on at least a weekly basis. Id. ¶ 5.

23. On 3 January 2020 the BVI Court issued an order authorizing the Petitioner to act as foreign representative for the purposes of any proceedings commenced in the United

States under chapter 15 of the U.S. Bankruptcy Code and elsewhere under the relevant local laws. Attached hereto as Exhibit D is a copy of the BVI Court order convening the Scheme Meeting (defined below) and authorizing the Petitioner to serve as Foreign Representative (the "**Convening Order**"). See Ex. D, Convening Order ¶ 19.

24. The JPLs and Olinda entered into a BVI Court-approved protocol, which formed part of the Appointment Order. Ex. B, Appointment Order ¶ 3. The Insolvency Protocol was subsequently amended by the BVI Court on 12 August 2019, following the exclusion of Olinda from the Brazilian RJ Proceeding (the "**BVI Insolvency Protocol**"). A copy of the 12 August Order and BVI Insolvency Protocol is attached hereto as Exhibit E. The Petitioner and Mr. Pearson worked on the joint provisional liquidation of the Ocean Rig group of companies based in the Cayman Islands, and a similar protocol was adopted in that case.

25. The purpose of the BVI Insolvency Protocol is to ensure the just, efficient, orderly and expeditious administration of a provisional liquidation. Ex. E, BVI Insolvency Protocol at 1. It also facilitates communication between management and the JPLs to ensure that the JPLs receive adequate information to discharge their duties. Id. ¶ 1(a). Under the Protocol, Olinda's sole director and management must provide to the JPLs such information as they reasonably request to perform their duties. Id. This includes overseeing and monitoring of Olinda's operations in the ordinary course of business. Id. ¶ 2. The JPLs are also entitled to receive drafts of written resolutions of Olinda, and to be included in any board meetings. Id. ¶ 3. The Protocol also states that the directors of Olinda shall obtain the JPLs' prior approval of the exercise of the directors' powers which are outside of the ordinary course of business. Id. ¶ 4.

E. The BVI Court supervises the BVI Proceeding and the JPLs

26. Provisional liquidation is a BVI Court-originated and supervised process. As described above, the process is commenced by an application to the BVI Court. After an initial

sixth month period, if the JPLs' appointment is to continue, an application must be made to the BVI Court every three months to extend the life of the "originating application" (which commenced the BVI Proceeding). Thus, over the course of Olinda's BVI Proceeding the JPLs have submitted five reports to the Court and the originating application has been extended five times. In addition, the BVI Court has required that the JPLs must submit reports on the status of Olinda's restructuring and activities to the BVI Court every 60 days.

27. Moreover, the provisional liquidators may exercise only their BVI Court-conferred powers. Various actions by a provisional liquidator that are outside the scope of their appointment order require the express prior approval of the BVI Court. This includes the power to make a compromise or arrangement with creditors (such as via a scheme of arrangement). At any time, the BVI Court can order that certain powers may only be exercised with its approval. The remuneration of the JPLs is also subject to BVI Court approval.

F. Provisional liquidators safeguard the interests of all creditors

28. BVI joint provisional liquidation proceedings are fair, equitable, and collective. BVI provisional liquidation proceedings are not for the benefit of a single creditor. Rather, they operate to preserve value for all creditors and stakeholders.

29. As mentioned, provisional liquidators are officers of the BVI Court and occupy a fiduciary position with respect to the company's assets and creditors. Their function is to represent the collective interests of the creditors of the company and protect its assets from undue dissipation. Indeed, BVI provisional liquidators may, with permission of the BVI Court, bring actions to prevent fraudulent dispositions or recover assets that have been fraudulently conveyed. Provisional liquidators are required to consider the interests of creditors as a whole when discharging their duties, and must treat creditors in a fair and even-handed manner.

30. Moreover, in BVI joint provisional liquidation proceedings, all creditors receive ample notice and an opportunity to be heard by the BVI Court throughout the course of the

proceedings and no creditor will be prejudiced because it is foreign-based. Indeed, upon the appointment of a provisional liquidator, the suffix "In Provisional Liquidation" was added to Olinda's name. This suffix is then used on all filings with the BVI registry, and the JPLs directed the company to include it on all documents and correspondence issued by the company in the ordinary course of business to ensure that all those who have dealings with the entity are on notice of its change in status. At any time a creditor or other interested party may apply to the BVI Court to challenge the appointment of the provisional liquidator or seek related relief. Although it is not a requirement of BVI law that the JPLs advertise their appointment, on 24 January 2019, the JPLs placed an advertisement of their appointment in the BVI Gazette, a nationally circulated periodical. The advertisement directed creditors of the company to contact the JPLs at their BVI location. Attached hereto as Exhibit F is a copy of the advertisement.

G. BVI Schemes of Arrangement

31. The BVI Acts provide a comprehensive framework that determines how a company's assets, irrespective of their physical location, will ultimately be distributed to creditors. There are two possible outcomes in a "soft-touch" provisional liquidation. The first is that the restructuring is successful, and a compromise or arrangement is reached with creditors, approved by the BVI Court, and duly implemented. If the restructuring succeeds, the provisional liquidators will ordinarily be discharged, the originating application will be dismissed and the company will not be liquidated. The second possible outcome is that the restructuring fails and the BVI Court ultimately orders that the company be wound up, in which case the provisional liquidators (or other qualified insolvency practitioners) are appointed as liquidators to liquidate the company. In the event of a liquidation, the Insolvency Act provides

a regime for the distribution of the proceeds of the estate that substantially accords with my understanding of the order prescribed by U.S. law.[4]

32. As set forth in further detail below, the vast majority of Olinda's creditors have approved entry by the company into a scheme of arrangement (the "**BVI Scheme**") and the BVI Court has sanctioned (i.e. approved) that Scheme. All that remains for the BVI Scheme to become effective is for this Court to enter the relief requested in the Chapter 15 Petition, upon which the Scheme Administrator will ensure that the BVI Scheme is filed with the BVI Registrar. The BVI Scheme will become effective as soon as it is filed with the BVI Registrar.

i. *Overview of law governing BVI Schemes of Arrangements*

33. A scheme of arrangement is a statutory, court-supervised arrangement between a company and its creditors. It is a collective procedure. A duly-approved scheme becomes binding on all creditors, whether or not they (a) attended the meeting, (b) voted at the meeting, or (c) voted against the scheme. The statutory framework for a schemes of arrangement under BVI law was derived from, and remains substantially similar to, schemes of arrangement permitted under English law. I understand from my review of the relevant legislation that Cayman law schemes of arrangement are also based upon English law statute. Further, the jurisprudence surrounding English schemes of arrangement is persuasive in both the Cayman and BVI courts.

ii. *Approval of Olinda's Scheme of Arrangement*

34. The scheme approval process commences by the company passing a resolution to propose a scheme of arrangement to its creditors. Where, as here, the company is in

[4] Specifically, section 207 of the BVI Act provides for the payment of classes of admitted claims and expenses in accordance with statutory priorities, and if the amount available for such claims is insufficient to pay claims in full, directs ratable payment by class. Any person or entity with a claim against the company may assert such claim in the proceeding. Further, any creditor not satisfied with the adjudication of its claim by the liquidator, may apply to the BVI Court for relief. See BVI Act §§ 209 and 273. In short, the BVI Act addresses, among other things, the provision of notice to creditors, the presentation and consideration of claims, the right of creditors to take part in the proceeding, and the distribution of assets to creditors holding approved claims. BVI Act §§ 178, 207-215.

provisional liquidation such a resolution will require the prior approval of the provisional liquidator. In considering whether or not to allow a scheme to proceed, the provisional liquidator will consider whether the scheme secures a better return for the company's creditors than they would otherwise receive in a liquidation. If satisfied, the provisional liquidator will authorise the company to begin the process of putting a scheme of arrangement to creditors and thereafter seeking BVI Court approval. On 13 December 2019 the JPLs, having concluded that entry into the BVI Scheme was in the interests of Olinda's creditors, the JPLs authorized Olinda's sole director to pass the resolution necessary to commence the approval process for the BVI Scheme, and counter-signed that resolution (the "**Scheme Commencement Resolution**"). Attached hereto as Exhibit G is a copy of the Scheme Commencement Resolution.

35. Next, with prior approval of the provisional liquidator, an application must be made to the BVI Court to request that a meeting of creditors (the "**Scheme Meeting**") be convened (the "**Convening Hearing**"). At the Convening Hearing, the BVI Court sets the date, time and location of the Scheme Meeting and prescribes the notice procedures to be followed. The Convening Hearing can be held on the papers if the BVI Court allows it. Creditors in the same class will be convened to the same Scheme Meeting. On 13 December 2019, Olinda, pursuant to the authorization of the JPLs, applied to the BVI Court and requested that the Convening Hearing be scheduled. On 20 December 2019, the BVI Court issued an order on the papers (the "**Convening Order**") scheduling the creditors meeting for 14 January, 2020. Ex. D. The Convening Order also provided that creditors must receive copies of the notice convening the Scheme Meeting and the BVI Scheme (together, the "**Scheme Documents**")[5] at least 14 days prior to the Scheme Meeting. Id. ¶ 2.

[5] A copy of the Scheme Documents is attached to the BVI Sanction Onder (defined below) (Ex. J).

36. In accordance with the Convening Order, the Petitioner directed that copies of the Scheme Documents were provided to the Depository Trust Company for distribution to Olinda's creditors and that a copy of the Scheme Documents was posted on the company's website at (https://theconstellation.com/enu/s-2005-enu.html). This is the same website where documents were posted in connection with the Brazilian RJ Proceeding for the benefit of the Constellation Group's creditors.

37. The BVI Court also appoints a person to chair the Scheme Meeting and fairly implement the scheme, if approved (the "**Scheme Administrator**"). In this instance the BVI Court appointed the Petitioner as Scheme Administrator, thereby extending the scope of the Petitioner's fiduciary duties to include oversight of the implementation of the BVI Scheme. A copy of the Petitioner's report as Scheme Administrator is attached hereto as Exhibit H.

38. On 14 January 2020, the the Petitioner, in her capacity as JPL and chair of the Scheme Meeting, convened the Scheme Meeting and informed creditors that due to administrative issues, the DTC did not post the required notice to scheme creditors until after 5pm on 2 January 2020. Ex. H ¶¶ 15, 24. The Petitioner therefore concluded that it was possible that some of Olinda's creditors may not have received the full 14 days' notice required by the BVI Court. Id. ¶ 24. Accordingly, on advice of counsel the Petitioner exercised her authority to adjourn the Scheme Meeting to 6 February 2020 to ensure that due process was followed and all creditors were afforded the required notice of the Scheme Meeting. Id. ¶¶ 24-29.

39. The Petitioner further directed that notice of the adjournment and the new date of the Scheme Meeting was made available to the Scheme Creditors as follows: (i) on 10 January 2020, the Scheme Documents (in an amended form) were uploaded by the Company to the Company's website at https://theconstellation.com/enu/s-2005-enu.html so that they were available to all Scheme Creditors; and (ii) on 15 January 2020, the Scheme Documents

(in an amended form) were made available through DTC's Legal Notice System. Id. ¶ 30. Creditors were informed that all voting and proxy forms that had already been provided would be retained and accepted at the adjourned Scheme Meeting, unless the JPLs were informed otherwise.

40. For a scheme to be approved by the BVI Court, it must be approved by a majority in number representing 75% in value of the creditors or class of creditors or members or class of members, present and voting either in person or by proxy at the meeting. Those who attend the Scheme Meeting have an opportunity to ask questions and make representations. The Scheme Meeting was reconvened on 6 February 2020. At the Scheme Meeting, 100% of the scheme creditors present or voting by proxy voted to approve the Scheme. See id.

41. Once a scheme is duly approved by creditors at the Scheme Meeting, the next step is to obtain BVI Court sanction of the BVI Scheme (the "**Sanction Hearing**"). While the Sanction Hearing appears in the court list and persons with a legitimate interest can attend and make representations to the BVI Court, the BVI Act does not require that scheme creditors be served with notice of the outcome of the Scheme Meeting or the scheduling of the Sanction Hearing. However, on 6 February 2020, the Petitioner caused a notice to be served on all scheme creditors via the DTC notifying them that: (i) the BVI scheme had been approved; (ii) the Sanction Hearing was scheduled to be held on 25 February 2020; and (iii) "any interested person may appear at the Sanction Hearing." Attached hereto is a copy of the Notice to Creditors dated 7 February 2020 as Exhibit I. The Petitioner also caused the same notice to be posted to the company's website.

42. At the Sanction Hearing, the BVI Court's role is not to assess the commercial benefits of the scheme, however, BVI Court approval of a scheme of arrangement is not a "rubber stamp" exercise. At the Sanction Hearing, the applicant must demonstrate (usually

through an affidavit of the Scheme Administrator) that: (i) the relevant statutory requirements have been satisfied; (ii) the classes of creditors were properly identified; (iii) each class was fairly represented by those attending the scheme meeting and the statutory majority was acting bona fide in the interests of the class; and (iv) it would be reasonable to approve the scheme. The BVI Court held the Sanction Hearing on 25 February 2019 and, based on the evidence submitted by the Scheme Administrator, approved the Scheme of Arrangement (the "**BVI Sanction Order**"). Attached hereto as Exhibit J is a copy of the BVI Sanction Order and the Scheme Documents. No creditor objected to the issuance of the Sanction Order.

43. Once the BVI Court sanctions the scheme of arrangement, the Scheme Administrator will ensure that it is filed with the BVI Registrar. A scheme will become effective upon such filing under BVI law. However, here, since the BVI Scheme concerns a U.S. law governed guarantee, I understand from my U.S. co-counsel that the effectiveness of the restructuring is conditioned on the granting of full force and effect to the BVI Scheme in the United States (the "**Chapter 15 Order**"). Accordingly, the Petitioner will cause the BVI Scheme to be filed with the BVI Registrar following entry of the Chapter 15 Order, upon which filing the BVI Scheme will become effective.

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 under the laws of the United States that the foregoing is true and correct.

Executed on 6 March 2020 in Tortola, British Virgin Islands.

Grant Carroll

EXHIBIT A

Olinda's Certificate of Incorporation and Certificate of Change of Name

TERRITORY OF THE BRITISH VIRGIN ISLANDS
BVI BUSINESS COMPANIES ACT, 2004

CERTIFICATE OF INCORPORATION (SECTION 7)

The Registrar of Corporate Affairs, of the British Virgin Islands HEREBY CERTIFIES, that pursuant to the BVI Business Companies Act, 2004, all the requirements of the Act in respect of incorporation having been complied with,

TESSONE VENTURES S.A.

BVI COMPANY NUMBER: 1049761

is incorporated in the BRITISH VIRGIN ISLANDS as a BVI BUSINESS COMPANY, this 7th day of September, 2006.

BBC0010

REGISTRAR OF CORPORATE AFFAIRS
7th day of September, 2006

TERRITORY OF THE BRITISH VIRGIN ISLANDS
BVI BUSINESS COMPANIES ACT, 2004

CERTIFICATE OF CHANGE OF NAME
(SECTION 21)

The REGISTRAR OF CORPORATE AFFAIRS of the British Virgin Islands HEREBY CERTIFIES that, pursuant to the BVI Business Companies Act, 2004, the requirements of the Act in respect of a change of name having been complied with

TESSONE VENTURES S.A.

BVI COMPANY NUMBER **1049761**

which was incorporated in the British Virgin Islands under the BVI Business Companies Act, 2004, on the 7th day of September, 2006 has changed its name to

OLINDA STAR LTD.

this the 28th day of December, 2006.

REGISTRAR OF CORPORATE AFFAIRS
FSC
BVI FINANCIAL SERVICES COMMISSION

for **REGISTRAR OF CORPORATE AFFAIRS**
28th day of December, 2006

EXHIBIT B

Appointment Order and Decision

HE EASTERN CARIBBEAN SUPREME COURT

THE TERRITORY OF THE VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

(COMMERCIAL DIVISION)

CLAIM NO. BVIHC (COM) 2018/0206, 0207,0208,0210,0212

IN THE MATTERS OF CONSTELLATION OVERSEAS LTD.; LONE STAR OFFSHORE LTD.; GOLD STAR EQUITIES LTD.; OLINDA STAR LTD.; SNOVER INTERNATIONAL INC.; AND ALPHA STAR EQUITIES LTD.

AND IN THE MATTER OF THE INSOLVENCY ACT, 2003

[1] CONSTELLATION OVERSEAS LTD.

[2] LONE STAR OFFSHORE LTD.

[3] GOLD STAR EQUITIES LTD.

[4] OLINDA STAR LTD.

[5] SNOVER INTERNATIONAL INC.

[6] ALPHA STAR EQUITIES LTD.

Applicants

Appearances:

Mr David Chivers QC, with him Mr Grant Carrol of Ogier for the applicants
Mr Alex Hall Taylor for the Consenting A/L/B Lenders of Maples and Calder
Ms Rosalind Nicolson for Banco Bradesco S.A of Walkers

2018: December 13, 19
2019: February 4

The Insolvency Act 2003- appointment of provisional liquidators-whether court has jurisdiction to appoint "soft touch" provisional liquidators to support a company's restructuring and reorganization

JUDGMENT

[1] **Adderley, J:** This was an application for the appointment of "soft touch" provisional liquidators over six British Virgin Islands ("**BVI**") registered companies which form a part of a Group of companies. It is believed to be the first application of its kind in the BVI.

[2] On 19 December, 2018, I acceded to the application to appoint "soft touch" joint provisional liquidators ("**JPLs**") over the companies and to grant a stay of proceedings in respect thereof. I promised to give my reasons later and now do so.

[3] The essence of a "soft touch" provisional liquidation is that a company remains under the day to day control of the directors, but is protected against actions by individual creditors. The purpose is to give the Group the opportunity to restructure its debts, or otherwise achieve a better outcome for creditors than would be achieved by liquidation. It may be appropriate where there is no alleged wrongdoing of the directors.

[4] This application was made in the context of a major cross-border restructuring involving both a Brazilian Judicial Reorganisation and a US Chapter 15 application.

[5] The Applicants to the present Applications were Constellatons Overseas Ltd ("the Company") (a holding company) and the BVI Subsidiaries (certain Drilling Rig-owning entities within the Group). The applicants were seeking orders from this Court to appoint JPLs over each of the applicants in order to allow them to enter into a "soft touch" provisional liquidation in the BVI and thre stay of proceedings against it. The purpose of the appointment of JPLs is to support and facilitate the restructuring of the Group through the RJ, as supported by the Chapter 15 Proceedings in the US. The Company's largest unsecured creditor, Banco Bradesco S.A. (**"Bradesco"**), supports the Company's application for the appointment of JPLs.

[6] In answer to the court's early enquiry counsel made it clear that this was not an application for recognition of an international insolvency or foreign representative under s.457 of the British Virgin Islands' Insolvency Act 2003 ("**IA**"). Therefore the principles of modified universalism discussed in **Rubin v Eurofinance**[1] and in **Cambridge Gas** [2] did not arise with this application. The issue of legislation impliedly excluding the use of common law powers as arose in **Singularis**[3] did not apply either.

[7] The court had raised the issue to assuage its fears that the application might be an attempt to obtain through the back door 'interim relief' under the provision of s 452 of the IA with the remedies afforded under s. 453. Those provisions fall under Part XVIII (Cross Border Insolvency) of the IA which were passed in 2003 by the legislature but for policy or other reasons deliberately not brought into force. Section 452 is predicated on the court recognizing a foreign judgment; this application was not so based.

[8] It was a wholly domestic remedy under the IA based on the common law jurisdiction in the BVI being applied to companies in the BVI in their place of incorporation. That it may assist the ongoing insolvency proceedings in the companies' COMI is a matter which its promoters would have decided before approaching the BVI courts.

[9] The application is a protective measure; the primary reason for making such an application is to ward of predatory creditors who may wish to take satellite ex parte actions against the companies registered in the BVI in an attempt to steal a march on creditors generally. Such attempts have taken place on at least two prior occasions in similar situations in the BVI.

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[1] [2013] 1 AC 236,

[2] Cambridge Gas Transportation Corporation v Official Committee of Unsecured Creditors of Navigation Holdings PLc [2006] UKPC 26

[3] Singularis Holdings Ltd v Pricewaterhouse Coopers [2014] UKPC 36

BACKGROUND

[10] Constellation Oil Services Holding S.A. (Luxembourg) (**"Constellation Holding"**), together with its direct and indirect majority-owned subsidiaries (collectively, **"the Group"**), form an oil and gas drilling business. The Group is experiencing financial distress attributable to the ongoing recession in the oil and gas sector. The effects of this industry-wide downturn have been exacerbated by the recent financial recession in Brazil.

[11] In view of its financial position, and after taking legal advice in the relevant jurisdictions the Group decided to seek the protection of a court-supervised restructuring under the First Business Court of Rio de Janeiro (**"the Brazilian Court"**), facilitated by supporting ancillary proceedings in other jurisdictions. On 6 December 2018 (**"the RJ Petition Date"**) the applicants, along with a group of their affiliates, (together, **"the RJ Debtors"**), filed a petition for a jointly administered *recuperação judicial* (a **"Judicial Reorganisation"**, or **"RJ"**) in the Brazilian Court. The aim of the RJ is to facilitate the agreement and implementation of a plan for restructuring the Group's debt. On the same day, the Brazilian Court entered an order formally accepting the RJ Debtors into the Brazilian RJ Proceedings. The RJ Debtors are presently operating their businesses under the judicial supervision of the Brazilian Court

[12] As the Group has both a complex, integrated, and multinational corporate structure and debt structure, ancillary support from courts in several other jurisdictions (including the BVI) is needed in order for the restructuring under the RJ to be successful. For this reason, shortly after the RJ proceeding was commenced in Brazil, certain companies within the Group, including the applicants, (together, **"the Chapter 15 Debtors")** commenced ancillary proceedings in the US for protection under Chapter 15 of the US Bankruptcy Code (**"the Chapter 15 Proceedings"**), in order to seek the recognition of the RJ as the "*foreign main proceeding*" of each of the Chapter 15 Debtors.

[13] Counsel for the applicants represented that the reorganization is supported by creditors holding over US$ 1 billion of the companies' debt of US$ 1.5 billion. The court acceded to the request of

the applicants to have Mr Alex Hall Taylor and David Welford of Maples and Calder appear at the hearing in support representing a group referred to as the Consenting A/L/B Lenders , a consortium of lenders led by HSBC(USA) NA and Citibank NA who have acted as lenders of the order of US$600 million to various entities within the Group. While reserving all their rights they expressed the view that the Consenting A/L/B Lenders have a significant interest in the solvency, financial position, and restructuring plans of the Group and its underlying entities to which they have lent very substantial funds and to which they intend to lend further funds. Therefore they are very interested in the determination of the applications.

[14] Similarly, Ms Rosalind Nicholson representing Banco Bradesco the single largest creditor of the Group in the sum of about US$152.6 million was in attendance to support the application.

[15] A look at the consolidated balance sheet to September 2018 shows that the company is balance sheet solvent but with approximately only US$100 million cash on hand the Group is not likely to be able to pay its upcoming debts absent a restructuring and so is cash flow insolvent. This is exacerbated by the insolvency event in the loan documents automatically triggered by the commencement of the RJ Proceedings and the Chapter 15 Proceedings.

BACKGROUND

[16] The applicants made a declaration that to the best of the applicants' knowledge, there was no existing arrangement nor proposal for a creditors' arrangement under Part II of the Act, nor any administrator or administrative receiver acting, in relation to any of the applicants in any jurisdiction. They were also not aware of any pending foreign insolvency proceedings against them, other than the Brazilian and US proceedings which they themselves have just initiated along with other entities in the Group, as described below.[4]

[4] As confirmed in relation to: (i) the Company (ii) Snover International Inc. (iii) Lone Star Offshore Ltd. and (iv) the remaining Applicants

Brazilian RJ Proceedings

[17] On 6 December 2018 the RJ Debtors [5] filed the RJ Petition in the Brazilian Court commencing their procedurally joint Judicial Reorganisation. The Brazilian Court's acceptance of the RJ Petition is currently pending.

[18] An RJ is a collective mechanism under Brazilian bankruptcy and restructuring law for adjusting debts under the control and supervision of a competent Brazilian court, and is commenced by debtors filing a petition in the court in the jurisdiction in which the debtors maintain their "*principal estabelecimento*"[6] according to Brazilian law.

[19] The Brazilian Court has jurisdiction to process an RJ of foreign entities, such as the applicants, if Brazil is the "*principal estabelecimento*" of the debtors for the purposes of Brazilian restructuring law. The RJ Debtors have been accepted to undergo a jointly administered RJ

[20] Proceedings and collections of claims against the RJ Debtors are stayed for 180 days from the date of the Brazilian Court formally accepting the debtors into an RJ.

[21] The officers of debtor companies subject to an RJ continue to administer the companies' affairs, acting under the supervision of the court.

[22] Creditors are given additional protection throughout the process by provisions in the law which allow for the formation of creditors' committees and the appointment of a Judicial Administrator to oversee the process. The procedure requires equal treatment of creditor claims of the same class, absent an economic justification for treating a certain subgroup differently (e.g. payments to critical suppliers, payments to creditors providing additional financing during the RJ).

[23] Debtors have a set time period in which to present a plan to their creditors. Following plan submission, a general meeting is held for a creditor vote. The plan is then either approved,

[5] A full list of the RJ Debtors was provided to the court. All of the Applicants are RJ Debtors.

[6] As noted in the Galdino Affidavits, Brazilian bankruptcy laws employs the concept of "*principal estabelecimento*" (typically translated as "principal place of business", in order to explain this Brazilian concept to a non-Brazilian audience) for the purpose of venue and jurisdiction in an RJ proceeding.

"crammed-down" on dissenting classes, or rejected. Approval of a plan requires significant consensus among creditors of each secured and unsecured class.

[24] The Group elected to commence its centralised restructuring in Brazil because Brazil has to date been the operational centre of the Group's business. Brazil is the "*principal estabelecimento*" of the Group for the purposes of Brazilian restructuring law. It is also the "centre of main interests" or "COMI" of each Chapter 15 Debtor for the purposes of US restructuring law (which is relevant because of the Group's New York law-governed debt, and the commencement of the Chapter 15 Proceedings seeking recognition of the RJ for each of the Chapter 15 Debtors, including the applicants). Approximately R$ 5,753,783,237.77 (US$ 1,482,934,061.44) in third-party debt owed by the RJ Debtors collectively will be subject to restructuring in the course of the RJ.

[25] The Group hopes that as a result of the RJ and ancillary proceedings in other jurisdictions (including provisional liquidations in the BVI), it will be able to maintain its operations during the course of its restructuring negotiations, and thereby preserve its value as a going concern for the benefit of creditors and employees as a whole.

[26] In order to ensure that the Group can undergo a globally co-ordinated and centralised restructuring, certain of the RJ Debtors have initiated complementary restructuring proceedings in other relevant jurisdictions: specifically the US and this jurisdiction. These proceedings are necessary because the Group is presently vulnerable to adverse creditor actions. Such adverse creditor action would be to the detriment of the Group's creditors as a whole, and would jeopardise the prospects of success in the RJ.

US Chapter 15 Proceedings

[27] **The Chapter 15 Debtors**[7] have commenced ancillary proceedings in the US to seek recognition of the RJ as the "foreign main proceeding", in order to obtain certain protections from the US Bankruptcy Court, Southern District of New York (**"the US Court"**) in support of the RJ. On 6

[7] A full list of the Chapter 15 Debtors is provided in the table at Appendix 1 to the appellants' skeleton argument. All of the Applicants are Chapter 15 Debtors.

December 2018 the Chapter 15 Debtors filed a Chapter 15 petition (**"the Chapter 15 Petition"**) under the US Bankruptcy Code in order to commence their Chapter 15 Proceedings

[28] The Chapter 15 Debtors initiated these proceedings in order to seek the protection of the US Court over their assets, property and interests within the US (and also because the vast majority of the Group's debt is governed by New York law). The US Court's determination of the Chapter 15 Petition is currently pending. Temporary injunctive relief (namely, a stay barring the commencement or continuation of actions against the Chapter 15 Debtors or their US property) has been sought pending a hearing of the Chapter 15 Petition.

THE BVI INSOLVENCY LAW ("IA")

[29] A brief summary of the relevant provisions under the IA will place the application in context, and will allow the provisions to be readily compared with the legislation of other jurisdictions to which I shall refer.

[30] By s 159 of the IA the court has the power to appoint a liquidator of a company under s 162. The grounds set forth in s.162 include s 162(1) (a) the company is insolvent, s.162(1)(b) that it is just and equitable that a liquidator should be appointed , and s 162(1)(c) it is in the public interest to do so.

[31] Insolvency is defined in s 8 of the Act. Under s 8(c)(ii) a company is defined as being insolvent if it is unable to pay its debts when they fall due. It is also deemed to be insolvent if it fails to comply with a statutory demand and does not pay or apply under s156 to set it aside within 14 days.

[32] Under s. 162(2) amoung the persons who have standing to apply to appoint a liquidator are the company itself, a creditor or a member, the supervisor of a creditors arrangement, the Financial Services Commission and the Attorney General. There are special provisions governing an application by the latter two and or by a member.

[33] Rule 157 mandates that a sealed copy of the application and supporting affidavit for the appointment of a liquidator "shall" be served on the company 14 days or less after filing, and an affidavit verifying such service be filed.

[34] Under s.165 (1)(b) of the IA the application must be advertised between 7 days or more after service and 7 days or more before the date on which the petition is to be heard. Under Rule 31 advertisement must be in the BVI Gazette (r.31(1) (a)), and in such newspaper or newspapers that the applicant considers most appropriate for ensuring that the application comes to the attention of the creditors or individuals subject to the insolvency proceeding (R 31(1)(b)).

[35] Under s 162(2) if not duly advertised, the court may dismiss the application.

[36] Under Rule 15 the proposed liquidator must give his/her written consent to act, and as the consent is only valid for 6 weeks the written consent cannot be more than six weeks old at the time the court grants the Order. Under section 483 non-resident insolvency practitioners must provide prior written notice the Financial Services Commission.

[37] Under s 168 an application for the appointment of a liquidator must be determined within 6 months from filing failing which it is deemed to be dismissed. The court has a discretion to extend the period for up to three months provided that the application is made before the period expires and the Court is satisfied that special circumstances justify the extension. There is no limitation on the number of times that such an extension can be granted if at the time of the application the court is satisfied that special circumstances exist to grant an extension.

[38] After hearing the application the court has power to "make any interim order or other order that it deems fit". Section 167 lists the orders that can be made:

> "On the hearing of an application for the appointment of a liquidator, the Court may-
>
> (a) appoint a liquidator under section 159(1);
>
> (b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;
>
> (c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim or other order that it considers fit"

Appointment Provisional liquidators

[39] Section 170 under which a provisional liquidator is appointed and s174 under which certain consequential remedies may be applied for by the applicant are not freestanding. In each case application for the appointment of a liquidator must first have been made and not yet determined or withdrawn.

[40] Section 170 of the IA provides for the appointment of provisional liquidators as follows:

> "(1) Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, the court may, on application of a person specified in subsection (2) appoint ...and eligible insolvency practitioner as provisional liquidator of the company on the grounds specified in subsection (4)."(underline added)

[41] Subsection (2) lists, the company among those having standing to apply. Two of the grounds specified in subsection (4) of section 170 on which the court would appoint a provisional liquidator include: if the company consents, and the Court is satisfied that the appointment is necessary for the purpose of maintaining the value of the assets owned or managed by the company. There is also a public interest ground on which a provisional liquidator may be appointed that is not germane to this case.

[42] Under s170(2) a creditor can apply to terminate the appointment of the provisional liquidation.

[43] Pursuant to section 170(4) of the Act, the Court has the power to appoint JPLs on "*such terms as it considers fit*". Section 171(1) further provides that JPLs have *"the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which [they were] appointed*". The Court has the power under section

170(2) of the Act to further limit the powers of JPLs in such manner and at such times as it considers fit.

[44] The jurisdiction of the court exercised under statutory provisions has been considered in a number of jurisdictions and certain principles have emerged.

ENGLAND

[45] The legislative provisions setting out the ability of the English courts to appoint JPLs are contained in section 135 of the Insolvency Act 1986. This section provides that:

> (1) Subject to the provisions of this section, the court may, at any time after the presentation of a winding-up petition, appoint a liquidator provisionally.
>
> (2) In England and Wales, the appointment of a provisional liquidator may be made at any time before the making of a winding-up order, and either the official receiver or any other fit person may be appointed.
>
> (3) The provisional liquidator shall carry out such functions as the court may confer on him.
>
> (4) When a liquidator is provisionally appointed by the court, his powers may be limited by the order appointing him."

[46] **Palmer's Company Law**[8] describes section 135 of the Insolvency Act 1986 as conferring "*a general power which the court will exercise on the basis of the view it takes of the requirements in the case before it*".

[47] Further, section 130(2) of the Insolvency Act 1986 provides that: "*When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose*"

[8] Morse, Geoffrey snf Worthington, Sarah, eds. (2018) Palmer's Company Law. Sweet & Maxwell, London, UK, Sections 15.290 and 15.295

[48] There are a number of English authorities which lend support to a court order appointing JPLs over the Applicants in order to enable a court-supervised restructuring process to take place. The development of this practice is described in **Palmer's Company Law** in the following manner:

> "*The latent potential of provisional liquidation to serve as a vehicle for resolving the financial affairs of insolvent companies has been increasingly explored in recent years. The relative speed with which the procedure can be initiated, combined with the benefits of an automatic moratorium in relation to the company's affairs and property, can in certain cases be utilised to facilitate the rescue of a financially troubled company where such alternatives as administration or administrative receivership may not be available. Provisional liquidators can be appointed with wide powers and duties which transcend the function of merely maintaining the assets for the benefit of creditors pending a winding up. If they are successful in restoring the company to viability, the order of appointment can be discharged and no winding up need take place. The courts have been supportive of such creative use of the procedure, and have been prepared to adapt other principles of insolvency law to meet the needs of emerging practice.*"

[49] The flexibility of the ability of the English courts to appoint JPLs is consistently emphasised in the English authorities.

[50] In **MHMH Ltd and others v Carwood Barker Holdings Ltd** [2004] EWHC 3174 (Ch), Evans-Lombe J observed that "*one thing*" that emerges from the English and Commonwealth authorities "*is the flexibility of the remedy for the appointment of provisional liquidators of companies*".

[51] Sir Robert Megarry V-C in **Re Highfield Commodities Ltd (1984)** 1 B.C.C. 99277; [1985] 1 W.L.R. 149 said that:

> "... *section 238* [the predecessor to section 135 of the Insolvency Act 1986] *is in quite general terms. I can see no hint in it that it is to be restricted to certain categories of cases. The section confers on the court a discretionary power, and that power must obviously be exercised in a proper judicial manner. The exercise of that power may have serious consequences for the company, and so a need for the exercise of the power must overtop those consequences.*"

[52] The practice seems to have had particular attraction for insurance companies to whom administration under Part II of the Insolvency Act 1986 did not apply (see **Re English and American Insurance Co Ltd** [1994] 1 BCLC 649 and **Re Hawk Insurance** [2001] 2 BCLC 480. In **Smith & Ors v UIC Insurance Co Ltd** [2001] B.C.C. 11; [2000] All ER (D) 33. His Honour Judge Dean QC acknowledged the wide range of purposes for which JPLs can be appointed:

> "i. *Historically, the appointment of a provisional liquidator was by way of a temporary and very often urgent appointment for the purpose of preserving the assets, for the purposes of preserving priorities of creditors pending the completion of the winding-up proceedings. The effect of the appointment is immediately to prevent parties commencing or continuing proceedings against the company or its property with the leave of the court ...*
>
> *ii. It appears, however ... that the appointment of a provisional liquidator can be used for far wider purposes ... in the case particularly of insurance companies the procedure of appointing a provisional liquidator is frequently, if not inevitably, made not for the purpose of safeguarding rival priorities or protecting assets in a pending full blown liquidation, but in order to enable a form of administration of the company with a view to resolving the financial difficulties, not necessarily by a winding up but by a scheme of arrangement under s. 425 of the Companies Act 1985.*"

[53] However, the practice was not confined to insurance companies, and extended to others that were not eligible for administration.

[54] Harman J discussed and acknowledged the "*developing practice of the court of using a petition by the company for its own winding up as a basis for the appointment of provisional liquidators*", and said that this was "*a practice which several Chancery judges have dealt with and approved of*" (**Re English & American Insurance Co Ltd** [1994] 1 BCLC 649. He summarised the breadth of the grounds on which the English Court is able to appoint JPLs. In **Re Andrew Weir Insurance Company Limited** (1992, High Court, unreported judgment). He said this:

> "[p.2] Traditionally, provisional liquidators have usually been appointed in cases where it was thought by the petitioning creditor, frequently the Crown, that there was a real risk of the assets of the company being dissipated or for there to be some form of jeopardy to assets or risk of improper dealing with assets. Nothing of that sort whatever arises in this case. However, the power in the Court to appoint liquidators provisionally, as the Act puts it under Section 135, is in entirely general terms: "The court may" (plainly creating a judicial discretion) "at any time after the presentation of a winding up petition appoint a liquidator provisionally."
>
> There is no sort of suggestion in the Statute that it is only in cases where there is jeopardy to assets or impropriety of some sort that the court should make such an appointment (p. 2)...
>
> [p.3] I believe that there is a tendency to appoint provisional liquidators nowadays in cases where there are no suggestions of misfeasance or wrong-doing by the directors. I have myself made such appointments in other cases."

[55] Although analogies are sometimes inappropriate in law, the learned Judge's comments can be applied by analogy to the legislative provisions which govern the appointment of JPLs in the BVI, as they are phrased in similarly broad terms:

Burden of Proof

[56] The Court does not have to be satisfied that a restructuring will occur. That could only be known after the vote. The cases seem to require only that there was at least "*some prospect*" of promoting a restructuring (see **Re Esal (Commodities) Ltd** [1985] BCLC 450 and **Re ARM Asset Backed Securities** [2013] BCC 252 per Richards J.

[57] A company's own application for the appointment of JPLs has always been treated more favourably than that of a creditor (see **Re London, Hamburg and Continental Exchange** [1866] 2 LR Eq 231 and **Re Club Mediterranean Pty Ltd** [1975] 1 ACL 36]). A distinction has always been drawn historically between applications to appoint JPLs which are made by a company itself and those which are made by a company's creditors. If the company itself makes, consents to, or is

shown not to oppose the application, "*the appointment is almost a matter of course ...* " (see **Palmer's Company Law** referred to in **Re Union Accident Insurance Co Ltd** [1972] All ER 1105).

Foreign Restructuring

[58] Further, **Palmer's Company Law** contains an express discussion of "*the potential for deployment of* [the provisional liquidation procedure] *in support of foreign proceedings directed at procuring the rescue of a company*" The commentary refers to the case of **Re Daewoo Motor Co Ltd** (2001, High Court, unreported judgment, Lightman J) which is summarised as follows:

> "*In that case, a Korean company had been placed under the control of a court-appointed receiver in its country of incorporation. The receiver anticipated that there was a risk creditors might seek to seize the company's English assets* [...] *By presenting a winding up petition in the name of the company, coupled with an application for appointment of provisional liquidators, the receiver was able to establish the necessary conditions for concluding an orderly disposal of the assets under the protective mantle of the automatic stay. Subsequently, the provisional liquidators obtained an order from the English court authorizing them to remit the proceedings of realization to the receiver in Korea, to be administered for the benefit of all creditors including those from England itself.*"[9]

[59] **Lightman & Moss, *The Law of Administrators and Receivers of Companies (6th ed.)*[10]** summarises the position under English law as follows:

> "*The traditional aim and purpose of the appointment [of JPLs] was usually to secure the assets of the company so that they may be available for equal distribution to creditors. Accordingly, obvious insolvency and jeopardy to assets are reasons for an appointment, but not the only reasons ... The avoidance of a scramble by*

[9] While this case itself was unreported, in the subsequent related case of ***Daewoo Motor Co. Ltd. v Stormglaze UK Ltd.* [2005] EWHC 2799 (Ch)** Lewison J confirmed that "*The provisional liquidators were appointed by an order of Mr. Justice Lightman essentially to assist the Korean receiver*".

[10] Fletcher, I. F., Lightman, G., & Moss, G.S. (2012). London:Sweet & Maxwell. Sections 2-053

creditors for assets and the protection of the assets pending the putting forward of a Companies Act scheme of arrangement have also been accepted as good reasons for the appointment of provisional liquidators."

[60] Accordingly, there is persuasive authority in England for using the Court's statutory powers flexibly in support of restructuring in general, including a foreign restructuring process. The practice in the English courts of using provisional liquidations in aid of corporate rescues has also been used, adapted and built upon by the courts of the Cayman Islands and Bermuda, who each now have a well-established practice of appointing JPLs in aid of cross-border corporate rescues.

[61] A few examples will suffice.

THE CAYMAN ISLANDS

[62] At all material times until 1 March 2009, when the Companies (Amendment) Law, 2007 (Commencement Order , 2009) was brought into force section 99 of The Companies Law in Cayman did not contain an express provision that JPLs could be appointed for the purposes of aiding a restructuring. It simply provided that:

> "*the Court may, at any time after the presentation of a petition for winding up a Company under this law, and before making an order for winding up the Company, upon the application of the Company, or of any creditor or contributor of the Company, restrain further proceedings in any action, suit or proceeding against the Company upon such terms as the Court thinks fit; and the court may also, at any time after the presentation of such petition and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the company*".

[63] While this provision was phrased in general terms, and did not expressly state that JPLs could be appointed for the purposes of aiding a restructuring, the provision was used to appoint JPLs for these purposes in **Re Fruit of the Loom Ltd.** ([2000] CILR, Note 7b; unreported)

[64] The practice of appointing JPLs upon the application of a company in aid of a company presenting a compromise or arrangement to its creditors was then codified in 2007.[11] Section 104 of the Companies Law (as amended) which provides...

> "i. *the Court may, at any time after the presentation of a winding up petition but before the making of a winding up order, appoint a liquidator provisionally".*
>
> Section 104(3) provides:
>
> a. "An application for the appointment of a provisional liquidator may be made under subsection (1) by the company ex-parte on the grounds that- (a) the company is likely to become unable to pay its debts within the meaning of section 93; and (b) the company intends to present a compromise or arrangement to its creditors".

[65] Further, section 96 of the Companies Law (as amended) provides that:

> *"At any time after the presentation of a winding up petition and before a winding up order has been made, the company and any creditor or contributory may –*
>
> *where any action or proceeding against the company ... is pending in a summary court, the Court, the Court of Appeal or the Privy Council, apply to the court in which the action or proceeding is pending for a stay of proceedings therein; and*
>
> 1. *where an action or proceeding is pending against the company in a foreign court, apply to the Court for an injunction to restrain further proceedings therein,*
>
> ii. *and the court to which the application is made may, as the case may be, stay or restrain the proceedings accordingly on such terms as it thinks fit".*

[11] Pursuant to The Companies (Amendment) Law 2007 (Law 15 of 2007). This Act repealed, *inter alia*, section 99 of the previous Companies Law, and replaced it with *inter alia* section 104 of the current Act.

[66] This provision to stay proceedings is in similar terms to s 170(4) of the IA.

[67] The decision to appoint JPLs in aid of a refinancing in **Re Fruit of the Loom Ltd** was made before the provision to appoint JPLs for such purposes had been codified, and is therefore analogous to the current legal position in the BVI. In that case the holding company for an international group sought the appointment of JPLs in order to assist a refinancing of its assets. The court approved the refinancing package, appointed JPLs to oversee the company's business and the refinancing procedure under the control of the board and supervision of the Court; and granted an injunction restraining proceedings against the company.[12] In considering whether the appointment of the JPLs should continue, Smellie CJ held applying the dicta of Harman J in **Re English & American Insurance Co Ltd** that since there were no specific statutory powers enabling the Cayman courts to make administration orders over companies, the court could use its wide discretion under section 99 of the Companies Law to allow a company to restructure and refinance itself for the benefit of creditors and shareholders.

[68] He also opined on the principles that should govern whether the appointment of the JPLs should be continued as follows:

1. The JPLs should be satisfied that the refinancing and/or sale of the business as a going concern was likely to be more beneficial to creditors than a liquidation of the company's assets and a rateable distribution to creditors;

2. there must be a real prospect of a refinancing and/or sale as a going concern being effected for the benefit of the general body of creditors;

3. Achieving such a refinancing and/or sale as a going concern should be in the best interests of creditors and shareholders in the circumstances; and

4. The Court will be astute to ensure that its orders are not abused by a company which is hopelessly insolvent being allowed to continue to trade.

[12] The decision to appoint JPLs was made during a previous unreported hearing, but the nature of the application and the decision were discussed in Smellie CJ's later judgment concerning whether or not the appointment of JPLs should continue.

[69] There have been other appointments of "soft touch" provisional liquidators since then in the Cayman Islands including, amoung others, **Re Trident Microsystems (Far East) Limited** [2012] (1) CLR 424, **Re Mongolian Mining Corporation (**2016, Grand Court of the Cayman Islands, court order, McMillan J)[13], and **Re China Agrotech Holdings Limited (2017, Grand Court of the Cayman Islands,** unreported **,** per Segal J**).**

BERMUDA

[70] There are several judgments from the Bermudan courts considering and endorsing the use of "soft touch" provisional liquidations in order to assist with global restructurings.

[71] The statutory powers of the Bermudan courts to appoint JPLs are contained in section 170 of the Companies Act 1981 as follows:

> "(1) For the purpose of conducting proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a liquidator or liquidators.
>
> (2) The Court may on the presentation of a winding up petition or at any time thereafter and before the first appointment of a liquidator appoint a provisional liquidator who may be the Official Receiver or any other fit person.
>
> (3) When the Court appoints a provisional liquidator, the Court may limit his powers by the order appointing him."

[72] Further, section 167(4) of the Companies Act 1981 provides:

> "When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose".

[13] There was no reported judgment of the decision to appoint the JPLs, but the Applicants had obtained a copy of the court's order appointing the JPLs.

[73] The case law foundation for the Bermudan courts' provisional liquidation restructuring jurisdiction was laid in the case of **Re ICO Global Communications (Holdings) Limited** 1999] Bda L.R. 69.[14] A Bermudan company applied for JPLs to be appointed over itself on the same day as it filed for Chapter 11 protection in the US in order to allow it to consider a refinancing or reorganisation. The court granted the company's application. Ward CJ (as he then was) was required to consider whether the initial appointment of JPLs should be continued. In his judgment the Judge considered the initial appointment, and endorsed the practice of appointing JPLs in aid of restructurings and stated (p.2, ¶6):

> "An Order was made that Messrs. Wallace and Butterfield be appointed joint provisional liquidators. I am satisfied that the Court is given a wide discretion and had jurisdiction under section 170 of the Companies Act 1981 and Rule 23 of the Companies (Winding-Up) Rules 1982 to make such an Order. Under it the directors of the company remained in office with continuing management powers subject to the supervision of the joint provisional liquidators and of the Bermuda Court..."

[74] **Discover Reinsurance Company v PEG Reinsurance Company Limited [2006]** Bda L.R. 88 concerned an initial appointment of JPLs by the court upon the application of a creditor of a Bermudan company,[15] which the company subsequently sought to have discharged. In the judgment Kawaley J considered in detail the principles governing the appointment of JPLs in Bermuda. In my judgment the following passages (at p.5, ¶19) are of particular germane:

> "i. The use of provisional liquidation to facilitate a restructuring has not always occurred in clear cases of insolvency. It has often been utilized when companies are in what has been referred to as the "zone of insolvency". Be that as it may, the Bermuda model of restructuring provisional liquidation has often kept the pre-existing management in place, and merely given the provisional liquidators "soft" monitoring powers. In theory, these

[14] The original judgment in which JPLs were appointed over the company was not reported, but one of the issues before Ward CJ in **Re ICO Global Communications (Holdings) Limited [1999] Bda L.R. 69** was whether the appointment of the JPLs that had already been appointed should be continued. It was in this context that the Judge discussed the original appointment of the JPLs, and endorsed the practice of appointing JPLs in aid of restructurings.

[15] The initial application for the appointment of JPLs was not reported.

monitoring powers are designed to reassure both creditors and the Court that assets are not dissipated, on the implicit assumption that the management that has run the company into difficulties can hardly be trusted to have the creditors' best interests at heart...."

[75] In **Up Energy Development Group Limited** [2016] SC (Bda) 83 (2016, Supreme Court of Bermuda, unreported) a creditor of a Bermudan company that held underlying assets in China and Canada sought the appointment of "soft touch" JPLs over a Bermudan debtor company in order to oversee a debt restructuring that was being negotiated by the company. The application was opposed by the Bermudan debtor company. Kawaley J expressed the view:

"*The established practice of this Court in appointing JPLs to supervise a de facto debtor-in-possession restructuring has typically arisen in the context of winding-up petitions presented by the company*" (at ¶11). This supports the ability of the Applicants to seek the appointment of JPLs over themselves.

"*Further, given the evidence concerning the likely favourable return to creditors if a restructuring can be achieved, and the role the JPLs would play in protecting creditor interests during negotiations, it is also difficult to see how the Applications could reasonably be opposed by creditor interests.*"

"*In summary, the Court has a broad discretionary jurisdiction to appoint JPLs before a winding-up order is made.*" (at ¶14).

[76] The powers of this Court are similarly broad.

[77] In **Re Seadrill Limited & others [2018] SC (Bda) 30 Com (5 April 2018)** three Bermudan companies within an offshore drilling group commenced Chapter 11 proceedings in the US in order to facilitate a group restructuring. The restructuring was required in order to address liquidity challenges resulting from the downturn in the oil and gas industry. The original decision to appoint JPLs over the companies was not reported, but in a later decision granting recognition of the Chapter 11 plan and permanently staying all claims against the companies Kawaley CJ Commented that:

"*When a Bermudian company is placed into provisional liquidation for the purposes of pursuing an insolvent restructuring, this Court makes three central interlocutory findings:*

1. *a prima facie case for winding-up has been made out on the grounds of insolvency;*
2. *the creditors have displaced the shareholders as the key stakeholders in the company; and*
3. *an arguable case that a restructuring is where the best interests of the creditors lie have been made out*" (¶19).

[78] He also confirmed that these findings had underpinned the original order appointing the JPLs (¶20).

HONG KONG

[79] The powers and jurisdiction of the courts of Hong Kong to appoint JPLs are contained in section 192 and following sections of the Hong Kong Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32). Section 192 provides that: "*For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the court may impose, the court may appoint a liquidator or liquidators, provisionally or otherwise, in accordance with sections 193 and 194*". Section 193 prescribes the jurisdictional conditions for the exercise of this power.

[80] The decision of the Hong Kong Court of Appeal in **Re Legend International Resorts Limited** [2006] 2 HKLRD 192 cast doubt upon the Hong Kong courts' ability to appoint JPLs in aid of a restructuring. In his judgment, Rogers VP speaking for the panel (Rogers, LePichon JJA) said that based upon the wording of section 192 and the following sections, the appointment of JPLs must be for the primary purpose of a winding up "*not for the purposes of avoiding the winding-up*" (¶35 – 36).

[80] The extent of the principle established by the decision has been ameliorated to some extent by the recent decision of **Re China Solar Energy Holdings Limited [2018]** HKCFI 555. The court held

that JPLs may pursue a corporate restructuring, provided they have originally been appointed on conventional grounds such as a need to preserve company assets against creditor actions.

THE BAHAMAS

[81] In The Bahamas, the common law position has been codified into statute. Under **The companies (Winding Up Amendment) Act, 2011** section 199(3) a company may, as in the Cayman Islands under their 2009 Act, seek the appointment of JPLs on the grounds that the company is, or is likely to become, unable to pay its debts, and intends to present a compromise or arrangement to its creditors. It reads as follows:

> "(3) an application for the appointment of a provisional liquidator may be made under subsection(1) at any time after the presentation of a winding up petition but before the making of a winding up order by the company ex parte on the grounds that-
> the company is or is likely to become unable to pay its debts within the meaning of section 188; and
> (b) the company intends to present a compromise or arrangement to its creditors"

THE CURRENT APPLICATION

[82] The applications to appoint liquidators were filed after the boards of directors of each of the applicants resolved to appoint Mr Paul Pretlove and Ms Eleanor Fisher as JPLs and/or liquidators. A separate Fixed Form R14 was filed electronically on 7 December 2017 by each company stating its intention to apply for an order under s 162(1)(a) of the IA for Joint Liquidators to be appointed over each of the applicants, and of their intention to appoint Eleanor Fisher of Kalo (Cayman Limited) and Paul Pretlove of Kalo (BVI) Limited as such liquidators. As explained earlier the ground relied on under Section 162(1)(a) was that the company is insolvent. The meaning of 'insolvent' is set out in s 8. For present purposes section 8(1)(c) applies, namely, either the value of the company's liabilities exceeds it assets, or the company is unable to pay its debts as they fall due. Ms Eleanor Fischer is a non-resident insolvency practitioner and so prior written notification was given to the FSC as required by section 483 of the IA. Each of the proposed JPLs has given consent to act.

[83] As mentioned in paragraph 15 above, the Report of Alvarez and Marshall which was in evidence shows that as of 30 September 2018 the companies were balance sheet solvent but that absent a restructuring, they are prima facie cash flow insolvent and would not have sufficient cash to meet upcoming financial debt obligations. If the companies were to default on certain debt obligations this would trigger additional defaults due to the default provisions in certain finance documents. Therefore there is a prima facie case for appointing a liquidator.

[84] Self-evidently because the companies themselves are the applicants they have consented as required by s 170(4)(a), and likewise there is no requirement to serve notice on the companies pursuant to Rule 157. After consideration of extensive business and financial evidence the court was satisfied that the appointments were necessary for the purpose of maintaining the value of the assets owned or managed by the companies, and aiding their possible reorganization.

[85] Since the hearing date has not yet been set prima facie there is no requirement to advertise pursuant to s165(1)(b) either. However, in the interest of all the creditors as well as to put potential investors on notice I order that notice of the appointments be provided by placing an advertisement in the BVI Gazette as soon as reasonably practicable.

[86] There is evidence of a real prospect of restructuring. The restructuring involves releases of some security to facilitate cash flow and injection of further cash by bondholders. With the requirement for a 50% majority of creditors' approval, the **RJ** has a realistic chance of success. The US court on 10 December granted a moratorium and the effective hearing will be on 15 February 2019.

[87] The Houlihan Report in evidence before the court showed that realization of assets for the company as a going concern is significantly better than a company in liquidation. There is a US$700 million difference between the breakup value and the company as a going concern, and therefore the appointment of a provisional liquidator is very germane to allowing the going concern value to be maintained for the benefit of the creditors as a whole.

[88] The court noted that both Mr Pretlove and Ms Fisher are a highly experienced restructuring experts. This is a relevant consideration to the appointment of "soft touch" provisional liquidators, and the court took it into account consideration.

[89] I adopt the opinions of general principle relating to the flexibility of the court and the principles to be applied in appointing provisional liquidators expressed by Smellie, CJ in **Re Fruit of the Loom**, Kawaley, J in **Discovery Reinsurance** and **Re Seadrill** and Ward CJ in **ICO Global** all of which themselves were anchored in the persuasive English authorities cited. In summary, on principle the court has a very wide common law jurisdiction to appoint provisional liquidators to preserve and protect the assets owned or managed by the Company, and that the jurisdiction includes making such appointments to aid the company's reorganization including cooperating with cross border reorganizational efforts aimed at achieving that overriding objective. While it is not always good to rely on analogies, having regard to the authorities mentioned the court was of the view that jurisdiction with a similar wide discretion exists under s 170 of the IA. It would allow this Court to co-operate with the Brazilian and US Courts; would not destroy the rights of the applicants' creditors; and would have the benefit of allowing the Court oversight of the Group's restructuring process for the benefit of the creditors as a whole. Schemes of Arrangement are not alien to the laws of the BVI being allowed under s178 of the Business Companies Act 2005 albeit in the context of voluntary liquidations.

[90] The Hong Kong Case of **Re Legend International Resorts Limited** [2006] 2 HKLRD 192 where in his judgment, Rogers VP opined that the appointment of JPLs must be for the purposes of a winding up "*not for the purposes of avoiding the winding-up*" can be distinguished. Under s 167(1)(b) of the IA on hearing a liquidation application the court can dismiss the application even if a ground on which the Court could appoint a liquidator has been proved. From this it appears that the legislature did not intend that the application for the appointment of a liquidatior was necessarily for the purpose of winding up the company.

[91] For all the above reasons I was satisfied that the court had jurisdiction to appoint the JLPs for the intended purpose and that this was a proper case in which to do so. I therefore acceded to the application and approved the appointment of Paul Pretlove and Eleanor Fisher as joint Provisional Liquidators of the applicants with the powers set out in the draft order. The JLPs shall deliver regularly but at least every 60 days to the court a confidential Report on the progress of the RJ Brazilian proceedings and the Chapter 15 Proceedings with the purpose of informing the court of the prospects and likely timing of successfully concluding the pending reorganization and restructuring. The court will be alive to the need that as officers of the court the JLPs will preserve

and not facilitate any dissipation or misuse of the assets of the companies to the detriment of creditors or facilitate mismanagement on the part of directors.

[92] In order to promote the orderly administration of the estate the JLPs may enter into protocols with the directors. In addition as there are parallel cross-border insolvency proceedings taking place, the JLPs should consider whether it is in the interest of the estate to enter into protocols for cross boarder cooperation within the framework of the Judicial Insolvency Network's (JIN) Guidelines for Communication and Cooperation between Courts in Cross Border Insolvency Matters which is a template to help parties customize communication and cooperation agreement for individual cross-border restructuring and insolvency cases. These Guidelines were adopted by the BVI under the Insolvency Rules on 15 May, 2017 by the Chief Justice's Practice Direction 8, No 2 of 2017 under the Insolvency Rules.

[93] Under the IA there is no automatic moratorium upon filing of an application for the appointment of a liquidator; an application must be made. Section 174(1) of the Act, which governs the Court's power to stay or restrain proceedings when an application for the appointment of a liquidator has been made, provides that:

> "Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, a person specified in section 170(2) [the applicant for the appointment of a liquidator, the company, a creditor, a member, the commission or any person entitled to apply for the appointment of a liquidator] may,
>
> iii. where any action or proceeding is pending against the company in the Court, the Court of Appeal or the Privy Council, apply to the Court, the Court of Appeal or the Privy Council, as the case may be, for a stay of the action or proceeding; and
>
> iv. where any action or proceeding is pending against the company in any other Virgin Islands court or tribunal in the Virgin Islands, apply to the Court for a stay of the action or proceeding".

[95] As part of this application the applicants sought a stay under s.174(1). I granted that stay in the form of the draft Order.

[96] I wish to thank counsel who acted for the applicants for the industry and research in preparing their skeleton arguments from which I lifted certain pertinent parts verbatim. The fact that I did not refer to all of authorities mentioned does not mean that I did not review them.

The Hon K. Neville Adderley

Commercial Court Judge (Ag)

By The Court

Registrar

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
CLAIM NO. BVI HC (COM) 2018/0211
IN THE MATTER OF THE INSOLVENCY ACT 2003

OLINDA STAR LTD

Applicant

ORDER FOR APPOINTMENT OF PROVISIONAL LIQUIDATORS

Before: **the Honourable Justice Adderley**

Dated: **19 December 2018**

Entered: 24 **December 2018**

UPON the application of Olinda Star Ltd ("**Olinda Star**") by its application dated 7 December 2018 (the "**Application**") for the appointment of joint provisional liquidators ("**JPLs**")

AND UPON reading the affidavits of Michael Pearson and Flavio Galdino, and exhibits thereto

AND UPON the Court noting that the Application is an ancillary proceeding in support of the main judicial restructuring proceedings (the "**RJ Proceedings**") of Olinda Star and certain of its affiliates (together, the **RJ Debtors**) in Brazil, where the Olinda Star's centre of main interests is located

AND UPON the Court noting that each of Alpha Star Equities Ltd ("**Alpha Star**"), Constellation Overseas Ltd ("**Constellation**"), Gold Star Equities Ltd ("**Gold Star**"), Snover International Inc. ("**Snover**"), Lone Star Offshore Ltd ("**Lone Star**") (collectively with Olinda Star, the "**BVI Filing Entities**") have sought the appointment of JPLs in the British Virgin Islands ("**BVI**")

AND UPON the Court noting that Olinda Star and certain of its affiliates have commenced ancillary restructuring proceedings in the United States seeking formal recognition of the RJ Proceedings as the "foreign main proceeding" of Olinda Star and certain of its affiliates under Chapter 15 of the United States Bankruptcy Code

AND UPON the Court noting that Andrew Childe of FFP Limited has been appointed as the Chapter 15 foreign representative of the RJ Proceeding of Olinda Star

AND UPON hearing David Chivers QC for Olinda Star together with Mr Grant Carroll

IT IS ORDERED that:

1 Eleanor Fisher and Paul Pretlove be appointed joint provisional liquidators ("**JPLs**") of Olinda Star with the power to act jointly and severally.

2 The JPLs are authorised to cooperate with the sole director and Olinda Star's Brazilian counsel, Galdino & Coelho Advogados ("**G&C**") in supporting Olinda Star's RJ Proceeding.

3 The JPLs are authorised to enter into the attached protocol, which forms part of this Order.

4 The JPLs shall provide notice of their appointment by placing an advert in the BVI Gazette.

5 Without prejudice to the powers retained by Olinda Star's sole director pursuant to paragraph 5 below, until further order, the JPLs are authorised to exercise, within and outside the British Virgin Islands, and without further sanction of the Court, the power to:

(a) oversee and monitor the day-to-day operations of Olinda Star and the actions taken by the sole director (or those to whom the director has granted powers-of-attorney for the management of Olinda Star, such persons (collectively or severally) "**Authorised Managers**") pursuant to paragraphs 5(a) to (g) below and to attend meetings (in person or by telephone or video-conference) with the sole director (or his authorised representatives) and/or other officers of Olinda Star, and confer with the sole director and/or the Authorised Managers with respect to the exercise by the sole director or the Authorised Managers of any powers or the making of any decisions by the sole director;

(b) for the purpose or in furtherance of the restructuring of Olinda Star and its affiliates, do all acts and execute, in the name and on behalf of Olinda Star, all deeds, receipts and other documents, and for that purpose, use the company seal of Olinda Star when necessary;

(c) address, in consultation with the sole director, questions from other parties in any way relating to or affecting the restructuring of Olinda Star and its affiliates;

(d) consult and agree with the sole director and/or the Authorised Managers of Olinda Star in respect of any sale of property, assets or businesses of Olinda Star that are material or outside of the ordinary course of business, which will be subject to the approval of this Honourable Court in any event;

(e) consult and agree with the sole director and/or Authorised Managers of Olinda Star in respect of raising or borrowing any new money or granting new security over the property of Olinda Star;

(f) appoint attorneys and professional advisors, whether in the British Virgin Islands, the United States, the United Kingdom, Brazil, the Netherlands, Luxembourg, or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and to cause them to be remunerated out of the assets of Olinda Star as an expense of the provisional liquidation;

(g) prove, rank, claim and / or receive dividends in the bankruptcy, insolvency or sequestration of any debtor;

(h) discharge costs, expenses and debts incurred by Olinda Star after the commencement of these proceedings as expenses or disbursements to the extent properly incurred in furtherance of the provisional liquidation;

(i) open a bank account in any relevant jurisdiction to the extent necessary and appropriate to properly discharge their duties in respect of the provisional liquidation;

(j) in consultation with Olinda Star, engage staff (whether or not as employees of Olinda Star and whether located in the British Virgin Islands or elsewhere) to the extent necessary and appropriate to assist them in the performance of their duties in respect of the provisional liquidation as set forth herein ;

(k) procure a resolution of the sole director and/or call a meeting of the shareholders of Olinda Star as appropriate and necessary to properly

discharge their duties in respect of the provisional liquidation as set forth herein;

(l) authorise the sole director and/or the Authorised Managers to exercise such of the above powers relating to Olinda Star on such terms as the JPLs consider fit to the extent necessary and appropriate to properly discharge their duties in respect of the provisional liquidation as set forth herein;

(m) following consultation with the sole director, make an application in the name of Olinda Star under section 174 of the Insolvency Act to stay any proceedings brought against Olinda Star; and

(n) do all other things incidental to the exercise of the powers and duties as set forth herein and not inconsistent therewith.

6 Until further order, and subject to the JPLs' oversight and monitoring of the exercise of such powers, and upon the sole director of Olinda Star undertaking (i) to include the JPLs in any exercise of any powers or the making of any decisions by the sole director and/or Authorised Managers, and (ii) to attend weekly meetings with the JPLs, (or at such other frequency as the JPLs shall from time to time require), in person or by telephone or video-conference, either by himself or by representatives authorised to act on his behalf, that the director and Authorised Managers of Olinda Star be authorised to continue to exercise all powers of management conferred on them by Olinda Star and conduct the ordinary, day-to-day, business operations of Olinda Star.

7 In relation to matters outside of the ordinary course of business of Olinda Star, the sole director and/or the Authorised Managers shall obtain the JPLs' prior approval of the exercise of the sole director's powers (which for the avoidance of doubt, includes the passing of all written resolutions for transactions outside the ordinary course of business). In the event that the JPLs and the sole director and/or Authorised Managers cannot agree upon a proposed action outside the ordinary course of Olinda Star's business, the JPLs and the sole director and Authorised Managers have liberty to apply to this Court for directions. Without prejudice to the generality of the foregoing, the sole director and Authorised Managers of Olinda Star are authorised to:

(a) continue to operate the bank accounts of Olinda Star in the ordinary course of Olinda Star's business;

(b) conduct the annual general meeting of Olinda Star's shareholders in accordance with the provisions of Olinda Star's Articles of Association;

(c) communicate with and carry out any necessary filings with regulatory bodies as appropriate, in the name and on behalf of Olinda Star;

(d) consult and agree with the JPLs in respect of steps to be taken for any sale of any other property, assets, or businesses of Olinda Star beyond the usual course of business;

(e) continue to work with and maintain authorizations granted to G&C to represent Olinda Star in and prosecute the RJ Proceedings;

(f) continue to work with and maintain authorizations granted to Andrew Childe in his capacity as the foreign representative of the RJ Proceeding of Olinda Star, and support prosecution of Olinda Star's Chapter 15 Proceeding; and

(g) consult and agree with the JPLs in respect of raising or borrowing any new money or granting new security over the property of Olinda Star.

8 The JPLs shall not be required to give security for their appointment.

9 Pursuant to section 174 of the Insolvency Act, 2003, any pending suit, action or other proceeding against Olinda Star is hereby stayed. For the avoidance of doubt, this does not bar continuation of the Chapter 15 Proceedings or the RJ Proceedings.

10 Unless otherwise ordered by the Court, the JPLs shall not act on the instruction of any shareholder of Olinda Star or receiver or assignee thereof.

11 The costs of this application be paid directly or indirectly out of the assets of Olinda Star as an expense of the provisional liquidation.

12 The remuneration and expenses of the JPLs, as approved by this Court, shall be recorded on a composite basis as between the BVI Filing Entities and allocated equitably as between them.

13 Pending the approval of their fees by the Court, the JPLs are authorised to draw 80% of their fees, and 100% of their expenses, on account from the retainer amounts pre-funded to them by the BVI Filing Entities and the sums deposited in a separate account by the JPLs out of the funds of the BVI Entities for the purposes of restructuring costs (the "**Restructuring Account**").

14 The remuneration and expenses of the JPLs, to the extent it exceeds the retainer amount, shall be paid on account out of the Restructuring Account, until further Order.

15 Any creditor of Olinda Star has liberty to apply to the Court at any time to vary or discharge this order, on not less than 14 clear days' notice to the JPLs, and on receipt of such notice, the JPLs shall immediately notify Olinda Star.

16 The JPLs and the sole director and Authorised Managers be at liberty to apply for further directions in relation to, without limitation, any matter concerning Olinda Star or the conduct of the provisional liquidation, the sole director, the Authorised Managers, or the JPLs

By the Registrar

Insolvency Protocol

Constellation Overseas Ltd ("**Constellation**"), Lone Star Offshore Ltd ("**Lone Star**"), Gold Star Equities Ltd ("**Gold Star**"), Olinda Star Ltd ("**Olinda Star**"), Snover International Inc. ("**Snover**"), Alpha Star Equities Ltd ("**Alpha Star**") (collectively the" **BVI Filing Entities**" and the "**Companies**") and Eleanor Fisher of Kalo (Cayman) Limited and Paul Pretlove of Kalo (BVI) Limited, as joint provisional liquidators (the "**JPLs**" and together with the Companies, the "**Parties**") of the Companies enter into this Insolvency Protocol Agreement (the "**Protocol**") with the Companies (acting by their directors) severally, as follows:

Preliminary Statement

The purpose of this Protocol is to ensure the just, efficient, orderly and expeditious administration of the provisional liquidation proceedings in the British Virgin Islands (the "**Proceedings**"), to avoid duplication of work and conflict between the JPLs and the directors and management of the Companies, and to facilitate the function of the Proceedings in support of the Companies' global restructuring, as progressing in a centralised forum in Brazil through a judicially-supervised Brazilian *recuperacao judicial* ("**Brazilian RJ Proceeding"**).

The Proceedings

A. On 6 December 2018 (the "**RJ Petition Date**"), the Companies along with certain of their affiliates (the "**RJ Debtors**") filed a petition in Brazil commencing their procedurally joint Brazilian RJ Proceeding. The Companies are part of a global oil and gas enterprise (the "**Constellation Group**" or the "**Group**"). The Group elected to commence its centralised restructuring in Brazil because Brazil has historically been and presently is the operational centre of the Group's business; Brazil is the *principal estabelecimento* or "principal place

of business" of the Group for purposes of Brazilian restructuring law; and Brazil is the "centre of main interests" or "COMI" of each debtor filing for chapter 15 recognition for the purposes of U.S. restructuring law (relevant here because of the Group's New York-law governed debt and location in the United States of certain Group assets).

B. In order to achieve a globally coordinated, centralised and holistic restructuring, the Companies have commenced complementary restructuring proceedings in the BVI, and through recognition proceedings in the United States under chapter 15 of the U.S. Bankruptcy Code. Specifically, on 7 December 2018, the Companies each filed an Originating Application and Ordinary Application in the BVI Commercial Court (the "**BVI Court**") seeking the appointment of JPLs to the BVI Filing Entities pursuant to s.170 of the BVI Insolvency Act, 2003.

C. By way of Orders dated 19 December 2018, the BVI Court appointed the JPLs to each of the BVI Filing Entities (the "**BVI Appointment Orders**").

D. In order to ensure that the Proceedings are conducted efficiently and, as intended, provide needed support to the Brazilian RJ Proceeding, the JPLs and the Companies wish to enter into the terms of this Protocol.

NOW THEREFORE, subject to the powers already afforded to the JPLs under the Appointment Orders and for so long as the JPLs remain appointed to any of the Companies as provisional liquidators, the JPLs and the Companies (acting by their respective director(s)) hereby agree the following as to those Companies to which they remain appointed:

(1) Each of the Companies (acting by their directors, or those granted powers-of-attorney by the directors for the management of the Company, such persons "**Authorised Managers**") shall continue to provide such information as is reasonably requested by the JPLs, including without limitation, reasonable requests for explanations or information as to:

(a) The actions or decisions taken by the Companies;

(b) The proposed terms of the incurrence of any new indebtedness or borrowing of money by the Companies whether pursuant to loan arrangements with financing institutions, bank or otherwise, and the granting of the security in respect of the same, and the guaranteeing of any indebtedness or borrowings of affiliates, which in each case will be subject to limitations within the Brazilian RJ Proceeding and/or the oversight of the Brazilian RJ Court;

(c) The proposed sale or disposal of any assets of the Companies; and

(d) The proposed restructuring in the Brazilian Judicial Restructuring proceedings filed on 6 December 2018 including discussions and communications with creditors.

(2) The Companies shall be permitted, subject to the JPLs' oversight and monitoring and unless otherwise ordered by the Court, to operate their businesses in the ordinary course, including the ordinary course operation of cash management systems and bank accounts, which in each case will be subject to limitations within the Brazilian RJ Proceeding.

(3) To facilitate communication between the Companies and the JPLs, and to ensure the JPLs are adequately informed as to the ongoing activities and decisions of the Companies, the officers and directors (or their authorised representatives, including Authorised Managers,) of the Companies shall include the JPLs in any board meetings of the

Companies and shall supply the JPLs with copies of any draft written resolutions and shall meet in person or by telephone or videoconference or by whatever means is most appropriate on a weekly basis, or at such other intervals as the JPLs require, to address matters such as budgeting, cash expenditures, cash management, ordinary course transactions and all other matters reasonably necessary to keep the JPLs informed as their appointment and duties require.

(4) The directors and/or the Authorised Managers shall obtain the JPLs' prior approval of the exercise of the directors' powers outside of the ordinary course of business, which in each case will be subject to limitations within the Brazilian RJ Proceeding and/or the oversight of the Brazilian RJ Court. In the event that the JPLs and the directors and/or the Authorised Managers cannot agree upon a proposed non-ordinary course action, the JPLs and the directors have liberty to apply to this Court for directions.

(5) The Parties acknowledge that the Companies are engaged in a global restructuring with certain affiliates that is centered in the Brazilian RJ Proceeding, that the Proceedings have been commenced in support of that global restructuring centered in Brazil, and that other foreign restructuring proceedings, namely proceedings in the United States under chapter 15 of the U.S. Bankruptcy Code, have also been commenced in support of the Brazilian RJ Proceeding. To facilitate the role of the Proceedings in this global restructuring and to ensure that they provide needed support thereto, the JPLs will seek where possible (in accordance with their duties to Company creditors) to exercise their duties accordingly.

(6) Upon authorization of commencement of the Brazilian Restructuring Proceeding, each of the Companies granted to the Brazilian law firm of Galdino & Coelho Advogados ("**G&C**")

a power-of-attorney to act on its behalf in the course of the Brazilian RJ Proceeding. In the course of the Brazilian RJ Proceeding, G&C will routinely enter filings with the Brazilian RJ Court, including motions for relief on behalf of the Companies. As G&C is expected to enter numerous filings with the Brazilian Court, many which are routine and/or minor and some of which must be entered at short notice, it is not feasible for G&C on behalf of the Companies to obtain permission from the JPLs, and in some case to give advance notice to the JPLs, of any expected filing. Nevertheless, the Parties recognize the importance of keeping the Companies and the JPLs equally apprised of and involved in important steps in the Brazilian RJ Proceeding, including filings made on behalf of the Companies. The Parties expect that G&C will provide routine informational updates on the development of the RJ Proceedings to the Companies and to the JPLs in tandem, and that any such updates or other information about progress in the Brazilian RJ Proceeding that is provided to the Companies will also be readily provided to the JPLs. The Parties also understand that the JPLs may have questions about the Brazilian restructuring process, and the Companies will direct their counsels, including G&C, to readily address any such queries.

(7) The Parties expect that G&C will provide, in a timely manner, to the Companies and the JPLs English translations of drafts of the RJ Plan as it is being developed, as well as materials in support of the RJ Plan such as valuation reports, liquidation analyses, and other schedules and reports. .

(8) The Parties expect that White & Case LLP, in its capacity as counsel to Andrew Childe, the foreign representative of the Brazilian RJ Proceeding with respect to each of the

Companies, will timely provide to the Companies and the JPLs regular updates as to the progress of the Chapter 15 Proceedings.

(9) The JPLs shall give notice to the Companies of all proceedings in the BVI Court and shall not object to the Companies attending and seeking to be heard at any hearings before the BVI Court.

(10) The Companies shall give notice to the JPLs of all proceedings in the BVI Court and shall not object to the JPLs attending and seeking to be heard at any hearings before the BVI Court.

(11) The JPLs may communicate and/or consult with any of the Companies' creditors, as and when and in the manner they believe it is appropriate to do so, following consultation with and consent of the directors of the relevant BVI Filing Entity, such consent not to be unreasonably withheld or delayed.

(12) The JPLS shall consult and obtain the consent of the Companies (such consent not to be unreasonably withheld) prior to the appointment of any additional professional advisors.

(13) The JPLs may, as they deem necessary and subject to any ruling of the BVI Court apply for directions or sanction from the BVI Court in relation to any matter. For the avoidance of doubt, this right is without prejudice to the right of the Companies to be put on notice of any such application and the right to be heard and, where necessary, object to the directions sought.

(14) The BVI Court shall have exclusive jurisdiction over the remuneration of the JPLs and the JPLs shall seek approval of their remuneration from the BVI Court as necessary. The JPLs shall open a bank account, and shall deposit an initial USD $1m from the assets of the Companies to facilitate the payment of BVI restructuring costs, fees, disbursements and such other expenses as the JPLs shall be required to settle from time to time during the course of the Proceedings.

(15) The JPLs acknowledge that in the course of performance of their duties they will have access to and be provided with trade secrets and other confidential material ("**Confidential Information**"). The JPLs agree to keep such Confidential Information confidential and shall not, without the approval of the Court or agreement of the Companies (or as otherwise required by law), reveal, divulge or in any other manner authorise the access to or publish Confidential Information, to any person, entity or company, nor use the Confidential Information for any other purpose that is not directly related to their role as JPLs of the Companies. Notwithstanding the foregoing, the JPLs may disclose Confidential Information on a need-to-know basis to their Representatives ("**Representatives**" of the JPLs means their and Kalo's employees, directors, officers, agents, associates, colleagues, and advisors, including lawyers, accountants, auditors and consultants).

(16) This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, liquidators, trustees, and receivers, receiver managers, or custodians appointed.

(17) This Protocol may not be waived, amended or modified except in writing by all parties and subject to the approval and authorisation of the BVI Court.

(18) Each party represents and warrants to the other that its execution, delivery, and performance of this Protocol are within the power and authority of such party and have been duly authorised by such party (except that it is acknowledged that approval of the BVI Court is required).

(19) This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

(20) The parties hereto are hereby authorised to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate the terms of this Protocol.

(21) This Protocol shall be deemed effective upon its approval by the BVI Court with relation to the BVI Filing Entities. This Protocol shall have no binding or enforceable legal effect until approved by BVI Court with relation to the BVI Filing Entities.

IN WITNESS WHEREOF the parties hereto have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

JOINT PROVISIONAL LIQUIDATORS

By: E.S. Fisher
Eleanor Fisher as joint provisional liquidator and without personal liability

By: P. Pretlove
Paul Pretlove as joint provisional liquidator and without personal liability

Date: 21 December 2018

Mr. Michael Pearson, on behalf of each of the BVI Filing Entities in his capacity of a director of the BVI Filing Entities

By: _____

Name: MICHAEL PEARSON

Title: DIRECTOR.

Date: 21 December 2018

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM No. BVI HC (COM) 2018/0211
BETWEEN:

OLINDA STAR LTD

Applicant

ORDER

Ogier
Ritter House
Wickham's Cay II
PO Box 3170
Road Town, Tortola
British Virgin Islands
Tel: +1 (284) 852 7300
Ref: BRL/CARGR 174287.00001
Legal Practitioners for the Applicant

EXHIBIT C

Enacting Legislation of the Insolvency Act

VIRGIN ISLANDS

INSOLVENCY ACT, 2003
No. 5 of 2003

VIRGIN ISLANDS

INSOLVENCY ACT, 2003

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I Assent
M. ELTON GEORGES, OBE
Acting Governor
12th May, 2003

VIRGIN ISLANDS

No. 5 of 2003

An Act to reform the law relating to the insolvency of companies and foreign companies, limited partnerships, partnerships and individuals and to provide, in particular, for a mechanism for insolvent persons to enter into arrangements with their creditors, an administration procedure for companies, the receivership of companies and foreign companies, the liquidation of companies, foreign companies, limited partnerships and partnerships, the making of bankruptcy orders against individuals, the licensing and regulation of insolvency practitioners, the penalization and redress of wrongdoing associated with insolvent persons, the disqualification of directors, the avoidance of certain transactions, cross border insolvency issues and other matters connected therewith.

[*Gazetted* 13th May, 2003]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I

PRELIMINARY PROVISIONS

Short title and commencement.

1. (1) This Act may be cited as the Insolvency Act, 2003.

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

Interpretation.

2. (1) In this Act, unless the context otherwise requires,

"administration order" has the meaning specified in section 76;

"administrative receiver" has the meaning specified in section 142;

"administrator", in relation to a company, means an administrator appointed under section 79;

"arrangement" means a company creditors' arrangement under Part **II**, Division **2** or an individual creditors' arrangement under Part **II**, Division **3**, as the case may be;

"articles" means

(a) the articles of association of a company, or

(b) where the context permits, in the case of a foreign company the articles of association, by-laws or such other document having the same effect by whatever name called;

"asset" includes money, goods, things in action, land and every description of property wherever situated and obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"bankrupt" means an individual against whom a bankruptcy order is made under Part **XII**;

"bankruptcy trustee" means the person appointed by the Court to be the trustee of the assets of a bankrupt;

"bankrupt's estate" has the meaning specified in section 313;

"board", in relation to a body corporate, means

(a) the board of directors, committee of management, council or other governing authority of the body corporate, or

(b) if the body corporate has only one director, that director;

"business day" means any day other than a Saturday, Sunday or public holiday in the Virgin Islands;

"charge" includes a mortgage, a fixed charge and a floating charge, whether crystallised or not;

"chargee" means the holder of a charge and includes a person in whose favour a charge is to be given or executed under an agreement, whether on demand or otherwise;

"chattel leasing agreement" means an agreement for the bailment of goods which is capable of subsisting for more than three months;

"Civil Procedure Rules" means the Eastern Caribbean Supreme Court Civil Procedure Rules 2000;

No. 12 of 2001

"Commission" means the Financial Services Commission established under the Financial Services Commission Act, 2001;

Cap. 285

"Companies Act" means the Companies Act (Cap. 285);

"company" has the meaning specified in section 3;

"connected person"

(a) in relation to a company or a foreign company has the meaning specified in section 5(1), and

(b) in relation to an individual has the meaning specified in section 5(3);

"Court" means the High Court;

Cap. 35

"court rate" means the rate of interest specified in section 7 of the Judgements Act (Cap 35);

"creditor" and "secured creditor" have the meanings specified in section 9;

"creditors' committee" means a committee appointed under section

421;

"director" has the meaning specified in section 6;

"disqualification order" has the meaning specified in section 260(1);

"disqualification undertaking" has the meaning specified in section 260(2);

"document" means a document in any form and includes

(a) any writing or printing on any material,

(b) any record of information or data, however compiled, and whether stored in paper, electronic, magnetic or any non-paper based form and any storage medium or device, including discs and tapes,

(c) books and drawings, and

(d) a photograph, film, tape, negative, facsimile or other medium in which one or more visual images are embodied so as to be capable (with or without the aid of equipment) of being reproduced,

and without limiting the generality of the foregoing, includes any court application, order and other legal process and any notice;

"dollar" or "$" means the lawful currency for the time being of the United States of America;

"eligible insolvency practitioner" means an insolvency practitioner who is eligible to act in relation to a company, foreign company or individual in accordance with section 482;

"floating charge" means a charge created by a company or a foreign company which is, or as created was, a floating charge;

"foreign company" means a body corporate that is incorporated, registered or formed outside the Virgin Islands but excludes a company within the meaning of section 3;

"insolvency practitioner" means a person acting in a capacity specified in section 474(1);

"insolvent",

(a) in relation to a company or a foreign company, has the meaning specified in section 8(1), and

(b) in relation to an individual, has the meaning specified in section 8(2);

No. 15 of 1994

"Insurance Act" means the Insurance Act, 1994;

No. 15 of 1994

"insurance company" means a company or a foreign company that holds, or at any time in the previous two years has held, a licence as an insurer issued under the Insurance Act;

"interim supervisor" means the person appointed as the interim supervisor under a proposal for an arrangement;

Cap. 291

"International Business Companies Act" means the International Business Companies Act (Cap. 291);

"liability" has the meaning specified in section 10;

"licensed insolvency practitioner" means a person holding a licence to act as an insolvency practitioner issued under section 476;

"liquidator", in relation to a company or a foreign company, means a liquidator appointed under section 159;

"member", in relation to a company, includes

(a) a member of a company limited by guarantee; and

Cap. 285

(b) a person to whom shares in a company have been transferred or transmitted by law, even though that person is not a member of the company within the meaning of the Companies Act;

"memorandum" means

(a) the memorandum of association of a company, or

(b) where the context permits, in the case of a foreign company its memorandum of association or other constituting document, by whatever name called;

"officer", in relation to a body corporate, includes a director and secretary of that body corporate but does not include an administrator, liquidator, receiver, supervisor or interim supervisor;

"Official Receiver" means the Official Receiver appointed by the Commission under section 488;

"preferential claim" means a claim of a type prescribed by the Rules as a preferential claim;

"preferential creditor" means a creditor having a preferential claim;

"prescribed" means prescribed by the Rules and "prescribed form" means a form specified in the Rules;

"prescribed priority" means

(a) in a liquidation, the priority for the payment of the costs and expenses of a liquidation prescribed in the Rules, and

(b) in a bankruptcy, the priority for the payment of the costs and expenses of a bankruptcy prescribed in the Rules;

"public document" has the meaning specified in section 13;

"receiver" means the receiver of the whole or any part of the assets of a company or a foreign company and includes

(a) a manager and a receiver and manager,

(b) a receiver of income, and

(c) an administrative receiver;

"receiver appointed out of court" means a receiver appointed in the exercise of a power conferred by a debenture or other instrument;

"Registrar" means the Registrar of Companies appointed under the Companies Act; Cap. 285

"regulated person" means a person that holds a prescribed financial services licence;

"related company" means a company that is related to another company in accordance with section 5(2);

"remuneration" includes properly incurred expenses and disbursements;

"retention of title agreement" means any agreement for the sale of goods under which the seller reserves title in the goods until payment, but excludes an agreement that constitutes a charge on the goods;

"Rules" means the Insolvency Rules made under section 498;

"security interest" includes a charge and a lien;

"statement of affairs" means a statement of the affairs of a company or a foreign company complying with section 277 and "verified statement of affairs" means a statement of affairs that has been verified by affidavit;

"statement of assets and liabilities" means a statement of the assets and liabilities of an individual complying with section 366 and "verified statement of assets and liabilities" means a statement of assets and liabilities that has been verified by affidavit;

"statutory demand" means a demand made under section 155;

"subsidiary" and "holding company" have the meanings specified in section 4;

"supervisor" means the person appointed to act as the supervisor of an arrangement under Part **II**;

"unlicensed financial services business" has the meaning specified in section 7; and

"Virgin Islands court" means any court having jurisdiction in the Virgin Islands.

(2) References in this Act or in the Rules to the "venue" for any proceeding, attendance before the Court or for a meeting are to the time, date and place for the proceeding, attendance or meeting.

Meaning of "company".

Cap. 285

3. Unless this Act expressly provides otherwise, "company" means

(a) a company incorporated under the Companies Act; or

(b) an international business company incorporated or continued under the International Business Companies Act.

Meaning of "subsidiary" and "holding company".

4. (1) A company is a "subsidiary" of another company, its "holding company", if that other company

(a) holds a majority of the voting rights in it,

(b) is a member of it and has the right to appoint or remove a majority of its board,

(c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it,

or if it is a subsidiary of a company which is itself a subsidiary of that other company.

(2) For the purposes of subsection (1), "company" includes a foreign company and any other body corporate.

Meaning of "connected person" and "related company".

5. (1) In relation to a company, "connected person" means any one or more of the following

(a) a promoter of the company;

(b) a director or member of the company or of a related company;

(c) a beneficiary under a trust of which the company is or has been a trustee;

(d) a related company;

(e) another company one of whose directors is also a director of the company;

(f) a nominee, relative, spouse or relative of a spouse of a person referred to in paragraphs (a) to (c);

(g) a person in partnership with a person referred to in paragraphs (a) to (c); and

(h) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

(2) A company is related to another company if

(a) it is a subsidiary or holding company of that other company;

(b) the same person has control of both companies; and

(c) the company and that other company are both subsidiaries of the same holding company.

(3) In relation to an individual, "connected person" means any one or more of the following

(a) a relative, spouse or relative of a spouse of the individual;

(b) a person in partnership with the individual;

(c) a relative or spouse of a person in partnership with the individual;

(d) a company in respect of which he is a connected person under subsection (1);

(e) a trustee of a trust having as a beneficiary a person who is, apart from this paragraph, a connected person.

(4) For the purposes of this section, "company" includes a foreign company and any other body corporate.

Meaning of "director".

6. (1) Subject to subsection (3), "director" in relation to a body corporate includes

(a) a person occupying or acting in the position of director by whatever name called;

(b) a person in accordance with whose directions or instructions a director or the board of a body corporate may be required or is accustomed to act; and

(c) a person who exercises, or is entitled to exercise, or who controls, or is entitled to control, the exercise of powers which, apart from the memorandum or articles, would fall to be exercised by the board.

(2) Notwithstanding subsection (1)

(a) a person is not to be regarded as a director of a body corporate by reason only that a director or the board act on advice given by him in a professional capacity; and

(b) a person acting as an insolvency practitioner in relation to a company or a foreign company is not to be regarded as a director of the company or foreign company by virtue of his acting in that capacity.

(3) In Parts **IX** and **X**, "director" has the meaning specified in this section with the deletion of subsection (1)(c).

Meaning of "unlicensed financial services business".

7. A person carries on unlicensed financial services business if he carries on an activity for which a prescribed financial services licence is required without having such a licence authorising him to carry on the activity.

Meaning of "insolvent".

8. (1) A company or a foreign company is insolvent if

(a) it fails to comply with the requirements of a statutory demand that has not been set aside under section 157;

(b) execution or other process issued on a judgment, decree or order of a Virgin Islands court in favour of a creditor of the company is returned wholly or partly unsatisfied; or

(c) either

(i) the value of the company's liabilities exceeds its assets, or

(ii) the company is unable to pay its debts as they fall due.

(2) An individual is insolvent if

(a) he fails to comply with the requirements of a statutory demand that has not been set aside under section 157; or

(b) execution or other process issued on a judgment, decree or order of a Virgin Islands court in favour of a creditor of the individual is returned wholly or partly unsatisfied.

Meaning of "creditor", "secured creditor" etc.

9. (1) A person is a creditor of another person (the debtor) if he has a claim against the debtor, whether by assignment or otherwise, that is, or would be, an admissible claim in

(a) the liquidation of the debtor, in the case of a debtor that is a company or a foreign company; or

(b) the bankruptcy of the debtor, in the case of a debtor who is an individual.

(2) A creditor is a secured creditor of a debtor if he has an enforceable security interest over an asset of the debtor in respect of his claim.

(3) An unsecured creditor is a creditor who is not a secured creditor.

Meaning of "liability".

10. (1) For the purposes of this Act, "liability" means a liability to pay money or money's worth including a liability under an enactment, a liability in contract, tort or bailment, a liability for a breach of trust and a liability arising out of an obligation to make restitution, and "liability" includes a debt.

(2) A liability may be present or future, certain or contingent, fixed or liquidated, sounding only in damages or capable of being ascertained by fixed rules or as a matter of opinion.

(3) For the purposes of this Act, an illegal or unenforceable liability is deemed not to be a liability.

Admissible claims.

11. (1) For the purposes of this section, "relevant time" means the time of the commencement of the liquidation of a company or a foreign company or the commencement of the bankruptcy of an individual, as the case may be.

(2) Subject to section 12, the following liabilities are admissible as claims in the liquidation of a company or foreign company or in the bankruptcy of an individual;

(a) liabilities of the company, foreign company or individual at the relevant time;

(b) liabilities of the company, foreign company or individual arising after the relevant time by virtue of any obligation incurred before the relevant time; and

(c) any interest that may be claimed in accordance with this Act or the Rules.

(3) For the purposes of determining whether a liability in tort is an admissible claim in the liquidation of a company or foreign company or in the bankruptcy of an individual, the company, foreign company or individual is deemed to become subject to that liability by reason of an obligation incurred at the time the cause of action accrued.

Non-admissible claims.

12. The following liabilities are not admissible claims in the liquidation of a company or a foreign company or the bankruptcy of an individual;

(a) an obligation arising under a confiscation order made under

(i) the Drug Trafficking Offences Act, 1992, or No. 5 of 1992

(ii) the Proceeds of Criminal Conduct Act, 1997; No. 5 of 1997

(b) a liability that, under any enactment or rule of law, is of a type that is not claimable, whether on grounds of public policy or otherwise; and

(c) such other liabilities or claims as may be prescribed.

Meaning of "public document".

13. (1) Subject to subsection (3), a "public document", in relation to a person, means a document of, or purporting to be issued, published or signed by or on behalf of that person that

(a) in the case of a company or foreign company, is required or permitted to be filed with the Registrar under

(i) this Act or the Rules,

(ii) the Companies Act, or Cap. 285

(iii) the International Business Companies Act; Cap. 291

(b) is issued, published or signed under, or for the purposes of, this Act or the Rules or any other enactment; or

(c) is issued or signed in the course of, or for the purposes of, a particular transaction or dealing.

(2) Without limiting subsection (1), "public document" includes a business letter, statement of account, invoice, receipt, order for goods, order for services or an official notice of, or purporting to be issued, published or signed by, or on behalf of, that person.

(3) A document is not a public document if it is applied, or intended or required to be applied, to goods or to any container, package or wrapping within which goods are, or are intended to be, supplied for a purpose connected with the supply of those goods.

PART II

CREDITORS' ARRANGEMENTS

Division 1 - Interpretation

Interpretation for and scope of this Part.

14. (1) In this Part,

"arrangement" has the meaning specified in section 15;

"debtor" means a company or individual proposing an arrangement,

"nominated insolvency practitioner" means the insolvency practitioner nominated as the interim supervisor under a proposal

(a) by the board of a company,

(b) by the administrator or liquidator of a company, where the company is in administration or liquidation, or

(c) by an individual debtor; and

"proposal" means a proposal for an arrangement.

(2) Where the context allows, a reference in this Part

(a) to a proposal includes the proposal as amended; and

(b) to the rejection of a proposal includes the deemed rejection of a proposal.

Arrangements.

15. (1) An arrangement is a compromise between a debtor and its or his creditors, the implementation of which is supervised by a supervisor acting as a trustee or otherwise.

(2) Without limiting subsection (1), an arrangement may

(a) cancel all or any part of, or vary, a liability of the debtor;

(b) vary the rights of the debtor's creditors or the terms of a debt; and

(c) include any other provision that may be prescribed.

(3) Varying a liability or the terms of a debt under paragraphs (a) or (b) of subsection (2) may include

(a) varying, adding or cancelling rights to interest; and

(b) varying the dates upon which a liability, or part of a liability, becomes due for payment.

(4) An arrangement shall not, except with the written agreement of the secured creditor or the preferential creditor concerned

(a) affect the right of a secured creditor of the debtor to enforce his security interest or vary the liability secured by the security interest; or

(b) result in a preferential creditor receiving less than he would receive in a liquidation or bankruptcy of the debtor had it commenced at the time of approval of the arrangement.

(5) An arrangement does not effect a release of any surety or co-debtor of the debtor unless the terms of the arrangement expressly provide otherwise.

Remuneration of supervisor and interim supervisor.

16. A supervisor and an interim supervisor is entitled to be paid remuneration for his services consisting of

(a) any disbursements made by the interim supervisor prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and

(i) in the case of a company, the board or, where it is in liquidation, the administrator or liquidator, or

(ii) in the case of an individual, the debtor; 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 an administration or liquidation (in the case of a company) or in a bankruptcy (in the case of an individual).

Fixing of remuneration by Court.

17. (1) Notwithstanding the terms of the arrangement, on the application of a person referred to in subsection (4), the Court may review and fix the amount paid or to be paid by way of remuneration to a supervisor or an interim supervisor.

(2) Subject to subsection (3), the Court's power under subsection (1)

(a) extends to fixing the remuneration for any period before the making of the order or the application for it;

(b) is exercisable notwithstanding that the supervisor or interim supervisor has died or ceased to act before the making of the application or the order; and

(c) extends to requiring him or his personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by the supervisor or interim supervisor as remuneration exceeds that fixed by the Court for the period concerned.

(3) The power conferred by subsection (2)(c) may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(4) Application to the Court for an order under subsection (1) may be made by any of the following persons

(a) the supervisor or interim supervisor; or

(b) the company or

(i) if the company is in liquidation, its liquidator, or

(ii) if the company is in administration, its administrator.

(5) In fixing the remuneration of a supervisor or interim supervisor under this section, the Court shall apply the general principles specified in section 432.

Commission's rights in respect of a regulated person.

18. Where a proposal is made, or an arrangement approved, in respect of a regulated person

(a) every notice or other document required to be sent to a creditor of the debtor under this Part shall also be sent to the Commission; and

(b) unless the applicant is the Commission, notice shall be given to the Commission of any application to the Court under this Part.

Division 2 - Company Creditors Arrangement

Interpretation and scope of Division.

19. (1) In this Division, "proposal period" means the period from the appointment of the interim supervisor to the approval or rejection by the creditors of the proposed arrangement.

(2) A foreign company may not propose or enter into an arrangement under this Division.

PROPOSAL AND INTERIM SUPERVISOR

Proposal for an arrangement by board.

20. (1) The board of a company, other than a company that is in liquidation or in administration, may propose an arrangement and nominate an interim supervisor to act in relation to the proposed arrangement if

(a) it believes on reasonable grounds that the company is insolvent or is likely to become insolvent; and

(b) it has passed a resolution

(i) stating its belief that the company is insolvent or is likely to become insolvent,

(ii) approving a written proposal containing the information prescribed, and

(iii) nominating an eligible insolvency practitioner to be appointed as interim supervisor.

(2) A director who votes in favour of a resolution under subsection (1) without having reasonable grounds for believing that the company is insolvent or is likely to become insolvent commits an offence.

Appointment of interim supervisor by board.

21. (1) Where the board of a company has passed a resolution under section 20(1)(b), it shall provide the nominated insolvency practitioner with

(a) a copy of the resolution passed;

(b) a copy of the proposal approved by the board;

(c) a statement of affairs made up to a date no earlier than two weeks prior to the date of the resolution; and

(d) a notice of intention to appoint the nominated insolvency practitioner as interim supervisor.

(2) The nominated insolvency practitioner may accept appointment as interim supervisor by delivering a copy of the notice referred to in subsection (1)(d), endorsed in accordance with the Rules, to the board within five business days of the date when the resolution was passed under section 20(1)(b).

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when he delivers the endorsed notice to the board.

(4) A resolution passed under section 20(1)(b) lapses and is of no effect if the insolvency practitioner nominated in the resolution is not appointed in accordance with this section within five business days of the date when the resolution was passed.

Appointment of interim supervisor, company in administration or liquidation.

22. (1) Where a company is in administration or liquidation, the administrator or liquidator may make a proposal and appoint another eligible insolvency practitioner as the interim supervisor.

(2) Where the administrator or liquidator intends to appoint another eligible insolvency practitioner as interim supervisor, he shall provide him with

(a) a notice of intention to appoint him as interim supervisor; and

(b) a written proposal containing the information prescribed.

(3) The nominated insolvency practitioner may accept appointment as interim supervisor by delivering the notice referred to in subsection (2)(a), endorsed in accordance with the Rules, to the administrator or liquidator.

(4) The appointment of an interim supervisor under this section takes effect from the time when the endorsed notice of intention to appoint is received by the administrator or liquidator.

Administrator or liquidator acting as interim supervisor.

23. (1) An administrator or liquidator who intends to make a proposal may, instead of appointing another eligible insolvency practitioner as interim supervisor, act as the interim supervisor himself.

(2) Where the administrator or liquidator intends to act as the interim supervisor himself he shall

(a) prepare a written proposal containing the information prescribed; and

(b) sign a notice of intention to act as interim supervisor.

(3) The appointment of the administrator or liquidator as interim supervisor under this section takes effect on the date of the notice of intention to act as interim supervisor.

Notification of appointment of interim supervisor

24. (1) The interim supervisor shall, within two business days of his appointment

(a) file a notice of appointment as interim supervisor with the Registrar; and

(b) if the company is a regulated person, file a copy of the notice of his appointment with the Commission.

(2) An interim supervisor who contravenes subsection (1) commits an offence.

Functions of interim supervisor and power to obtain information.

25. (1) The functions of an interim supervisor are

(a) to prepare a report on the proposal for the creditors;

(b) to carry out any duties assigned to him by this Act or the Rules;

(c) in the case of an interim supervisor appointed by the board or by the administrator or liquidator of a company, to undertake such functions and duties as he may agree to undertake with the board or with the administrator or liquidator; and

(d) in the case of an interim supervisor appointed by the board of a company, to monitor the affairs of the company, including the conduct of its business, during the proposal period.

(2) Where an interim supervisor is appointed by the board or by the administrator or liquidator of a company, every officer of the company or the administrator or liquidator of the company, as the case may be, shall

(a) provide to the interim supervisor such documents, information and explanations as he may reasonably require for the purposes of enabling him to exercise his functions; and

(b) give the interim supervisor such assistance as he may reasonably require.

(3) On the application of the interim supervisor, the Court may make an order requiring an officer of the company to comply with subsection (2).

(4) An officer of a company who fails to comply with an order of the Court made under subsection (3) commits an offence.

Amendment of proposal before creditors' meeting.

26. (1) The board of a company or, in the case of a company that is in administration or liquidation, its administrator or liquidator, may amend a proposal in accordance with the Rules

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of a creditors' meeting has been given under section 27; or

(c) after notice of a creditor's meeting has been given under section 27 but before the date fixed for the meeting.

(2) The board of a company may not amend a proposal unless it has passed a resolution to do so.

(3) A proposal cannot be amended otherwise than in accordance with this section or section 31.

MEETING OF CREDITORS

Calling creditors' meeting.

27. (1) The interim supervisor shall

(a) prepare a written report on the proposal complying with the Rules;

(b) call a meeting of creditors for a date no later than 28 days after the commencement of the proposal period for the purposes of considering whether to approve the proposal;

(c) send to each creditor, together with the notice of the meeting, a copy of the proposal, his report on the proposal and a copy of the company's statement of affairs;

(d) cause the creditors' meeting to be advertised;

(e) send a copy of the notice of the creditors' meeting, together with copies of the documents sent to creditors, to every member of the company; and

(f) send to every director of the company a copy of the notice of the meeting, together with copies of the documents sent to creditors.

(2) Where a proposal is amended under section 26(1)(b), this section and section 28 applies to the amended proposal as if it were the original proposal.

(3) An interim supervisor who contravenes subsection (1) commits an offence.

Interim supervisor may require certain persons to attend creditors' meeting.

28. (1) If the interim supervisor considers that it is reasonable to require the presence at a creditors' meeting called under section 27 of a person specified in subsection (4), the interim supervisor may, by notice, require the person to attend the meeting.

(2) In determining whether it is reasonable to require a person to attend the creditors' meeting, the matters that the interim supervisor shall have regard to include

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by him in attending the meeting, unless the interim supervisor is prepared to pay those expenses;

(c) the distance that he would be required to travel to attend the meeting; and

(d) the time that it would take him to travel to and from and attend the meeting.

(3) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to that person at least 14 days prior to the date of the meeting and shall be accompanied by copies of the documents required to be sent to creditors under section 27(1)(c).

(4) Subsection (1) applies to an officer of the company and to any person who, at any time during the two years prior to the date of the notice, was an officer of the company.

(5) A person commits an offence if

(a) he receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, he fails to attend the meeting.

Attendance of members and directors at creditors' meeting.

29. (1) Subject to subsection (2), each member and director of a company is entitled to attend the creditors' meeting and, with the permission of the chairman, to address the meeting, but not to vote in that capacity at the meeting.

(2) The chairman of the creditors' meeting may, if he thinks fit, exclude any present or former director or other officer from attendance at the meeting, either completely or for any part of it.

(3) Subsection (2) applies whether or not the present or former director or other officer

(a) is also a member; or

(b) has been sent a notice requiring him to attend the meeting.

Business to be conducted at creditors' meeting.

30. (1) At the meeting called under section 27, the creditors may resolve

(a) to approve the proposal, with or without amendment, and appoint the interim supervisor, or another eligible insolvency practitioner, to be the supervisor of the arrangement;

(b) to adjourn the meeting to a date no later than three months after the commencement of the proposal period; or

(c) to reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if

(a) the proposal does not comply with section 15(4);

(b) the proposal has been amended without the consent of the board or, in the case of a company in administration or liquidation, its administrator or liquidator; or

(c) the proposal has been amended otherwise than in accordance with section 26 or section 31.

(3) The proposal is deemed to be rejected, and the creditors' meeting concluded, if

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) On the rejection of a proposal the proposal period ends and the appointment of the interim supervisor is terminated.

(5) References in this section to a meeting include, where the meeting is adjourned, the adjourned meeting.

Amendment of proposal at creditors' meeting.

31. (1) Where, at a meeting called under section 27, the creditors wish to approve an amended proposal that has not been amended in accordance with section 26, the meeting shall be adjourned for sufficient time to enable the chairman of the meeting to give all creditors of the company not present or represented at the meeting at least two business days notice

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 30 applies to the adjourned meeting.

(3) Subsection (1) does not apply if

(a) every creditor who was given notice of the meeting under section 27 is present or represented at the meeting; or

(b) the chairman certifies in writing that an amendment is to correct minor errors or is otherwise not material.

Report on outcome of creditors' meeting.

32. (1) The chairman of a creditors' meeting called under section 27 shall, within four business days of the conclusion of the meeting, prepare a report complying with subsection (2).

(2) A report prepared under subsection (1) shall

(a) state whether the proposal was approved or rejected and, if approved, with what modifications, if any;

(b) set out the resolutions put to the meeting, and the decision on each one;

(c) list the creditors, with their respective values, who were present or represented at the meeting;

(d) state whether any moratorium was extended; and

(e) include such further information, if any, that the chairman

considers should be made known to creditors.

(3) The chairman shall

(a) send a copy of his report to every creditor and every member of the company; and

(b) file a copy of his report with the Registrar.

(4) For the purposes of subsection (1), a creditors' meeting is concluded if

(a) the creditors resolve either to approve or reject the proposal; or

(b) the proposal is deemed to be rejected.

(5) A person who contravenes subsection (1) or subsection (3) commits an offence.

Notification of appointment of supervisor.

33. (1) The supervisor shall, within two business days of his appointment

(a) file a notice of appointment as supervisor with the Registrar; and

(b) if the company is a regulated person, file a copy of the notice of his appointment with the Commission.

(2) A supervisor who contravenes subsection (1) commits an offence.

Effect of approval of proposal.

34. (1) Where a proposal is approved at a creditors' meeting, the arrangement is binding on the company and on each member and each creditor of the company as if he was a party to the arrangement.

(2) For the purposes of subsection (1), a person is a creditor of the company if he has a claim against the company that would be an admissible claim in
a liquidation of the company commencing at the time of the approval of the arrangement.

IMPLEMENTATION OF ARRANGEMENT

Supervisor to be given possession of assets included in arrangement.

35. (1) After the approval of an arrangement the board or, where appropriate the administrator or liquidator, shall forthwith take all necessary steps to put the supervisor into possession of the assets included in the arrangement.

(2) The supervisor shall, on taking possession of the assets included in the arrangement

(a) where, at the time of approval, the company is in administration or liquidation

(i) promptly discharge any sums due to the administrator or liquidator under the Act or the Rules; or

(ii) provide the administrator or liquidator with a written undertaking to discharge any such sums out of the assets as soon as practicable; and

(b) where, at the time of approval, the company is in liquidation, promptly discharge any sums due to the preferential creditors.

(3) The supervisor shall, out of the assets included in the arrangement,

(a) discharge all guarantees properly given, or obligations properly entered into, by the administrator or liquidator for the benefit of the company or in the course of his duties;

(b) pay the administrator's or the liquidator's outstanding remuneration; and

(c) if as part of the arrangement, the administration order is to be discharged and the administrator released or the liquidation stayed, pay the costs of such discharge, release or stay.

(4) The following have equally ranking charges on the assets included in the arrangement, subject to the deduction of the proper costs and expenses of realisation

(a) notwithstanding his release or discharge, the administrator or liquidator of a company in respect of any monies payable under subsections (2) and (3); and

(b) each preferential creditor in respect of any monies payable to him under subsection (2).

(5) In this section, "liquidator" and "administrator" includes, where appropriate, a former liquidator or administrator.

36. (1) Where an arrangement permits or requires the supervisor

Supervisor's duty to keep accounting records.

(a) to carry on the business of the company or trade on its behalf and in its name;

(b) to realise assets of the company; or

(c) otherwise to administer or dispose of any of its funds;

he shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to his acts and dealings in and in connection with the arrangement.

(2) The supervisor shall retain the accounting records kept under subsection (1) for a period of not less than six years after the termination of the arrangement.

(3) A supervisor who contravenes this section commits an offence.

Supervisor to prepare and send out regular accounts and reports.

37. (1) The supervisor shall prepare accounts of his receipts and payments, if any, and reports concerning the progress and efficacy of the arrangement covering the periods specified in subsection (2).

(2) The accounts and reports prepared under subsection (1) shall cover

(a) the period of 12 months following the supervisor's appointment;

(b) each subsequent period of 12 months; and

(c) where the supervisor ceases to act as supervisor

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he acted as supervisor for less than 12 months from the date of his appointment, to the date of his ceasing to act, and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless prepared in accordance with subsection (2)(c)(i).

(3) The supervisor shall, within sixty days of the last day of the period covered by the accounts

(a) file a copy of the accounts and his report with the Registrar; and

(b) send a copy of the accounts and his report to

(i) the company,

(ii) each creditor of the company, and

(iii) each member of the company.

(4) The Court, on the application of the supervisor, may dispense with the sending of the accounts and report prepared under subsection (1) to the members of the company.

(5) A supervisor who contravenes this section commits an offence.

Completion of arrangement.

38. (1) Where an arrangement is completed, the supervisor shall, within 28 days of its completion

(a) file a notice of completion with the Registrar; and

(b) send a notice of completion to the company and to each creditor and member of the company.

(2) Where an arrangement is completed, the report prepared under section 37(2)(c) shall explain any material difference between the implementation of the arrangement and the proposal approved by the creditors.

(3) A supervisor who contravenes this section commits an offence.

MODIFICATION OF ARRANGEMENT

Supervisor may propose modification of arrangement.

39. (1) In this section and in section 40

(a) "creditor", in relation to an arrangement, means a creditor bound by that arrangement; and

(b) "proposal" means a proposal to modify an arrangement.

(2) If the supervisor of an arrangement considers it appropriate, he may propose a modification of the arrangement at a meeting of creditors called for such a purpose.

(3) The supervisor shall call a meeting of creditors under subsection (2) by sending to each creditor

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Rules.

(4) The supervisor shall send a copy of the notice of the meeting and his report on the proposed modification to each member and director of the company.

Modification of arrangement.

40. (1) Unless the Rules otherwise provide, sections 28, 29, 30 and 32 and the relevant Rules apply, with suitable modifications, to a meeting called under section 39.

(2) Where a proposal to modify an arrangement is approved

(a) the modified arrangement is binding on the company and on each member and each creditor of the company as if he had agreed to the modification; and

(b) the provisions of this Division applicable to an arrangement apply to the modified arrangement.

(3) An arrangement may not be modified otherwise than in accordance with section 39 and this section.

APPLICATIONS TO COURT

Appointment of interim supervisor or supervisor by Court.

41. (1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner, is appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made

(a) where the supervisor or interim supervisor has failed to comply with a duty imposed upon him under this Division or has died, by the board of the company, or where it is in administration or liquidation by the administrator or liquidator; or

(b) where it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act, by the board of the company, or where it is in administration or liquidation by the administrator or liquidator, or by the supervisor or interim supervisor.

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

Application where arrangement approved or modified.

42. (1) Where an arrangement is approved or modified, the Court may

(a) on an application made by a person specified in subsection (2)

(i) give directions to the supervisor in relation to any matter arising,

(ii) confirm, reverse or modify any act or decision of the supervisor, or

(iii) make such other order as it considers fit; or

(b) on an application made by the supervisor or, if appropriate the administrator or liquidator

(i) discharge the administration order or stay the liquidation, and

(ii) give such directions regarding the administration or liquidation as it considers appropriate.

(2) Application under subsection (1)(a) may be made by the supervisor, by any administrator or liquidator, by a creditor, director or member of the company, by a surety of a liability of the company, by a co-debtor of the company, by a person affected by the arrangement or, where the company is a regulated person, by the Commission.

(3) The Court shall not make an order under subsection (1)(b)

(a) until a period of 28 days after the chairman's report is filed under section 32(3); or

(b) at any time when an application under section 43, or an appeal in respect of such an application is outstanding or during the period within which such an appeal may be brought.

Application on grounds of unfair prejudice.

43. (1) An application may be made by a person specified in subsection (2) for an order under subsection (3) on one or both of the following grounds:

(a) that an arrangement approved or modified by the creditors unfairly prejudices the interests of a member, creditor, surety or co-debtor of the company; or

(b) that there has been a material irregularity at or in relation to the meeting at which the arrangement was approved or modified.

(2) An application for an order under subsection (3) may be made by

(a) a member, creditor, surety or co-debtor of the company;

(b) the supervisor or the person who, immediately prior to the approval of the arrangement, acted as interim supervisor;

(c) where the company is in administration, the administrator;

(d) where the company is in liquidation, the liquidator; or

(e) where the company is a regulated person, the Commission.

(3) Where it is satisfied as to either of the grounds specified in subsection (1), the Court

(a) may revoke or suspend

(i) any decision approving or modifying the arrangement, or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity; and

(b) may give a direction to any person

(i) for the calling of a further meeting to consider any amended proposal for an arrangement that the board or the supervisor may make,

(ii) for the calling of a further meeting to consider any amended proposal for a modification of the arrangement that the supervisor may make, or

(iii) where there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the arrangement or for the modification of an arrangement.

(4) Where at any time after giving a direction under subsection (3)(b)(i) or (ii), the Court is satisfied that the board, or the supervisor, does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the arrangement or the modification of an arrangement.

(5) Where the Court, on an application under this section, gives a direction under subsection (3)(b) or revokes or suspends a decision under subsection (3)(a) or (4), the Court may give such supplemental directions as it considers fit and, in particular, directions with respect to things done under the arrangement since it, or any modification, took effect.

(6) Except as provided in this section, a decision taken at a meeting called under section 27 or 39 is not invalidated by any irregularity at or in relation to the meeting.

(7) Without limiting subsection (1)(a), the interests of a member, creditor, surety or co-debtor of the company are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

Application to Court by former supervisor or interim supervisor.

44. Where an application may be made to the Court by a supervisor or an interim supervisor under section 41, 44, 42 or 43, an application may, with the leave of the Court, be made by the person who was the supervisor or interim supervisor immediately before

(a) the termination of his appointment;

(b) the termination of the arrangement; or

(c) the termination of the proposal period;

as the case may be.

OFFENCES

False representations etc.

45. An officer of a company who makes any false representation or who fraudulently does, or omits to do, anything for the purpose of obtaining the approval of the creditors of the company to an arrangement commits an offence.

Division 3 - Individual Creditors' Arrangement

Interpretation for and scope of this Division.

46. (1) In this Division,

"debtor" means an individual who intends to make or who has made a proposal under this Division; and

"interested person" means,

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest,

(b) in relation to an asset not belonging to a debtor which is used or occupied by or in the possession of the debtor, the owner or lessor of the asset,

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress, and

(d) in relation to a guarantee of a liability of the debtor, the person entitled to enforce the guarantee;

"proposal period", means the period from the appointment of the interim supervisor to the approval or rejection by the creditors of the proposed arrangement.

(2) An undischarged bankrupt may not make a proposal under this Division.

(3) Where the context allows, a reference in this Division to the extension of a moratorium period includes a further extension of the moratorium period.

PROPOSAL

Proposal.

47. (1) A debtor who intends to make a proposal under this Division shall

(a) nominate an insolvency practitioner to act as interim supervisor for the purposes of the proposal; and

(b) provide the nominated insolvency practitioner with

(i) a copy of the proposal,

(ii) a statement of assets and liabilities made up to a date no earlier than four weeks prior to the date upon which it is provided to the nominated insolvency practitioner, and

(iii) a notice of intention to appoint the nominated insolvency practitioner as interim supervisor.

(2) The nominated insolvency practitioner may accept appointment as interim supervisor, by delivering to the debtor a copy of the notice referred to in subsection (1)(b), endorsed in accordance with the Rules.

(3) Subject to subsection (4), the appointment of an interim supervisor takes effect from the time when he delivers the endorsed notice to the debtor.

(4) The appointment of an interim supervisor is not effective unless he accepts appointment under subsection (2) within five business days of the date of receiving the notice of intention to appoint him as interim supervisor from the debtor.

Notification of appointment of interim supervisor.

48. (1) If the debtor is a regulated person, the interim supervisor shall, within two business days of his appointment file a copy of the notice of his appointment with the Commission.

(2) An interim supervisor who contravenes subsection (1) commits an offence.

Functions of interim supervisor and power to obtain information.

49. (1) The functions of an interim supervisor are

(a) to prepare a report on the proposal for the Court;

(b) to carry out any duties assigned to him by this Act or the Rules or by the Court;

(c) to undertake such functions and duties as he may agree with the debtor; and

(d) to monitor the affairs of the debtor, including the conduct of any business carried on by the debtor, during the proposal period.

(2) For the purposes of enabling the interim supervisor to exercise his functions, a debtor shall

(a) provide to the interim supervisor such documents, information and explanations as he may reasonably require; and

(b) give the interim supervisor such assistance as he may reasonably require.

(3) On the application of the interim supervisor, the Court may make an order requiring a debtor to comply with subsection (2).

(4) A debtor who fails to comply with an order of the Court made under subsection (3) commits an offence.

Amendment of proposal after appointment of interim supervisor.

50. (1) A debtor may amend a proposal in accordance with the Rules

(a) before the appointment of an interim supervisor;

(b) after the appointment of an interim supervisor but before notice of a creditors' meeting has been given under section 58; or

(c) after notice of a creditor's meeting has been given under section 58 but before the date fixed for the meeting.

(2) A proposal cannot be amended otherwise than in accordance with this section or section 60.

MORATORIUM

Application for moratorium order.

51. (1) A debtor who intends to make a proposal may apply to the Court for a moratorium order under this section if

(a) he is entitled to apply to the Court for a bankruptcy order under section 295;

(b) an eligible insolvency practitioner has accepted appointment as interim supervisor under the proposal in accordance with section 47;

(c) no previous application for a moratorium has been made by the debtor during the 12 months immediately preceding the date of the application; and

(d) he is not a regulated person.

(2) An application under subsection (1) shall be supported by an affidavit setting out the matters prescribed and exhibiting

(a) a copy of the proposal provided to the interim supervisor under section 47(1)(b);

(b) a copy of the endorsed notice of appointment of the interim supervisor; and

(c) a statement of assets and liabilities.

(3) The debtor shall give two business days notice of the hearing of an application under this section to

(a) the interim supervisor; and

(b) any creditor who, to his knowledge, has applied to the Court for a bankruptcy order against him.

Court may grant stay.

52. (1) At any time when an application under section 51 for a moratorium order is pending, the Court may, on the application of the debtor or the interim supervisor, stay any action, execution or other legal process against the debtor or his assets.

(2) Any Virgin Islands court, or any tribunal in the Virgin Islands, in which proceedings are pending against a debtor may, on proof that an application under section 51 has been made by the debtor, either stay those proceedings or allow them to continue on such terms as it considers just.

Moratorium order.

53. (1) The Court may make a moratorium order on an application under section 51 if it considers that it would be appropriate to do so for the purpose of facilitating the consideration of the debtor's proposal.

(2) Unless extended by the Court under this section, a moratorium order ceases to have effect at the end of the fourteenth day after the date upon which it is made.

(3) If the Court makes a moratorium order under subsection (1), it shall at the same time fix a venue for consideration of the interim supervisor's report under section 56, no later than the date of expiry of the moratorium order under subsection (2).

(4) In a case where the interim supervisor has failed to submit his report as required by section 56, the Court may, on the application of the debtor, direct that the moratorium order shall continue or, if it has ceased to have effect, be renewed for such further period as the Court may order.

(5) The Court may, on the application of the interim supervisor, extend the period for which the moratorium order has effect so as to enable the interim supervisor to have more time to prepare and submit his report under section 56.

(6) The Court may, at any time, discharge the moratorium order if it is satisfied, whether by reason of a report made to it by the interim supervisor under section 54 or otherwise

(a) that the debtor has failed to comply with his obligations under section 49(2);

(b) that it would not be appropriate for a meeting of creditors to be called to consider the debtor's proposal; or

(c) that, for any other reason, it is appropriate for the moratorium order to be discharged.

(7) An order discharging the moratorium order may be made by the Court on the application of the debtor or the interim supervisor or on its own motion.

Duty of interim supervisor to report certain matters to the Court.

54. The interim supervisor shall report to the Court forthwith if, at any time during the period when a moratorium order is in force

(a) he forms the view that the proposed arrangement no longer has a reasonable prospect of being approved or implemented; or

(b) the debtor fails to comply with his obligations under section 49(2).

Effect of moratorium order.

55. (1) In the period during which a moratorium order is in force in respect of a debtor

(a) no application for a bankruptcy order against the debtor may be presented or proceeded with;

(b) no bankruptcy order may be made against the debtor;

(c) no steps may be taken to enforce any security interest over the debtor's assets, except with the leave of the Court;

(d) no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the debtor, including

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement; and

(ii) goods supplied subject to a retention of title agreement,

except with the leave of the Court; and

(e) no proceedings, execution or other legal process may be commenced or continued or distress levied against the debtor or his assets, except with the leave of the Court;

(2) On an application for leave under paragraphs (c) to (e) of subsection (1), the Court may grant leave subject to such terms and conditions as it considers fit.

(3) Subsection (1) does not prevent or require the leave of the Court to be obtained for

(a) the enforcement of a security interest on assets belonging to a debtor if, before the commencement of the moratorium period, an

interested person lawfully

(i) entered into possession of or assumed control of the assets, or

(ii) entered into a binding agreement to sell the assets,

for the purpose of enforcing the security interest on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a company if, before the commencement of the moratorium period, an interested person lawfully entered into possession, or assumed control of those assets; or

(c) the exercise by a creditor of any set-off that he would have been entitled to exercise under section 150 if the debtor was in bankruptcy, the bankruptcy having commenced on the date that the moratorium order was made.

CONSIDERATION OF PROPOSAL

Interim supervisor's report on debtor's proposal.

56. (1) An interim supervisor shall, before the end of the relevant time limit specified in subsection (3), file with the Court a report including the matters prescribed in the Rules.

(2) An interim supervisor shall file with the report

(a) where the debtor made an application for a moratorium order under section 51 and the proposal has since been amended, a copy of the amended proposal; or

(b) where the debtor has not made an application for a moratorium order, copies of the documents referred to in paragraphs (a) to (c) of section 51(2).

(3) The relevant time limits for the purposes of subsection (1) are

(a) where a moratorium order has been made, no less than two business days prior to the date of the hearing fixed under section 53(3);

(b) in any other case, within 14 days after the date of the appointment of the interim supervisor.

(4) The Court may, on the application of the interim supervisor, extend the period within which the interim supervisor shall submit his report under subsection (1) by such further period as it considers appropriate.

Extension of moratorium.

57. (1) This section applies where a moratorium order is in force at the time when the interim supervisor files his report with the Court.

(2) If, on receiving the interim supervisor's report, the Court is satisfied that a meeting of creditors should be called to consider the debtor's proposal, the Court shall extend the period for which the moratorium order is in force for such further period as it may specify for the purpose of enabling the debtor's proposal to be considered by his creditors in accordance with this Division and for the result of the creditors' meeting to be reported to the Court.

Calling creditors' meeting.

58. (1) Unless the Court otherwise orders, where the interim supervisor has reported to the Court that a meeting of creditors should be called, he shall

(a) call a meeting of creditors at the venue proposed in his report; and

(b) send to each creditor, together with the notice of the meeting, a copy of the debtor's proposal, his report on the proposal and a copy of the debtor's statement of assets and liabilities.

(2) An interim supervisor who contravenes subsection (1) commits an offence.

Decisions of creditors' meetings.

59. (1) At the meeting called under section 58, the creditors may resolve

(a) to approve the proposal, with or without amendment, and appoint the interim supervisor, or another eligible insolvency practitioner, to be the supervisor of the arrangement;

(b) to adjourn the meeting to a date no later than 28 days after the date for which the meeting was originally called; or

(c) to reject the proposal.

(2) A resolution to approve a proposal is invalid and of no effect if

(a) the proposal does not comply with section 15(4);

(b) the proposal has been amended without the consent of the debtor; or

(c) the proposal has been amended otherwise than in accordance with section 50 or section 60.

(3) The proposal is deemed to be rejected, and the creditors' meeting concluded, if

(a) the creditors fail to pass one of the resolutions specified in subsection (1); or

(b) the creditors' meeting is not held on the date for which it was called or to which it was adjourned.

(4) Where a meeting of creditors is adjourned, the chairman shall forthwith file a notice of the adjournment with the Court and the Court may, on the application of the debtor or the interim supervisor, extend the period for which the moratorium order is in force for such further period as it may specify for the purpose of enabling the adjourned meeting to be held and for the result to be reported to the Court.

(5) References in this section and section 60 to a meeting include, where the meeting is adjourned, an adjourned meeting.

Amendment of proposal at creditors' meeting.

60. (1) Where, at a meeting held under section 59, the creditors wish to approve an amended proposal that has not been amended in accordance with section 50, the meeting shall be adjourned for sufficient time to enable the chairman of the meeting to give all creditors not present or represented at the meeting at least two business days notice

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 59 applies to the adjourned meeting.

(3) Subsection (1) does not apply

(a) if every creditor who was given notice of the meeting under 58 is present or represented at the meeting; or

(b) if the chairman certifies in writing that an amendment is to correct minor errors or is otherwise not material.

Report of decisions to Court.

61. (1) The chairman of a creditors' meeting called under section 58 shall, within four business days of the date of the conclusion of the meeting

(a) file with the Court a report of the meeting complying with

subsection (2);

(b) file a notice of the arrangement with the Official Receiver; and

(c) if the debtor is a regulated person, file notice of the arrangement with the Commission.

(2) A report filed under subsection (1)(a) shall

(a) state whether the proposal was approved or rejected and, if approved, with what modifications, if any;

(b) set out the resolutions put to the meeting, and the decision on each one;

(c) list the creditors, with their respective values, who were present or represented at the meeting; and

(d) include such further information, if any, that the chairman considers should be made known to the Court.

(3) If a report filed under subsection (1)(a) states that the meeting has rejected the proposal, any moratorium order in force is discharged with effect from the end of the fourth business day after the conclusion of the meeting unless the Court otherwise orders.

(4) The chairman of the meeting shall, as soon as practicable after filing his report with the Court, send a notice stating the result of the meeting to all creditors of the debtor.

(5) A person who contravenes subsection (1) or subsection (4) commits an offence.

Effect of approval.

62. (1) Where the meeting of creditors called under section 58 approves the proposed arrangement, the arrangement

(a) takes effect as if made by the debtor at the meeting; and

(b) is binding on the debtor and each creditor of the debtor as if he were a party to the arrangement.

(2) For the purposes of subsection (1), a person is a creditor of the debtor if he has a claim against the debtor that would be an admissible claim in the bankruptcy of the debtor commencing at the time of the approval of the arrangement.

(3) If

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by the arrangement has not been paid; and

(b) the arrangement did not come to an end prematurely;

the debtor shall, at that time, become liable to pay to that person the amount payable under the arrangement.

(4) For the purposes of subsection (3), an arrangement comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement.

(5) Subject to section 72, any moratorium order in force in relation to the debtor immediately before the end of the period of 28 days beginning with the day on which the report with respect to the creditors' meeting was filed with the Court under section 61 ceases to have effect at the end of that period.

(6) Where proceedings on an application for a bankruptcy order have been stayed by a moratorium order which ceases to have effect under subsection (2), that application is deemed, unless the Court otherwise orders, to have been dismissed.

IMPLEMENTATION OF ARRANGEMENT

Supervisor to be given possession of assets included in arrangement.

63. After the approval of an arrangement the debtor shall forthwith take all necessary steps to put the supervisor into possession of the assets included in the arrangement.

Supervisor's duty to keep accounting records.

64. (1) Where an arrangement permits or requires the supervisor

(a) to carry on the debtor's business or trade on his behalf or in his name;

(b) to realise assets of the debtor; or

(c) otherwise to administer or dispose of any of the debtor's funds;

he shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to his acts and dealings in and in connection with the arrangement.

(2) The supervisor shall retain the accounting records kept under subsection (1) for a period of not less than 6 years after the termination of the arrangement.

(3) A supervisor who contravenes this section commits an offence.

Supervisor to prepare and send out regular accounts and reports.

65. (1) The supervisor shall prepare accounts of his receipts and payments, if any, and reports concerning the progress and efficacy of the arrangement covering the periods specified in subsection (2).

(2) The accounts and reports prepared under subsection (1) shall cover

(a) the period of 12 months following the supervisor's appointment;

(b) each subsequent period of 12 months; and

(c) where the supervisor ceases to act as supervisor

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he acted as supervisor for less than 12 months from the date of his appointment, to the date of his ceasing to act, and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless prepared in accordance with subparagraph (i).

(3) The supervisor shall, within sixty days of the last day of the period covered by the accounts

(a) file a copy of the accounts and his report with the Court; and

(b) send a copy of the accounts and his report to

(i) the Court,

(ii) the debtor, and

(iii) each creditor of the debtor.

(4) A supervisor who contravenes this section commits an offence.

Completion of arrangement.

66. (1) Where an arrangement is completed, the supervisor shall, within 28 days of its completion, file a notice of completion with the Court and send a copy of the notice to the debtor and to each creditor of the debtor.

(2) Where an arrangement is completed, the report prepared under section 61 shall explain any difference between the implementation of the agreement and the proposal approved by the creditors.

(3) A supervisor who contravenes this section commits an offence.

MODIFICATION OF ARRANGEMENT

Supervisor may propose modification of arrangement.

67. (1) In this section and in section 68

(a) "creditor", in relation to an arrangement, means a creditor bound by that arrangement; and

(b) "proposal" means a proposal to modify an arrangement.

(2) If the supervisor of an arrangement considers it appropriate, he may propose a modification of the arrangement at a meeting of creditors called for such a purpose.

(3) The supervisor shall call a meeting of creditors under subsection (1) by sending to each creditor

(a) a notice of the meeting; and

(b) a written report on the proposed modification complying with the Rules.

(4) The supervisor shall send a copy of the notice of the meeting and his report on the proposed modification to the debtor.

Modification of arrangement.

68. (1) Subject to the exceptions specified in the Rules, sections 59 and 61 and the relevant Rules apply, with suitable modifications, to a meeting called under section 67.

(2) Where a proposal to modify an arrangement is approved

(a) the modified arrangement is binding on the debtor and on each creditor of the debtor as if he had agreed to the modification; and

(b) the provisions of this Division applicable to an arrangement apply to the modified arrangement.

(3) An arrangement may not be modified otherwise than in accordance with section 67 and this section.

APPLICATIONS TO COURT

Appointment of interim supervisor or supervisor.

69. (1) The Court may, on an application made by a person and in the circumstances specified in subsection (2), order that an eligible insolvency practitioner who has filed with the Court a notice of consent to act, is appointed as supervisor or interim supervisor either in substitution for the existing supervisor or interim supervisor or to fill a vacancy.

(2) An application under subsection (1) may be made

(a) where the interim supervisor has failed to submit the report required by section 56, on the application of the debtor;

(b) where the supervisor or interim supervisor has failed to comply with a duty imposed upon him under this Division or has died, by the debtor;

(c) where it is impracticable or inappropriate for the existing supervisor or interim supervisor to continue to act, by the debtor or by the supervisor or interim supervisor; or

(d) where the individual is a regulated person, by the Commission.

(3) An order under subsection (1) may increase the number of persons acting as supervisor or interim supervisor or replace one or more of those persons.

Application in respect of moratorium.

70. (1) Where a moratorium order is or has been in force in respect of a debtor, the Court may, on an application made by the debtor, by the supervisor or interim supervisor, by a creditor, by a person affected by the moratorium or, where the individual is a regulated person, by the Commission

(a) give directions to the supervisor or interim supervisor in relation to any matter arising in connection with the moratorium;

(b) confirm, reverse or modify any act or decision of the supervisor or interim supervisor;

(c) terminate the moratorium order and make such consequential provisions as it considers fit; or

(d) make such other order, whether in relation to the supervisor or interim supervisor, the debtor or otherwise as it considers fit.

(2) Without limiting subsection (1)(d), an order under that subsection

(a) may require the debtor to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he has omitted to do;

(b) may require the calling of a meeting of creditors for the purpose of considering such matters as the Court may direct; and

(c) may make such provision as the Court considers necessary to protect the interests of one or more creditors in the period during which the moratorium order is in force.

(3) An application under subsection (1) may be made during the period in which the moratorium order is in force or after the moratorium order has been discharged.

(4) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the debtor in good faith and for value.

Application where arrangement approved or modified.

71. (1) Where an arrangement is approved or modified, the Court may, on an application made by a person specified in subsection (2)

(a) give directions to the supervisor in relation to any matter arising in connection with the arrangement;

(b) confirm, reverse or modify any act or decision of the supervisor; or

(c) make such other order as it considers fit.

(2) Application under subsection (1) may be made by the supervisor, by the debtor, by a creditor of the debtor, by a surety of a liability of the debtor, by a co-debtor of the debtor, by a person affected by the arrangement or, where the individual is a regulated person, by the Commission.

Application on grounds of unfair prejudice.

72. (1) An application may be made by a person specified in subsection (2) for an order under subsection (3) on one or both of the following grounds:

(a) that an arrangement approved or modified by the creditors at a meeting called under section 58 unfairly prejudices the interests of a creditor, surety or co-debtor; or

(b) that there has been a material irregularity at or in relation to the meeting at which the arrangement was approved or modified.

(2) An application for an order under subsection (1) may be made by

(a) the debtor;

(b) the supervisor or the person who, immediately prior to the approval of the arrangement, acted as interim supervisor;

(c) a creditor, surety or co-debtor of the debtor; or

(d) where the individual is a regulated person, by the Commission.

(3) Where it is satisfied as to either of the grounds specified in subsection (1), the Court may

(a) revoke or suspend

(i) any decision approving or modifying the arrangement, or

(ii) any decision taken at a meeting at or in relation to which there was a material irregularity;

(b) give a direction to any person

(i) for the calling of a further meeting to consider any amended proposal for an arrangement that the supervisor or the debtor may make,

(ii) for the calling of a further meeting to consider any amended proposal for a modification of the arrangement that the supervisor may make,

(iii) where there has been a material irregularity, for the calling of a further creditors' meeting to reconsider the proposal for the arrangement or for the modification of an arrangement.

(4) Where at any time after giving a direction under subsection (3)(b)(i), the Court is satisfied that the debtor does not intend to submit an amended proposal, the Court shall revoke the direction and revoke or suspend any decision approving the arrangement or the modification of the arrangement.

(5) Where the Court, on an application under this section gives a direction under subsection (3)(b) or revokes or suspends a decision under subsection (4), the Court may

(a) direct that any moratorium order in place be continued or, if it has ceased to have effect, be renewed for such further period as the Court may order; and

(b) give such supplemental directions as it considers fit and, in particular, directions with respect to things done under the arrangement since it took effect.

(6) Except as provided in this section, a decision taken at a meeting called under section 58 is not invalidated by any irregularity at or in relation to the meeting.

(7) Without limiting subsection (1)(a), the interests of a member, creditor, surety or co-debtor of the company are capable of being unfairly prejudiced on the grounds that the remuneration paid or to be paid to the supervisor is excessive.

MISCELLANEOUS

Register of arrangements.

73. (1) The Official Receiver shall maintain a register of arrangements made under this Division and shall record in the register all matters that are required to be reported to him under this Division or under the corresponding Division in the Rules.

(2) A member of the public is entitled to inspect the register maintained under subsection (1) on payment of the prescribed fee.

OFFENCES

False representations etc.

74. (1) A debtor who makes any false representation or who fraudulently does, or omits to do, anything for the purpose of obtaining the approval of his creditors to an arrangement commits an offence.

(2) Subsection (1) applies whether or not the proposal is approved.

PART III

ADMINISTRATION

PRELIMINARY

Interpretation for and scope of this Part.

75. (1) In this Part,

"interested person" means,

(a) in relation to a security interest, the person entitled to the security interest or any receiver appointed under the security interest,

(b) in relation to an asset not belonging to a company which is used or occupied by or in the possession of the company, the owner or lessor of the asset,

(c) in relation to proceedings, execution or legal process, including distress, a person who is entitled to commence or continue the proceedings, execution or legal process or levy the distress, and

(d) in relation to a guarantee of a liability of the company, the person entitled to enforce the guarantee;

"moratorium period" is the period specified in section 83(1).

(2) An administration order may not be made in respect of a foreign company.

ADMINISTRATION ORDERS

Meaning of administration order.

76. (1) An administration order is an order directing that, during the period for which the order is in force, the business, assets and affairs of a company shall be managed by an administrator appointed by the Court with a view to achieving one or more of the following purposes:

(a) the rehabilitation of the company or of one or more companies in a group of companies of which the company is a member;

(b) the survival of all or any part of the company's undertaking as a going concern;

(c) a better return for the company's creditors than would result from an immediate liquidation;

(d) the approval of a creditors' arrangement under Part **II**;

(e) to facilitate an application, or the provision of cooperation, under Part **XVIII** or Part **XIX**.

(2) Where an administration order is made in respect of a company, that company is referred to in this Act as "in administration" until the discharge of the order.

(3) For the purposes of subsection (1)(a) a "group of companies" comprises a holding company and its subsidiaries.

(4) In subsection (3), "company" means any body corporate.

Court may make an administration order.

77. (1) Subject to subsections (3) and (4), section 78(2) and section 79(2), the Court may, on application by a person specified in subsection (2), make an administration order in respect of a company if

(a) it is satisfied that the company is or is likely to become insolvent; and

(b) it considers that there is a reasonable prospect that the making of the order will achieve one or more of the purposes specified in section 76(1).

(2) Application for an administration order may be made by one or more of the following:

(a) the company;

(b) a creditor;

(c) the supervisor of an arrangement in respect of the company; and

(d) the Commission, where the company

(i) is or has been a regulated person, or

(ii) is carrying on, or has carried on, unlicensed financial services business.

(3) An application for an administration order shall be served not less than five business days prior to the date fixed for the hearing

(a) on any person who has appointed or is or may be entitled to appoint an administrative receiver for the company;

(b) if an administrative receiver has been appointed, on him;

(c) if the application is made by any person other than the company, on the company;

(d) if an application has been made for the appointment of a liquidator of the company, on the applicant and on any provisional liquidator of the company;

(e) on any person who, to the applicant's knowledge, is charged with an execution or other legal process against the company or its assets;

(f) on any person who, to the applicant's knowledge, has distrained against the company or its assets; and

(g) on the Commission if

(i) the company is or has been a regulated person; and

(ii) the applicant is not the Commission.

(4) Without limiting section 496(2)(b), an administration order shall not be made unless service of the application has been effected on the persons specified in subsection (3).

(5) An application for an administration order may not be withdrawn except with the leave of the Court.

Application in respect of insurance companies.

78. (1) Where an application for an administration order is made by the Commission in respect of an insurance company, for the purposes of section 77(1)(a), the insurance company is deemed to be insolvent if the total value of its assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency prescribed in respect of the company in the Insurance Regulations, 1995.

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(2) An application for an administration order may not be made in respect of an insurance company unless the Commission has consented in writing.

Powers of Court on hearing of application for administration order.

79. (1) Subject to subsection (2), on the hearing of an application for an administration order, the Court may

(a) make an administration order in respect of the company;

(b) dismiss the application;

(c) adjourn the hearing conditionally or unconditionally;

(d) make any interim order or other order that it considers fit; or

(e) treat the application as an application for the appointment of a liquidator and make any order that it could make under section 167.

(2) Subject to section 80, an application for an administration order shall be dismissed if

(a) the company is in liquidation;

(b) the Court is satisfied that a qualifying administrative receiver has been appointed for the company who, in accordance with section 142(2) is entitled to act, unless the Court is also satisfied

(i) that the person by whom or on whose behalf the administrative receiver was appointed consents to the making of an order; or

(ii) that any security interest under which the administrative receiver was appointed would, if an administration order was made, be liable to be set aside as a voidable transaction under Part **VIII**; or

(c) in the case of an insurance company, the Commission has not consented in writing to the application being made.

(3) For the purposes of subsection (2), an administrative receiver is a qualifying administrative receiver if

(a) he is a licensed insolvency practitioner, whether or not he has been appointed to act jointly with an overseas insolvency practitioner, within the meaning of section 473; and

(b) notice of his appointment was filed with the Registrar under section 118(1) not less than four business days after service of the application for the administration order was served upon the person who appointed him.

(4) Where the Court makes an administration order it shall, at the same time, appoint an eligible insolvency practitioner to be the administrator of the company.

(5) If the Court makes an order under subsection (1)(c), it shall give directions as to the persons to whom, and how, notice is to be given.

Application where company in liquidation.

80. (1) The liquidator of a company may apply to the Court for an administration order.

(2) If the Court makes an administration order on the application of the liquidator of a company,

(a) the Court

(i) shall discharge the order appointing the liquidator,

(ii) shall make provision for such matters as may be prescribed,

(iii) may make such consequential provision as it considers appropriate, and

(iv) shall specify which of the powers of an administrator are to be exercisable by the administrator; and

(b) this Part has effect with such modifications as the Court may specify.

Effect of administration order.

81. Where the Court makes an administration order,

(a) any application for the appointment of a liquidator shall be dismissed; and

(b) any administrative receiver of the company is deemed to have vacated office.

Notification and advertisement of administration order.

82. (1) Where an administration order is made, the administrator shall

(a) forthwith, after the making of the order, give notice of his appointment to

(i) any person who has appointed, or who may be entitled to appoint, an administrative receiver of the company,

(ii) any administrative receiver who has been appointed, and

(iii) if an application for the appointment of a liquidator is pending, to the applicant and to any provisional liquidator that may have been appointed;

(b) within five days of the making of the order

(i) advertise the order and his appointment as administrator, and

(ii) file a notice of his appointment together with a sealed copy of the order with the Registrar and, if the company in administration is or has been a regulated person, with the Commission; and

(c) within 28 days of the order, send a notice in the prescribed form to the company and to every creditor of the company.

(2) An administrator who, without reasonable excuse, fails to comply with subsection (1) commits an offence.

MORATORIUM

Moratorium period.

83. (1) Subject to subsection (2), a moratorium period in respect of a company commences on the filing of an application for an administration order and terminates on

(a) the dismissal of the application for an administration order; or

(b) if an administration order is made, upon the discharge of that order.

(2) If an application for an administration order is filed at a time when an administrative receiver of the company is in office and the person by or on whose behalf the administrative receiver was appointed has not consented to the making of an order, the moratorium period does not commence unless and until

(a) that person so consents in writing;

(b) the administrative receiver vacates or is deemed to vacate office; or

(c) an administration order is made.

Effect of moratorium.

84. (1) Subject to subsections (3), (4) and (5), during the moratorium period

(a) no order may be made and, notwithstanding paragraph (f), no resolution may be passed for the appointment of a liquidator or a provisional liquidator;

(b) no steps may be taken to enforce any security interest over the company's assets, except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(c) except with the leave of the Court or, if the company is in administration, with the consent of the administrator, no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the company, including

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement, and

(ii) goods supplied subject to a retention of title agreement;

(d) no proceedings, execution or other legal process may be commenced or continued or distress levied against the company or its assets except with the leave of the Court or, if the company is in administration, with the consent of the administrator;

(e) no share may be transferred and no alteration may be made in the status of the members of the company, whether by an amendment of the memorandum or articles or in any shareholders' or members' agreement or otherwise, except with the leave of the Court; and

(f) no resolution of the members may be passed except with the leave of the Court or, if the company is in administration, with the consent of the administrator.

(2) On an application for leave under paragraphs (b) to (f) of subsection (1), the Court may grant leave subject to such terms and conditions as it considers fit.

(3) During the period beginning with the commencement of the moratorium period and ending with the making of an administration order, subsection (1) does not prevent the appointment of an administrative receiver of the company, or require the leave of the Court for the appointment of an

administrative receiver or limit or affect the carrying out by an administrative receiver of his functions.

(4) Subsection (1) does not prevent, or require the leave of the Court to be obtained for

(a) the enforcement of a charge on assets belonging to a company if, before the commencement of the moratorium period, an interested person lawfully

(i) entered into possession of or assumed control of the assets, or

(ii) entered into a binding agreement to sell the assets,

for the purpose of enforcing the charge on those assets;

(b) the repossession of assets being used or occupied by or in the possession of a company if, before the commencement of the moratorium period, an interested person lawfully entered into possession, or assumed control of those assets; or

(c) the exercise by a creditor of any set-off that he would have been entitled to exercise under section 150 if the company was in liquidation, the liquidation having commenced at the time that the moratorium period commenced.

(5) Notwithstanding subsection (1)(a), the Court may make an order during the moratorium period

(a) appointing a liquidator on the grounds specified in section 162(1)(c); or

(b) appointing a provisional liquidator on an application for the appointment of a liquidator on the grounds specified in section 162(1)(c).

(6) On making an order under subsection (5), the Court shall either

(a) discharge the administration order and make such consequential provision as it considers fit; or

(b) order that the appointment of the administrator shall continue to have effect.

(7) If the Court makes an order under subsection (6)(b), it may also
(a) specify which of the powers of an administrator are to be

exercisable by the administrator;

(b) order that this Part has effect with such modifications as the Court may specify; and

(c) make such consequential provision as it considers fit.

Preservation of charged and other assets.

85. (1) During the period beginning with the commencement of the moratorium period in respect of a company and ending with the making of an administration order against it, the company may not, without the written consent of the interested person concerned, or the leave of the Court granted under section 86, dispose of or otherwise deal with

(a) any assets subject to a charge, other than a floating charge;

(b) any assets subject to a floating charge, otherwise than in the ordinary course of business; or

(c) any assets in the company's use, occupation or possession of which another person is the owner or lessor, including

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement, and

(ii) goods supplied subject to a retention of title agreement.

(2) A company that contravenes subsection (1) commits an offence.

Disposal of perishable assets during moratorium period.

86. (1) This section applies during the period beginning with the commencement of the moratorium period and ending with

(a) the making of an administration order; or

(b) the dismissal of the application for an administration order.

(2) Where any assets referred to in section 85(1) are perishable assets, the Court may, on the application of the company, make an order permitting the company to dispose of those assets.

(3) Where the Court makes an order under subsection (2) permitting a company to dispose of assets that are subject to a floating charge, the holder of the security interest has the same priority in respect of any assets of the company directly or indirectly representing the assets disposed of as he would have had in respect of the assets subject to the security interest.

(4) It shall be a condition of an order made under subsection (2) permitting a company to dispose of assets referred to in section 85(1) that are not subject to a floating charge, that

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make good the deficiency;

shall be applied towards discharging the sums payable to the interested person concerned.

(5) Where a condition under subsection (4) relates to two or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (4)(b) shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(6) Where the Court makes an order under subsection (2) it may make such consequential orders as it considers fit, including

(a) giving directions as to the conduct of the disposal;

(b) making provision for the protection of the proceeds of the disposal.

(7) Where an order is made under subsection (2), the company shall, within 14 days of the date of the order, file with the Registrar a notice in the prescribed form together with a sealed copy of the order.

(8) A company commits an offence if it

(a) contravenes subsection (7), without reasonable excuse; or

(b) fails to comply with a condition imposed under this section.

ADMINISTRATORS

General duties of administrator.

87. (1) An administrator shall, on his appointment, take into his custody or under his control the assets to which the company in administration is or appears to be entitled.

(2) The administrator shall manage the business, assets and affairs of the company

(a) in furtherance of the purposes set out in the administration order;

(b) after the approval of proposals under section 102, in accordance with those proposals; and

(c) in accordance with any directions that may be given by the Court.

(3) Whilst a company is in administration, the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part.

Duty to prepare report.

88. (1) The administrator of a company shall, within sixty days of the commencement of the administration, prepare a report as to whether, in his opinion, further enquiries are desirable with respect to

(a) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(b) possible claims under sections 254 to 256.

(2) The administrator shall send a copy of the report prepared under subsection (1)

(a) to each creditor of the company; and

(b) if in his report he states that further enquiries are desirable with respect to a matter referred to in subsection (1), to the Official Receiver.

Duty to report to Commission.

89. (1) Subject to subsection (2), if it appears to the administrator of a company that the company is carrying on or has carried on unlicensed financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

(2) Subsection (1) does not apply where the administration order was made on the application of the Commission.

(3) Where the administrator makes a report to the Commission under subsection (1) he shall, for the purposes of section 105, treat the company as if it was a regulated person.

General powers of administrator.

90. (1) The administrator of a company may

(a) remove any director of the company;

(b) appoint a person to be director of the company, whether to fill a vacancy or not;

(c) call a meeting of the members or the creditors of the company;

(d) require a receiver, other than a qualifying administrative receiver, to vacate office;

(e) do anything necessary for the management of the business, assets and affairs of the company;

(f) apply to the Court for directions in respect of the administration of the company;

(g) use the company's seal; and

(h) do all acts on behalf of the company and execute any deed, receipt or other document in the name of the company.

(2) Without limiting subsection (1), the administrator has the powers specified in Schedule **1**. Schedule 1

(3) The following persons are not concerned to inquire whether the administrator is acting within his powers

(a) a person dealing with the administrator in good faith and for value; and

(b) a person who acquires any interest in assets of the company in administration from a person referred to in paragraph (a) in good faith and for value.

(4) The acts of an administrator of a company are valid notwithstanding any defect in his nomination, appointment or qualifications.

(5) Where a receiver is required to vacate office under subsection (1)(d) the Court may, on the application of the administrator or the receiver, may make such directions as it considers appropriate, including directions as to

(a) the terms upon which assets are to be passed to the administrator;

(b) the payment of the debts of preferential creditors; and

(c) the payment of the remuneration of the receiver.

Power to deal with assets subject to floating charge..

91. (1) The administrator of a company may dispose of any assets of the company that are subject only to a floating charge, whether or not the charge has crystallised.

(2) Where assets are disposed of or otherwise dealt with under subsection (1), the holder of the security interest has the same priority in respect of any assets of the company directly or indirectly representing the assets disposed of as he would have had in respect of the assets subject to the security interest.

Application to Court to deal with other charged assets.

92. (1) The Court may, on the application of the administrator, make an order authorizing the administrator to dispose of

(a) assets of the company that are subject to a security interest that is not a floating charge; and

(b) assets that are being used or occupied by or in the possession of the company but of which some other person is the owner or lessor, including

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement, and

(ii) goods supplied subject to a retention of title agreement;

if it considers that the disposal of the assets, with or without other assets, would be likely to promote one or more of the purposes specified in the administration order.

(2) The administrator shall give five business days notice of an application under subsection (1) to

(a) the holder of the charge over; or

(b) the owner or lessor of;

the assets in respect of which the application is made.

(3) It shall be a condition of an order under subsection (1) that

(a) the net proceeds of the disposal; and

(b) if those proceeds are less than such amount as the Court may determine, or as may be agreed, to be the fair market value of the assets disposed of, the sum required to make good the deficiency;

shall be applied towards discharging the sums payable to the interested person concerned.

(4) Where a condition under subsection (3) relates to two or more security interests, the net proceeds of the disposal and any sum required to be paid under subsection (3)(b) shall be applied towards discharging the sums secured by those security interests in the order of their priorities.

(5) Where an order is made under subsection (1), the administrator shall

(a) forthwith serve a sealed copy of the order on the holder of the charge or the owner or lessor of the goods, as the case may be; and

(b) within 14 days of the date of the order, file a notice in the prescribed form with the Registrar.

(6) An administrator commits an offence if he

(a) contravenes subsection (5), without reasonable excuse; or

(b) fails to comply with a condition imposed under this section.

Administrator as agent of company.

93. When performing a function or exercising a power as administrator of a company in administration, the administrator acts as the company's agent.

Removal and resignation of administrator.

94. (1) The Court may, on the application of a creditor of a company in administration or on its own motion, remove an administrator from office.

(2) An administrator

(a) may resign in such circumstances as may be prescribed or with the leave of the Court; and

(b) shall resign if he ceases to be an eligible insolvency practitioner.

(3) An administrator ceases to hold office with effect from the date that an administration order is discharged.

Vacancy in office of administrator of company.

95. (1) Where the administrator of a company in administration

(a) dies;

(b) is removed under section 94(1); or

(c) resigns under section 94(2);

the Court may, on the application of a person specified in subsection (2) or on its own motion, fill the vacancy.

(2) An application under subsection (1) may be made

(a) by any continuing administrator;

(b) by the creditor's committee, if any; or

(c) where there is no administrator or no creditor's committee, by the company in administration, the board of the company or a creditor of the company.

(3) The provisions of this Act and the Rules applicable to giving notice of and advertising an administration order apply to an order of the Court filling a vacancy under subsection (1).

Remuneration of administrator.

96. (1) The administrator of a company is entitled to receive remuneration for his services as administrator.

(2) The remuneration payable to an administrator shall be fixed applying the principles set out in section 432.

Administrator to have charge over assets of company.

97. (1) The administrator has the following charges on the assets of the company in his possession or control:

(a) a first ranking charge for any sums payable in respect of debts or liabilities incurred, whilst he was administrator, under contracts entered into by him or a predecessor of his in the carrying out of the functions of administrator; and

(b) a second ranking charge for his remuneration.

(2) Subject to subsection (3), the charges specified in subsection (1)

(a) rank in priority to any floating charge to which the assets of the company may be subject; and

(b) continue to subsist after the termination of the administration.

(3) Where a debenture or other instrument creates a fixed charge and a floating charge over the assets of a company, subsection (2)(a) does not apply to any assets of the company that are subject to the fixed charge.

(4) A liability arising out of a contract of employment adopted by an administrator, or his predecessor, is a debt or liability for the purposes of subsection (1)(b) if

(a) it is a liability to pay a sum by way of wages or salary or a contribution to an occupational pension scheme; and

(b) it is in respect of services rendered wholly or partly after the adoption of the contract;

but not otherwise.

(5) For the purposes of subsection (4),

(a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or salary in respect of services rendered in that period;

(b) a sum payable in lieu of holiday is deemed to be wages or salary in respect of services rendered in the period by reference to which the holiday entitlement arose; and

(c) that part of the liability representing payment in respect of services rendered before the adoption of the contract of employment shall be disregarded.

Release of administrator.

98. (1) A person who ceases to be the administrator of a company, may apply to the Court for his release and the Court may grant the release unconditionally or upon such conditions as it considers proper, or it may withhold it.

(2) If the Court withholds the release, it may make a compensation order against the former administrator under section 254.

(3) Subject to subsection (5), where a former administrator is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the company.

(4) An order for the release of a former administrator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(5) Subsection (3) does not prevent the Court from making an order under section 254 against an administrator who has been released under this section.

(6) An administrator who obtains his release under this section shall file a notice in the prescribed form with the Registrar.

Statement of affairs.

99. (1) In this section, "relevant person" has the meaning set out in section 275.

(2) The administrator of a company may require one or more relevant persons to prepare and submit to him a statement of affairs.

(3) Subject to section 280, the administrator shall file with the Court each statement of affairs and each affidavit of concurrence that he receives.

ADMINISTRATOR'S PROPOSALS

Administrator's proposals and creditors meeting.

100. (1) Subject to subsection (3), the administrator shall

(a) prepare a report setting out his proposals for the achievement of one or more of the purposes in the administration order;

(b) call a meeting of creditors for a date no later than sixty days after the date of the administration order for the purpose of considering whether to approve his proposals;

(c) send a copy of his report to each creditor together with the notice of the meeting;

(d) send a copy of the notice calling the meeting and his report to each member of the company;

(e) file a copy of the notice calling the meeting together with his report with the Registrar; and

(f) cause the creditors' meeting to be advertised.

(2) The report prepared by the administrator under subsection (1)(a) shall contain the matters prescribed by the Rules.

(3) The administrator is not required to call a meeting of creditors under subsection (1)(b) where

(a) he is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full; and

(b) the report prepared under subsection (1)(a) contains a statement that

(i) the administrator is of the opinion that the company has sufficient assets to enable each creditor of the company to be paid in full, and

(ii) the administrator does not intend to call a meeting of creditors under this section.

(4) Notwithstanding subsection (3), if requested to do so by creditors whose debts amount to at least 10 per cent in value of the total debts of the company, the administrator shall call a meeting of creditors to be held no later than 30 days after the date upon which he receives the request.

(5) A request for a meeting under subsection (4) must be delivered to the administrator in the manner and within the period prescribed.

(6) An administrator who contravenes subsection (1) commits an offence.

Attendance at meeting of directors and others.

101. (1) If the administrator considers that it is reasonable to require the presence at a creditors' meeting called under 100 of a person specified in subsection (4), the administrator may, by notice, require the person to attend.

(2) In determining whether it is reasonable to require a person to attend the creditors' meeting, the matters that the administrator shall have regard to include

(a) the likely benefits of the person's attendance;

(b) the travel and associated expenses that will be incurred by him in attending the meeting, unless the administrator is prepared to pay those expenses;

(c) the distance that he would be required to travel to attend the meeting; and

(d) the time that it would take him to travel to and from and attend the meeting.

(3) A notice under subsection (1) requiring a person to attend a creditors' meeting shall be sent to that person at least 14 days prior to the date of the meeting and shall be accompanied by a copy of his report on his proposals.

(4) Subsection (1) applies to any officer of the company and any person who, at any time during the two years prior to the date of the notice, was an officer of the company.

(5) A person commits an offence if

(a) he receives a notice to attend a creditors' meeting under subsection (1); and

(b) without reasonable excuse, he fails to attend the meeting.

Consideration of proposals by creditors.

102. (1) At the creditors' meeting called under section 100, the creditors may resolve to

(a) approve the administrator's proposals, with or without amendment;

(b) reject the proposals; or

(c) adjourn the meeting.

(2) A resolution to approve the administrator's proposals is invalid and of no effect if

(a) the proposals have been amended without the consent in writing of the administrator; or

(b) the proposal has been amended otherwise than in accordance with section 103.

(3) The administrator shall, within 14 days of the conclusion of a meeting called under section 100

(a) report the result of the meeting to the Court and file a copy of that report with the Registrar; and

(b) send a notice setting out the result of the meeting to every creditor.

(4) The report and notice required under subsection (3) shall have annexed to it details of

(a) the proposals considered at the meeting and of any amendments to those proposals that were considered; and

(b) such proposals and amendments as were approved.

(5) If the creditors resolve not to approve the administrator's proposals or fail to pass one of the resolutions specified in subsection (1), the Court may, by order

(a) discharge the administration order and make such consequential provisions as it considers fit;

(b) adjourn the hearing, conditionally or unconditionally; or

(c) make an interim order or any other order that it considers fit.

(6) An administrator who contravenes subsection (3) commits an offence.

Amendment of proposals at creditors' meeting.

103. (1) Where, at a meeting called under section 100, the creditors wish to approve an amended proposal, the meeting shall be adjourned for sufficient time to enable the administrator to give all creditors not present or represented at the meeting at least two business days notice

(a) of the venue of the adjourned meeting; and

(b) of the amended proposal to be considered at the adjourned meeting.

(2) Where a meeting is adjourned under subsection (1), section 102 applies to the adjourned meeting.

(3) Subsection (1) does not apply if

(a) every creditor who was given notice of the meeting under section 100 is present or represented at the meeting; or

(b) the chairman of the meeting certifies in writing that an amendment is to correct minor errors or is otherwise not material.

Modification of proposals.

104. (1) Where proposals have been approved under section 102 and the administrator subsequently considers that they should be substantially modified, he shall

(a) prepare a report setting out his proposed modifications;

(b) call a meeting of creditors for the purpose of considering the report;

(c) send a copy of his report to each creditor together with the notice of the meeting;

(d) send a copy of the notice convening the meeting together with his report to each member of the company;

(e) file a copy of the notice calling the meeting together with his report with the Registrar; and

(f) cause the creditors' meeting to be advertised.

(2) At the creditors' meeting referred to in subsection (1), the creditors may resolve to

(a) approve the administrator's proposed modifications to the proposals, with or without amendment;

(b) reject the proposed modifications; or

(c) adjourn the meeting.

(3) Section 102(2) applies to the creditors' approval of the administrator's proposed modifications to the proposal under this section and if the creditors wish to amend the administrator's proposed modifications, section 103 applies.

(4) The administrator shall, within 14 days of the date of the meeting held under subsection (1)

(a) report the result of the meeting to the Court and file a copy of the report with the Registrar; and

(b) send a notice setting out the result of the meeting to every creditor.

(5) The report and notice required under subsection (4) shall have annexed to it details of

(a) the modifications to the proposal considered at the meeting and of any amendments to those modified proposals that were considered; and

(b) such proposals and amendments as were approved.

(6) An administrator who contravenes subsection (4) commits an offence.

MISCELLANEOUS

Commission's rights where company a regulated person.

105. Where a company in administration is or has been a regulated person,

(a) every notice or other document required to be sent to a creditor of the company under this Part shall also be sent to the Commission;

and

(b) notice shall be given to the Commission of any application to the Court under this Part in respect of the company.

Administrator's duty to keep accounting records.

106. (1) An administrator shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions of the company in administration.

(2) The administrator shall retain the accounting records kept under subsection (1) for a period of not less than six years after the termination of the administration.

(3) An administrator who contravenes this section commits an offence.

Administrator to prepare and send out regular accounts and reports.

107. (1) An administrator shall prepare

(a) accounts of the receipts and payments of the company in administration; and

(b) a report on the progress of the administration;

covering the periods specified in subsection (2).

(2) The accounts and report prepared under subsection (1) shall cover

(a) the period of six months following his appointment;

(b) each subsequent period of six months; and

(c) where he ceases to act as administrator

(i) the period from the end of the period covered by the last accounts required to be prepared under this section, or if he acted as administrator for less than six months from the date of his appointment, to the date of his ceasing to act, and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless prepared in accordance with subparagraph (i).

(3) An administrator shall, within sixty days of the last day of the period covered by the accounts and report

(a) file a copy of the accounts and report with the Court and with the Registrar;

(b) send a copy of the accounts and report to each member of the creditors' committee, if any; and

(c) if the company is or has been a regulated person file a copy of the accounts and report to the Commission.

(4) An administrator who contravenes this section commits an offence.

Notification.

108. (1) Where a company is in administration, every document of a type specified in subsection (2) shall

(a) state that the company is in administration; and

(b) specify the name of the administrator.

(2) Subsection (1) applies to

(a) every public document issued by or on behalf of the company; and

(b) every public document issued by or on behalf of the administrator of the company on which the name of the company appears.

(3) If subsection (1) is contravened the company, and each officer or administrator of the company who causes, permits or acquiesces in the contravention, commits an offence.

Meetings of creditors.

109. (1) The administrator shall call a meeting of creditors if

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) he is directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Rules by 10 per cent in value of the creditors of the company.

Discharge or variation of administration order.

110. (1) The administrator of a company may, at any time, apply to the Court for the administration order to be discharged or to be varied to add to or change the purposes specified in the administration order.

(2) An administrator shall make an application under subsection (1) if

(a) he considers that the purposes specified in the order have been achieved or are incapable of achievement; or

(b) he is required to do so by a meeting of creditors.

(3) On the hearing of an application under subsection (1), the Court may discharge or vary the administration order and make such consequential provision as it considers fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it considers fit, including an order under section 111.

Appointment of liquidator or dissolution of company on discharge of administration order.

111. (1) Where the Court makes an order for the discharge of an administration order made in respect of a company and the Court is satisfied that the company is insolvent

(a) the Court may make an order for the appointment of an eligible insolvency practitioner to be the liquidator of the company; or

(b) if it is satisfied that no useful purpose would be served by the appointment of a liquidator, the Court may dissolve the company.

(2) The Court may appoint the administrator of a company to be the liquidator under subsection (1)(a).

(4) An order under subsection (1)(a) takes effect as an order made under section 162 on the application of the company.

(5) Where an order is made for the appointment of a liquidator under this section, Part **VI** applies to the liquidation of the company.

Filing copy of discharge order with Registrar.

112. (1) Where an administration order is discharged or varied, the administrator or where the order is discharged the person who, immediately before the discharge, was the administrator of the company shall, within 14 days of the date of the order effecting the variation or discharge, file a copy of the order with the Registrar.

(2) A person who contravenes subsection (1) commits an offence.

PROTECTION OF INTERESTS OF CREDITORS AND MEMBERS

Application in respect of moratorium period.

113. (1) During the period beginning with the commencement of the moratorium period and ending with the making of an administration order, the Court may, on an application made by a creditor or member of the company, by a person affected by section 84 or, where the company is or has been a regulated person, by the Commission,

(a) give directions in relation to any matter arising in connection with that section; or

(b) make such other order as it considers fit.

(2) Without limiting subsection (1), an order under that subsection may

(a) regulate the management by the directors of the company's affairs, business and assets during the remainder of the moratorium period;

(b) require the directors to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained they have omitted to do;

(c) require the calling of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; and

(d) make such provision as the Court considers necessary to protect the interests of one or more creditors of the company during the moratorium period.

(3) In making an order under this section, the Court shall have regard to the need to safeguard the interests of persons who have dealt with the company in good faith and for value.

Application on grounds of unfair prejudice.

114. (1) At any time when an administration order is in force, an application may be made by a creditor or member of a company or, where the company is or has been a regulated person by the Commission for an order under subsection (2) on one or both of the following grounds:

(a) that the company's affairs, business and assets are being, or have been, managed by the administrator in a manner which unfairly prejudices the interests of the member or creditor; or

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

(2) Subject to subsections (3) and (4), where it is satisfied as to either of the grounds specified in subsection (1), the Court may make such order as it considers fit for giving relief in respect of the matters complained of, or adjourn the hearing conditionally or unconditionally, or make an interim or any other order that it considers fit.

(3) An order under subsection (2) shall not prejudice or prevent

(a) the implementation of proposals approved by the creditors under section 102; or

(b) where the application for the order was made more than 28 days after the approval of any proposals or revised proposals under section 102 or 104, the implementation of those proposals or revised proposals.

(4) Without limiting subsection (2), an order under that subsection may

(a) regulate the management by the administrator of the company's affairs, business and assets;

(b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act that the applicant has complained he has omitted to do;

(c) require the calling of a meeting of creditors or members for the purpose of considering such matters as the Court may direct; and

(d) discharge the administration order and make such consequential provision as the Court considers fit.

(5) Section 91 is not to be taken as prejudicing an application to the Court under this section.

PART IV

RECEIVERSHIP

PRELIMINARY

Interpretation for and scope of this Part.

115. (1) In this Part, unless the context otherwise requires, "company" means the company in respect of whose assets a receiver is or may be appointed.

(2) This Part applies to a receiver appointed

(a) by the Court;

(b) under a debenture or other instrument; or

(c) under or in accordance with any other enactment.

(3) Unless this Act expressly states otherwise, where, in respect of a receiver appointed by the Court (other than as an administrative receiver), there is a conflict between this Act and the provisions of any other enactment or rule of law or the Civil Procedure Rules, the provisions of the enactment or rule of law or the Civil Procedure Rules, as the case may be, shall prevail.

(4) Where an administrative receiver is appointed in respect of a company, that company is referred to in this Act as "in administrative receivership".

GENERAL

Persons not to be appointed or act as receiver.

116. (1) Subject to subsection (2), the following persons are not eligible to be appointed as receiver in respect of a company and shall not accept appointment or act as such a receiver

(a) a mortgagee of any assets of the company;

(b) a person who is, or within the previous 2 years has been,

(i) an officer or employee of a mortgagee of any assets of the company, or

(ii) a shareholder in or member of the company or a related company;

(c) a person who, pursuant to section 477 is disqualified from holding a licence;

(d) a person who, in an insolvency proceeding, would not be eligible to act as an insolvency practitioner in respect of the company pursuant to section 482(2);

(e) a body corporate; and

(f) such other persons as may be prescribed.

(2) The Court may appoint

(a) the Official Receiver; or

(b) a person who is not eligible under subsection (1);

as a receiver, other than an administrative receiver.

(3) A person who accepts or purports to accept appointment or acts or purports to act as a receiver contrary to subsection (1) commits an offence.

Appointment of joint receivers.

117. (1) A power conferred by a debenture or other instrument to appoint a receiver includes the power to appoint

(a) two or more joint receivers;

(b) an additional receiver to act jointly with the receiver in office; and

(c) a receiver to succeed a receiver who has vacated office;

unless the debenture or other instrument expressly provides otherwise.

(2) Joint receivers may act jointly or severally unless the instrument under which, or the Court order by which, they are appointed expressly provides otherwise.

(3) Unless the context otherwise requires, in this Act and the Rules, "receiver" and "administrative receiver" includes two or more persons appointed as joint receivers or joint administrative receivers, as the case may be.

Notice of appointment.

118. (1) A receiver shall forthwith upon being appointed

(a) send a notice of his appointment to the company; and

(b) file a notice of his appointment

(i) with the Registrar, and

(ii) if the company is or has been a regulated person, with the Commission.

(2) In addition to complying with subsection (1), an administrative receiver shall

(a) subject to subsection (3), within five business days after being appointed, cause a notice of his appointment to be advertised; and

(b) within 28 days after being appointed, send a notice of his appointment to all creditors of the company in receivership.

(3) Subsection (2)(a) does not apply to a receiver appointed

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act.

(4) A receiver who contravenes subsection (1) and an administrative receiver who contravenes subsection (2) commits an offence.

Notification of receivership.

119. (1) Where a company is in receivership, every document to which subsection (2) applies shall contain a statement that a receiver has been appointed.

(2) Subsection (1) applies to

(a) every public document issued by or on behalf of the company; and

(b) every public document issued by or on behalf of the receiver or any liquidator of the company on which the name of the company appears.

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

(4) A person who contravenes subsection (1), or who causes, permits or acquiesces in a contravention of subsection (1), commits an offence.

Vacation of office.

120. (1) The office of receiver becomes vacant if the person holding the office

(a) dies;

(b) resigns;

(c) vacates his office in accordance with subsection (2); or

(d) is removed from office in accordance with section 123.

(2) A receiver appointed out of court shall vacate his office forthwith if he ceases to be eligible to act as a receiver in accordance with section 116(1).

(3) Where a receiver vacates office in accordance with subsection (2), he shall, as soon as practicable, give notice to

(a) the person who appointed him;

(b) the company, or

(i) if the company is in liquidation, its liquidator, and

(ii) if the company is in administration, its administrator; and

(c) the members of the creditors' committee, if any.

(4) A receiver appointed by the Court shall as soon as practicable notify the Court if he ceases to be eligible to act as a receiver in accordance with section 116(1).

(5) Where a vacancy in the office of receiver occurs as a result of the resignation or removal of the person holding office as receiver or as a result of the person holding office vacating office under subsection (4), that person shall, within seven days of his ceasing to hold office, give notice in the prescribed form to the Registrar.

(6) Where a receiver vacates office, unless the Court otherwise orders

(a) his remuneration; and

(b) any indemnity to which he is entitled out of the assets of the company;

shall be charged on and paid out of any assets of the company that are in his custody or under his control at that time in priority to any security interest held by the person by or on whose behalf he was appointed.

(7) A person who contravenes subsections (2), (3), (4) or (5) commits an offence.

Assistance to be provided by receiver vacating office.

121. (1) A person vacating the office of receiver shall provide such information and give such assistance in the conduct of the receivership as is reasonably required by any remaining joint receiver or his successor.

(2) If a person vacating the office of receiver fails to provide information or give assistance as required under subsection (1) the Court may, on the application of the remaining joint receiver or successor, order the person vacating office to provide such information and give such assistance as is reasonably required within such time as is specified in the order.

(3) A person who fails to comply with an order made under subsection (2) commits an offence.

Resignation of receiver.

122. (1) The resignation of an administrative receiver appointed out of court is not effective unless he has given not less than seven days notice of his intention to resign to

(a) the person who appointed him;

(b) the company in receivership, or if it is in liquidation, its liquidator; and

(c) the members of the creditors' committee, if any.

(2) Unless the Court otherwise orders, the resignation of a receiver appointed by the Court is not effective unless he has given at least seven days notice of his intention to resign to the Court and to such other persons as may be specified by the Court.

(3) A notice given under subsection (1) shall state the date upon which the receiver intends his resignation to take effect.

Removal of receiver.

123. (1) A receiver appointed out of court, other than an administrative receiver, may be removed

(a) in accordance with the charge or other instrument under which he was appointed; or

(b) by order of the Court.

(2) A receiver appointed by the Court and an administrative receiver may be removed by order of the Court, but not otherwise.

(3) Application to the Court for the removal of a receiver under subsection (1) or subsection (2) may be made by

(a) the company, or

(i) if the company is in liquidation, its liquidator, and

(ii) in the case of a receiver who is not an administrative receiver, if the company is in administration, its administrator;

(b) the board of the company;

(c) the person by or on whose behalf the receiver was appointed;

(d) a creditor of the company; or

(e) any other person who the Court is satisfied has a legitimate interest in the removal of the receiver.

(4) An application to the Court for the removal of a receiver under this section shall specify the grounds upon which the removal of the receiver is being sought and shall be served on the receiver at least five business days prior to the date fixed for the hearing of the application.

Co-operation with receiver.

124. (1) Where a receiver is appointed, the company and every officer of the company shall

(a) make available to the receiver all books, documents and information relating to the assets in respect of which the receiver has been appointed in its or his possession or under its or his control;

(b) if required to do so by the receiver, verify by statutory declaration that the books, documents and information are complete and correct; and

(c) give the receiver such assistance as he may reasonably require.

(2) On the application of the receiver, the Court may make an order requiring the company or an officer of the company to comply with subsection (1).

(3) A person who fails to comply with an order of the Court made under subsection (2) commits an offence.

Duty to report to Commission.

125. If it appears to a receiver that the company in respect of which he was appointed is carrying on or has carried on unlicensed financial services business, he shall as soon as reasonably practicable report the matter to the Commission.

Agency.

126. (1) A receiver appointed out of court, other than an administrative receiver, is deemed to be the agent of the company unless the charge or instrument under which he was appointed expressly provides otherwise.

(2) Subject to subsection (3), an administrative receiver is deemed to be the agent of the company in receivership.

(3) If a liquidator is appointed in respect of a company in receivership, the agency of any receiver, including an administrative receiver, terminates with immediate effect.

Powers of receiver, other than administrative receiver.

127. (1) A receiver has the powers expressly or impliedly conferred on him,

(a) in the case of a receiver appointed out of court, by the charge or other instrument by which he was appointed; or

(b) in the case of a receiver appointed by the Court, by the Court order under which he was appointed.

(2) Unless the charge or other instrument under which, or Court order by which, he was appointed expressly provides otherwise, a receiver may

(a) demand and recover, by action or otherwise, income of the assets in respect of which he was appointed;

(b) issue receipts for income recovered;

(c) manage, insure, repair and maintain the assets in respect of which he was appointed; and

(d) exercise, on behalf of the company, a right to inspect books or documents that relate to the assets in respect of which he was appointed in the possession or under the control of a person other than the company.

(3) This section does not apply to an administrative receiver.

General duties of receivers.

128. (1) The primary duty of a receiver is to exercise his powers

(a) in good faith and for a proper purpose; and

(b) in a manner he believes, on reasonable grounds, to be in the best interests of the person in whose interests he was appointed.

(2) To the extent consistent with subsection (1), a receiver shall exercise his powers with reasonable regard to the interests of

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which he was appointed; and

(d) the company.

(3) Where a receiver appointed out of court acts or refrains from acting in accordance with any directions given by the person in whose interests he was appointed, the receiver is not in breach of the duty specified in subsection (1)(b), but is nevertheless liable for any breach of the duties specified in subsection (1)(a) and subsection (2).

Powers of sale and proceeds of sale.

129. (1) A receiver who exercises a power of sale of assets in respect of which he was appointed owes a duty to

(a) creditors of the company;

(b) sureties who may be called upon to fulfil obligations of the company;

(c) persons claiming, through the company, an interest in assets in respect of which he was appointed; and

(d) the company;

to obtain the best price reasonably obtainable at the time of sale.

(2) A receiver shall keep money relating to the assets in respect of which he was appointed separate from other money received in the course of, but not relating to, those assets and from other money held by him or under his control.

(3) Notwithstanding any other enactment or rule of law to the contrary or anything contained in the debenture or other instrument by which a receiver was appointed,

(a) it is not a defence in proceedings against a receiver for a breach of the duty imposed by subsection (1) that the receiver was acting as the agent of the company or under a power of attorney from the company; and

(b) a receiver is not entitled to compensation or an indemnity from the assets in respect of which he was appointed or the company in respect of any liability incurred by the receiver arising from a breach of the duty imposed by subsection (1).

Liabilities of receivers.

130. (1) Subject to subsections (2) and (3), a receiver is personally liable

(a) on any contract entered into by him in the performance of his functions; and

(b) for the payment of wages or salary, including amounts due for holidays or absence due to sickness, or contributions to an occupational pension scheme that, during the period of the receivership, accrue under a contract of employment adopted by him in the performance of those functions.

(2) A receiver appointed out of court is not personally liable on a contract referred to in subsection (1)(a) to the extent that the contract excludes or limits his liability.

(3) Where a receiver is appointed by the Court, other than as an administrative receiver, unless the Court orders otherwise, all contracts of employment are terminated with immediate effect and subsection (1)(b) does not apply.

(4) For the purposes of subsection (1)(b), a receiver is deemed to have adopted a contract of employment if notice of the termination of the contract is not given within 14 days after the date of his appointment.

(5) A receiver is entitled to an indemnity in respect of his liability under subsection (1) out of the assets in respect of which he was appointed.

(6) Nothing in this section

(a) imposes any liability on a receiver for wages or salary, including amounts due for holidays or absence due to sickness, or contributions to an occupational pension scheme, in respect of services rendered prior to the commencement of the receivership;

(b) limits any right to indemnity that the receiver would have apart from this section;

(c) limits the liability of a receiver on a contract entered into without authority; or

(d) confers on a receiver a right to an indemnity in respect of his liability on a contract entered into without authority.

Payment of debts out of assets subject to a floating charge.

131. (1) This section applies where a receiver is appointed on behalf of the holder of a floating charge.

(2) If the company is not in liquidation, its preferential creditors shall be paid out of the assets coming into the hands of the receiver in priority to any claims for principal or interest in respect of

(a) the debenture or other instrument under which the receiver is appointed; and

(b) any other debenture or other instrument of the company secured by a floating charge.

(3) Payments made under this section shall be recouped, as far as possible, out of the assets of the company available for payment of unsecured creditors.

Court directions.

132. (1) On the application of a person referred to in subsection (2), the Court may, in relation to any matter arising in connection with the performance of the functions of a receiver, make one or more of the following orders:

(a) an order giving such directions as it considers appropriate;

(b) an order declaring the rights of persons before it; and

(c) such other order as it considers just.

(2) Application to the Court for an order under subsection (1) may be made by any of the following persons:

(a) the receiver;

(b) the person by whom or on whose behalf the receiver was appointed;

(c) a person in whose interest the receiver is acting; and

(d) where the company in receivership is or has been a regulated person, the Commission.

Further provisions with respect to an order under section 132.

133. The power of the Court to make an order under section 132

(a) is in addition to any other powers that may be exercised by the Court whether under this Act or any other enactment or in its inherent jurisdiction;

(b) may be exercised notwithstanding that the receiver may have died or ceased to act as receiver before the making of the application or the order; and

(c) notwithstanding anything in the Civil Procedure Rules to the contrary, includes the power to vary or amend an order that the Court has already made.

Remuneration of receivers.

134. (1) Subject to subsection (3), a receiver appointed under a debenture or other instrument is entitled to be paid remuneration for his services

(a) in accordance with the terms of that debenture or other instrument; or

(b) as agreed with the person on whose behalf he was appointed.

(2) A receiver appointed by the Court or in accordance with any other enactment is entitled to be paid such remuneration as the Court may order.

(3) On the application of a person referred to in subsection (6), the Court may review and fix the amount paid or to be paid by way of remuneration to a receiver in accordance with subsection (1).

(4) Subject to subsection (5), the Court's power under subsection (3)

(a) extends to fixing the remuneration for any period before the making of the order or the application for it;

(b) is exercisable notwithstanding that the receiver has died or ceased to act before the making of the application or the order; and

(c) extends to requiring him or his personal representative to account for the excess or such part of it as may be specified in the order to the extent that an amount paid to or retained by a receiver as remuneration exceeds that fixed by the Court for the period concerned.

(5) The power conferred by subsection (4)(c) may not be exercised with respect to a period before the date of the application for an order under this section unless the Court is satisfied that there are special circumstances that justify it.

(6) An application to the Court for an order under subsection (3) may be made by any of the following persons:

(a) the receiver;

(b) the company or

(i) if the company is in liquidation, its liquidator, and

(ii) if the company is in administration, its administrator;

(c) a person claiming through the company an interest in the assets in respect of which the receiver was appointed; and

(d) if the company in receivership is or has been a regulated person, the Commission.

(7) In fixing the remuneration of a receiver under this section, the Court shall apply the general principles specified in section 432.

Accounting records.

135. (1) A receiver shall keep accounting records that correctly record and explain the receipts, expenditure and other transactions relating to the assets in respect of which he has been appointed.

(2) The accounting records kept under subsection (1) shall be retained for a period of not less than six years after the receivership ends.

Receivership accounts to be filed with Registrar.

136. (1) A receiver shall prepare accounts of his receipts and payments covering the periods specified in subsection (2).

(2) Accounts prepared under subsection (1) shall cover the following periods:

(a) the period of 12 months following the receiver's appointment;

(b) each subsequent period of six months;

(c) where the receiver ceases to act as receiver,

(i) the period from the end of the period covered by the last accounts required to be filed under this section, or if he acted as receiver for less than 12 months from the date of his appointment, to the date of his ceasing to act, and

(ii) the period from the date of his appointment to the date of his ceasing to act, unless filed in accordance with subparagraph (i).

(3) The accounts prepared under subsection (1) shall

(a) comprise an abstract showing all receipts and payments during the period covered by the accounts; and

(b) within 30 days of the last day of the period covered by the accounts

(i) be filed with the Registrar, and

(ii) if the company in receivership is or has been a regulated person, with the Commission.

(4) A receiver appointed by the Court shall, in addition to complying with subsection (3), file at Court accounts in such form, covering such periods and within such time as the Court may order.

(5) In respect of a receiver appointed by the Court,

(a) the obligations imposed by this section are additional

(i) to any obligations or requirements concerning receivership accounts contained in Rules of Court, and

(ii) to any order made with respect to receivership accounts by the Court; and

(b) the Court may set aside the application of subsections (1), (2) and (3) to such extent and on such terms and conditions as it considers fit.

(6) The Registrar may, on the application of a receiver, extend the period for the filing of accounts under this section for a period of, or where he grants more than one extension, for an aggregate period not exceeding three months.

(7) A receiver who contravenes this section commits an offence.

(8) Nothing in this section affects or limits the duty of a receiver to prepare and render proper accounts imposed otherwise than by this section.

Enforcement of duty to make returns.

137. (1) If a receiver

(a) having made default in filing, delivering or making any return, account or other document, or in giving any notice, which a receiver is required to file deliver, make or give under this Act or any other enactment fails to make good the default within 14 days after the service on him of a notice requiring him to do so; or

(b) being a receiver appointed out of court, has, after being required at any time by the liquidator of the company to do so, failed to render proper accounts of his receipts and payments and to vouch them and pay over to the liquidator the amount properly payable to him;

the Court may, on an application being made to it, order the receiver to make good the default within such time as may be specified in the order or, in respect of a default referred to in subsection (1)(a), may relieve the receiver of the obligation, in whole or in part.

(2) An application to the Court may be made

(a) in respect of a default referred to in subsection (1)(a), by the Registrar, a member or creditor of the company, its board or, if appropriate, its liquidator or administrator or the Commission; and

(b) in respect of a default referred to in subsection (1)(b), by the liquidator of the company.

(3) The Court may order that the receiver pay the costs of and incidental to an application under subsection (1).

(4) This section does not affect the operation of this Act or any other enactment that may impose penalties on receivers in respect of a default of the type referred to in subsection (1).

(5) A receiver who fails to comply with an order made under this section commits an offence.

Completion of receivership.

138. On the completion of his receivership, a receiver shall forthwith

(a) give notice to

(i) the company, or if it is in administration or liquidation, the administrator or liquidator,

(ii) in the case of an administrative receiver, the creditors' committee, if any, and

(iii) if the company is or has been a regulated person, to the Commission; and

(b) file a notice of completion with the Registrar and, if the company is or has been a regulated person, with the Commission.

RECEIVERS APPOINTED OUT OF COURT

Appointment of receiver out of court.

139. (1) The appointment of a receiver out of court shall be made in writing.

(2) Subject to subsection (3), the appointment of a receiver out of court takes effect from the time upon which the receiver receives the written notice of appointment.

(3) The appointment of a receiver out of court is not effective unless the receiver accepts it before the end of the next business day following the day on which he receives the written appointment.

(4) Where two or more joint receivers are appointed out of court

(a) the joint appointment takes effect from the time that all joint receivers receive the written appointment; and

(b) the joint appointment is not effective unless each receiver accepts the appointment in accordance with subsection (3).

(5) Where a receiver is appointed out of court, whether as a sole or joint receiver, he shall, if he accepts the appointment, within seven days confirm his acceptance in writing to the person who appointed him.

(6) Subsection (5) does not apply where an appointment is accepted in writing.

(7) For the purposes of this section,

(a) a person receives a written appointment if the appointment is received on his behalf; and

(b) an acceptance or confirmation of acceptance of an appointment as a receiver under this section may be given by any person authorized for that purpose by the appointee.

(8) A written acceptance or confirmation of acceptance of an appointment of a receiver out of court shall state

(a) the time and date of receipt of the notice of appointment; and

(b) the time and date of the acceptance.

Execution of documents.

140. Where a receiver appointed out of court, other than an administrative receiver, is authorized to execute documents in the name of or on behalf of a company, whether under a power of attorney or otherwise, that authority continues in respect of documents necessary or incidental to the receiver's powers notwithstanding that the company may go into liquidation.

Invalid appointment.

141. (1) Where the appointment of a person as a receiver appointed out of court is invalid the Court may, if it satisfied that the receiver acted honestly and reasonably, order the person by whom or on whose behalf the receiver was appointed to indemnify the receiver against any liability which arises solely by reason of the invalidity of the appointment.

(2) The Court may exercise its powers under subsection (1) subject to such terms and conditions as it considers fit.

ADMINISTRATIVE RECEIVERS

Meaning of "administrative receiver".

142. (1) In this Act, "administrative receiver" means a receiver of the whole, or substantially the whole, of the business, undertaking and assets of a company

(a) appointed out of court by or on behalf of the holder of a debenture or other instrument of the company secured by a floating charge, whether or not that debenture or other instrument is also secured by one or more other security interests; or

(b) appointed by the Court as an administrative receiver under section 143.

(2) Where two or more persons have the right, under different instruments, to appoint an administrative receiver,

(a) each may appoint an administrative receiver, but only one administrative receiver may act in relation to the company at any time; and

(b) the administrative receiver appointed on behalf of the person whose security interest ranks highest in priority, is entitled to act as administrative receiver.

Appointment of administrative receiver by Court.

143. (1) Where the Court appoints a receiver who would, had he been appointed out of Court, be an administrative receiver, the Court may, in the order under which the receiver is appointed, specify that the receiver is an administrative receiver.

(2) Where the Court appoints a receiver as an administrative receiver under subsection (1), unless and to the extent that the Court otherwise orders or that this Act provides to the contrary, the provisions of this Act that apply to administrative receivers apply to that receiver.

(3) The Court shall not appoint a receiver as an administrative receiver if there is an administrative receiver acting in relation to the company.

Powers of administrative receiver.

144. (1) Notwithstanding any provision in the memorandum or articles, an administrative receiver may, unless the debenture or other instrument by which he was appointed provides otherwise,

(a) execute all documents necessary or incidental to the exercise of his powers in the name of and on behalf of the company in receivership; and

(b) use the company's seal.

(2) Unless and to the extent that the debenture or other instrument by which an administrative receiver is appointed provides otherwise, the powers conferred on an administrative receiver of a company by the debenture or other instrument by
Schedule 1
which he was appointed include the powers specified in Schedule **1**.

(3) References in Schedule **1** to the assets of the company are to that part of the assets of the company in respect of which the receiver is appointed.

(4) A person dealing with the administrative receiver of a company in good faith and for value is not concerned to enquire whether he is acting within his powers.

Power to dispose of charged assets.

145. (1) In this section, "relevant assets", in relation to the administrative receiver, means the assets of which he is or, but for the appointment of some other person as the receiver of part of the company's assets, would be the receiver.

(2) Where on an application by an administrative receiver, the Court is satisfied that the disposal, with or without other assets, of any relevant assets which are subject to a security interest would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the Court may by order authorize the administrative receiver to dispose of the assets as if they were not subject to the other security interest.

(3) Subsection (2) does not apply in the case of any security interest held by the person by or on whose behalf the administrative receiver was appointed, or of any security interest to which a security interest so held has priority.

(4) It shall be a condition of an order made under subsection (2) that

(a) the net proceeds of the disposal; and

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

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

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

(6) Where, following the disposal of assets under this section, subsection (4)(b) applies, the administrative receiver, or any person to whom sums are to be paid under that subsection, may apply to the Court for a review of the Court's determination as to the open market value of the assets.

(7) On an application made under subsection (6), the Court may make a fresh determination as to the open market value of the assets disposed of and subsections (4) and (5) shall apply with the new open market value substituted for the original open market value.

(8) An application under subsection (6) shall be made

(a) in the case of the administrative receiver, within 14 days of the date of the disposal of the assets; or

(b) in the case of a person other than the administrative receiver, within 14 days of the date that he is notified by the administrative receiver of the sale.

(9) The administrative receiver shall file a copy of an order made under subsection (2) or subsection (7) with the Registrar within 14 days of the date of the order.

(10) An administrative receiver who contravenes subsection (9) commits an offence.

Statement of affairs.

146. (1) In this section, "relevant person" has the meaning set out in section 275.

(2) An administrative receiver shall, as soon as practicable after his appointment, by notice, require one or more relevant persons to prepare and submit to him a statement of affairs of the company in administrative receivership.

Report by administrative receiver.

147. (1) An administrative receiver shall, within three months of his appointment, prepare and file with the Registrar a report as to

(a) the events leading up to his appointment;

(b) the disposal or proposed disposal by him of any assets of the company and the carrying on by him of any business of the company;

(c) the amounts of principal and interest payable to the person by whom or on whose behalf he was appointed and the amounts payable to preferential creditors;

(d) the amount, if any, likely to be available for the payment of other creditors; and

(e) the persons who have submitted statements of affairs under section 146.

(2) A report prepared under subsection (1) shall include summaries of the statements of affairs submitted to him together with his comments thereon.

(3) The administrative receiver shall, within 14 days of filing the report prepared under subsection (1) with the Registrar,

(a) send a copy of the report to

(i) the company in receivership or, if it is in liquidation, its liquidator,

(ii) every creditor of the company, in so far as he is aware of their addresses, and

(iii) where the company is or has been a regulated person, to the Commission;

(b) publish a notice in the prescribed form stating the address of an office to which creditors of the company may write for a copy of the report and at which the report can be inspected during normal office hours; and

(c) call a meeting of unsecured creditors.

(4) Where he is satisfied that the disclosure of information in a report prepared under this section would seriously prejudice the carrying out by him of is functions, the administrative receiver may omit such information from his report.

(5) Where a liquidator is appointed after the administrative receiver has sent a copy of his report to the company under subsection (3)(a), he shall within seven days of the date of appointment of the liquidator send a copy of his report to the liquidator.

(6) This section does not apply to a receiver appointed

(a) to act jointly with an existing administrative receiver; or

(b) to act in place of an administrative receiver who has died or ceased to act;

where subsections (1), (3) and (5) have been complied with by the existing administrative receiver or by his predecessor.

(7) An administrative receiver who fails to comply with this section commits an offence.

Application for permission not to call meeting of creditors.

148. (1) An administrative receiver may apply to the Court for an order permitting him not to call a meeting of creditors under section 147(3)(c) and, subject to subsection (2), the Court may make such an order subject to such terms as it considers appropriate.

(2) The Court shall not make an order under subsection (1) unless

(a) the administrative receiver has stated in his report prepared under 147(1) his intention of applying for the order; and

(b) the report has been sent to the persons referred to in section 147(3)(a) not less than 14 days prior to the date of the hearing of the application.

PART V

PROVISIONS APPLICABLE TO THE LIQUIDATION OF COMPANIES

AND TO THE BANKRUPTCY OF INDIVIDUALS

Interpretation.

149. For the purposes of this Part,

(a) "debtor" means a company in liquidation or an individual in bankruptcy;

(b) "insolvency proceeding" means in the case of a company, its liquidation and in the case of an individual, his bankruptcy; and

(c) "relevant time" means, in the case of a company, the commencement of its liquidation and, in the case of an individual, the commencement of his bankruptcy.

Insolvency set-off.

150. (1) Subject to section 434, where, before the relevant time, there have been mutual credits, mutual debts or other mutual dealings between a debtor and a creditor claiming or intending to claim in the insolvency proceeding,

(a) an account shall be taken of what is due from each party to the other in respect of those mutual credits, mutual debts or other mutual dealings, as at the relevant time;

(b) the sum due from one party shall be set-off against the sums due from the other party; and

(c) only the balance of the account, if any, may be claimed in the insolvency proceeding or is payable to the debtor, as the case may be.

(2) A creditor is not entitled to claim the benefit of a set-off under this section if he had actual notice that the debtor was insolvent

(a) at the time he gave credit to the debtor or received credit from the debtor; or

(b) at the time he acquired any claim against the debtor or any part of or interest in such a claim.

(3) For the purposes of subsection (2), "insolvent" has the meaning specified in section 8 with the deletion of subsection (1)(c)(i) of that section.

(4) Where, before the relevant time, a creditor waives or agrees that he will not claim the benefit of a set-off under this section, that waiver or agreement takes effect notwithstanding subsection (1), except to the extent that a creditor who was not a party to the agreement, or has not agreed otherwise, is prejudiced.

Validity of agreements to subordinate debt.

151. Where, before the relevant time, a creditor acknowledges or agrees that, in the event of a shortfall of assets, he will accept a lower priority in respect of a debt than that which he would otherwise have under this Act, that acknowledgement or agreement takes effect notwithstanding the provisions of this Act, except to the extent that a creditor of the debtor who was not a party to the agreement is prejudiced.

Quantification of claims in liquidation and bankruptcy.

152. (1) This section applies to the quantification of a claim in the liquidation of a company or the bankruptcy of an individual.

(2) The amount of a claim shall be quantified as at the relevant time.

(3) Where a claim is subject to a contingency or, for any other reason, the amount of the claim is not certain, the liquidator, or the bankruptcy trustee, shall

(a) agree an estimate of the value of the claim as at the relevant time; or

(b) apply to the Court to determine the amount of the claim.

(4) On an application by the liquidator or the bankruptcy trustee under subsection (3)(b), the Court may

(a) determine the amount of the claim itself; or

(b) determine a method to be used by the liquidator or the trustee for calculating the amount of the claim.

(5) In the case of rent and other payments of a periodic nature, a claim may include any amounts due and unpaid at the relevant time and where, at the relevant time, a payment was accruing due, the claim may include so much as would have fallen due at that time if the liability had been accruing from day to day.

(6) A claim based on a liability that, at the relevant time, was not payable by the company until after the relevant time shall be discounted in accordance with the Rules.

(7) Interest may be included in a claim as provided by section 153.

Interest on claims.

153. (1) Subject to sections 215 and 342, a claim in the liquidation of a company or the bankruptcy of an individual shall not include an amount for interest in respect of a period after the relevant time.

(2) If it was agreed between the debtor and a creditor that the debt on which the creditor's claim is based would bear interest, the claim may include interest, at the agreed rate, up to the relevant time.

(3) A claim made by a creditor other than one referred to in subsection (2) may include interest up to the relevant time if

(a) the debt on which the claim is based is due by virtue of a written instrument and was payable at a certain time before the relevant time; or

(b) if, before the relevant time, the creditor made written demand on the debtor and the demand stipulated that interest would be payable on the debt from the date of the demand until payment of the debt.

(4) The amount of interest that may be included in a claim under this section is,

(a) in the case of a debt referred to in subsection (3)(a), interest at the court rate for the period from the date that the debt was payable to the relevant time; and

(b) in the case of a debt referred to in subsection (3)(b), interest at the court rate for the period from the date of the written demand to the relevant time.

Claim in currency other than dollars.

154. (1) The amount of a claim based on a liability incurred or payable in a currency other than dollars shall be converted into dollars at the rate of exchange prevailing at the relevant time.

(2) For the purposes of subsection (1), the rate of exchange should be ascertained in such manner as may be prescribed.

Statutory demand.

155. (1) A creditor may make demand on a person for payment of a debt owed by that person to him.

(2) A demand under subsection (1) shall

(a) be in respect of a debt that is due and payable at the time of the demand and that is not less than the prescribed minimum;

(b) be in writing and shall specify the nature of the debt and its amount;

(c) be dated and shall be signed by the creditor or by a person authorized to make demand on the creditor's behalf;

(d) require the person to pay the debt or to secure or compound for the debt to the reasonable satisfaction of the creditor within 21 days of the date of service of the demand on him;

(e) state that if the demand is not complied with, application may be made to the Court for the appointment of a liquidator or a trustee, as the case may be;

(f) set out the rights of the person to make application to set the demand aside under section 156; and

(g) comply with and be served in accordance with the Rules.

(3) If the creditor making demand under subsection (1) is a secured creditor in respect of the debt, the full amount of the debt shall be specified in the demand, but

(a) the demand shall specify the nature of the security interest, and the value which the creditor places on it at the date of the demand; and

(b) the amount claimed

(i) shall be the full amount of the debt less the amount specified as the value of the security interest; and

(ii) shall equal or exceed the prescribed minimum.

Application to set aside statutory demand.

156. (1) Where a person has been served with a statutory demand he may apply to the Court to set it aside.

(2) An application under subsection (1) shall be made within seven days of the date of service of the demand on him.

(3) The Court may not extend the time for making or serving an application to set aside a statutory demand.

(4) Subject to an order of the Court under section 157, the time for compliance with the demand ceases to run as from the date upon which an application under subsection (1) is filed with the Court.

(5) A person applying to set aside a statutory demand under this section shall give seven days notice of the hearing to the creditor or, where a person is named in the demand as the person with whom communications in respect of the demand should be made, to that person.

Hearing to set aside statutory demand.

157. (1) The Court shall set aside a statutory demand if it is satisfied that

(a) there is a substantial dispute as to whether

(i) the debt, or

(ii) a part of the debt sufficient to reduce the undisputed debt to less than the prescribed minimum,

is owing or due;

(b) the person on whom the statutory demand was served has a reasonable prospect of establishing a set-off, counterclaim or cross claim in an amount equal to or greater than the amount specified in the demand less the prescribed minimum; or

(c) the creditor holds a security interest in respect of the debt claimed and the value of the security interest is equal to or greater than the amount specified in the demand less the prescribed minimum.

(2) The Court may set aside a statutory demand if it is satisfied that substantial injustice would otherwise be caused

(a) because of a defect in the demand, including a failure to comply with section 155(3); or

(b) for some other reason.

(3) Where the Court is satisfied that the security interest of a secured creditor has been under-valued in the statutory demand, the Court may require the creditor to amend the demand accordingly, but without prejudice to his right to make application for the appointment of a liquidator or a bankruptcy order, as the case may be.

(4) If, on hearing an application to set aside a statutory demand, the Court is satisfied that there are no grounds for setting aside the statutory demand, it may extend the time for compliance with the statutory demand.

(5) If the Court dismisses an application to set aside a statutory demand, it shall make an order authorizing the creditor to make application for the appointment of a liquidator or a bankruptcy order, as the case may be.

(6) Having considered the evidence before it on a hearing under this section, the Court may either summarily determine the application or adjourn it giving such directions as it considers fit.

PART VI

LIQUIDATION

PRELIMINARY

Application of this Part to Official Receiver.

158. Where the Official Receiver is appointed as the liquidator or provisional liquidator of a company, the provisions of this Act that apply to a liquidator apply to the Official Receiver, as liquidator, unless otherwise provided.

Appointment of liquidator.

159. (1) The Court may appoint the Official Receiver or an eligible insolvency practitioner as liquidator

(a) of a company, on an application under section 162; or

(b) of a foreign company, on an application under section 163.

(2) Subject to section 161, the members of a company may, by a qualifying resolution, appoint an eligible insolvency practitioner as liquidator of the company.

(3) For the purposes of subsection (2), a resolution is a "qualifying resolution" if it is passed at a properly constituted meeting of the company by a majority of 75 per cent, or if a higher majority is required by the memorandum or articles, by that higher majority, of the votes of those members who are present at the meeting and entitled to vote on the resolution.

(4) The members of a foreign company may not appoint a liquidator under this Part and any resolution of the members of a foreign company that purports to appoint a liquidator under this Part is void and of no effect.

Duration of liquidation.

160. The liquidation of a company commences at the time at which a liquidator is appointed as provided in section 159 and continues until it is terminated in accordance with section 232 and, throughout this period, the company is referred to in this Act as "in liquidation".

Appointment of liquidator by members.

161. (1) The members of a company may not appoint a liquidator of the company if

(a) an application to the Court to appoint a liquidator has been filed but not yet determined;

(b) a liquidator has been appointed by the Court; or

(c) the person to be appointed liquidator has not consented in writing to his appointment;

and a resolution to appoint a liquidator in the circumstances referred to in paragraphs (a), (b) or (c) is void and of no effect.

(2) Where the members resolve to appoint a liquidator under section 159(2), the company shall, as soon as practicable, give the liquidator notice of his appointment.

(3) The members of a company may not appoint the Official Receiver as liquidator of the company, and any resolution of the members that purports to do so is void and of no effect.

(4) A company that contravenes subsection (2) commits an offence.

APPOINTMENT OF LIQUIDATOR BY COURT

Appointment of liquidator by Court.

162. (1) The Court may, on application by a person specified in subsection (2), appoint a liquidator of a company under section 159(1) if

(a) the company is insolvent;

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed; or

(c) the Court is of the opinion that it is in the public interest for a liquidator to be appointed.

(2) Subject to subsections (3), (4) and (5), an application under subsection (1) may be made by one or more of the following:

(a) the company;

(b) a creditor;

(c) a member;

(d) the supervisor of a creditors' arrangement in respect of the company;

(e) the Commission; and

(f) the Attorney General.

(3) An application under subsection (1)(a) by a member may only be made with the leave of the Court, which shall not be granted unless the Court is satisfied that there is a *prima facie* case that the company is insolvent.

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

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

(6) Where a creditor's arrangement has terminated, the person who, immediately before the termination of the arrangement, was the supervisor is treated as the supervisor for the purposes of this section.

(7) An applicant may, in his application under this section, propose an eligible insolvency practitioner as liquidator of the company.

(8) Where an order is made under section 159(1) at a time when an arrangement is in force in respect of the company, the Court may appoint the supervisor of the arrangement as liquidator of the company.

Appointment of liquidator of a foreign company.

163. (1) The Court may, on application by a person specified in section 162(2), appoint a liquidator of a foreign company under section 159(1) if the Court is satisfied that the company has a connection with the Virgin Islands and

(a) the company is insolvent;

(b) the Court is of the opinion that it is just and equitable that a liquidator should be appointed;

(c) the Court is of the opinion that it is in the public interest for a liquidator to be appointed;

(d) the company is dissolved or has otherwise ceased to exist under or by virtue of the laws of the country in which it was last registered;

(e) the company has ceased to carry on business; or

(f) the company is carrying on business only for the purpose of winding up its affairs.

(2) For the purposes of subsection (1), a foreign company has a connection with the Virgin Islands only if

(a) it has or appears to have assets in the Virgin Islands;

(b) it is carrying on, or has carried on, business in the Virgin Islands; or

(c) there is a reasonable prospect that the appointment of a liquidator of the company under this Part will benefit the creditors of the company.

(3) An application for the appointment of a liquidator of a foreign company may be made

(a) notwithstanding that the company has been dissolved or has otherwise ceased to exist under or by virtue of the laws of any other country; and

(b) whether or not the company is or has been registered under Part IX of the Companies Act. Cap. 285

(4) Subject to the modifications and exceptions set out in Schedule **3**, the provisions of this Part apply to an application to appoint a liquidator of a foreign company and to the liquidation of a foreign company. Schedule 3

Withdrawal of application.

164. An application for the appointment of a liquidator may not be withdrawn except with the leave of the Court.

Advertisement of application.

165. (1) Unless the Court otherwise orders, an application for the appointment of a liquidator shall be advertised,

(a) if the company is the applicant, not less than seven days before the date set for the application to be heard; or

(b) if the company is not the applicant, not less than seven days after service of the application on the company and not less than seven days before the date set for the application to be heard.

(2) If the application is not advertised in accordance with this section and the Rules, the Court may dismiss it.

Substitution of applicant.

166. (1) In the circumstances specified in subsection (2), the Court may, by order, substitute as applicant in an application for the appointment of a liquidator, a creditor or member who is entitled to make such an application.

(2) The Court may make a substitution order under subsection (1) where the original applicant is a member or creditor of the company and the Court considers it appropriate to do so

(a) because the applicant applies to withdraw the application or consents to it being dismissed;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

Court's powers on hearing of an application.

167. (1) On the hearing of an application for the appointment of a liquidator, the Court may

(a) appoint a liquidator under section 159(1);

(b) dismiss the application, even if a ground on which the Court could appoint a liquidator has been proved;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers fit.

(2) The Court shall not refuse to appoint a liquidator of a company merely because

(a) the assets of the company are subject to a security interest in respect of an amount equal to or greater than the value or amount of the assets;

(b) the company has no assets; or

(c) where the applicant is a member, if the order were made, no assets of the company would be available for distribution among the members.

(3) Where an application to appoint a liquidator is made by a member under section 162(1)(b), if the Court is of the opinion that

(a) the applicant is entitled to relief either by the appointment of a liquidator or by some other means; and

(b) in the absence of any other remedy it would be just and equitable to appoint a liquidator;

it shall appoint a liquidator unless it is also of the opinion that some other remedy is available to the applicant and that he is acting unreasonably in seeking to have a liquidator appointed instead of pursuing that other remedy.

Period within which application shall be determined.

168. (1) Subject to subsection (2), an application for the appointment of a liquidator shall be determined within six months after it is filed.

(2) The Court may, upon such conditions as it considers fit, extend the period referred to in subsection (1) for one or more periods not exceeding three months each if

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

Expenses of an arrangement.

169. Where a liquidator of a company is appointed and, at the date that the application was filed, an arrangement was being supervised by a supervisor, the remuneration of the supervisor is a first charge on the assets of the company.

INTERIM RELIEF

Appointment of provisional liquidator.

170. (1) Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, the Court may, on application by a person specified in subsection (2), appoint the Official Receiver or an eligible insolvency practitioner as provisional liquidator of the company on the grounds specified in subsection (4).

(2) Subject to subsection (3), an application under subsection (1) may be made by one or more of the following:

(a) the applicant for the appointment of a liquidator;

(b) the company;

(c) a creditor;

(d) a member;

(e) the Commission; and

(f) any person who, under any other enactment, is entitled to apply for the appointment of a liquidator of the company.

(3) An application under subsection (1) by a member may only be made with the leave of the Court.

(4) The Court may appoint a provisional liquidator under subsection (1) if

(a) the company, in respect of which the application to appoint a liquidator has been made, consents; or

(b) the Court is satisfied that the appointment of a provisional liquidator

(i) is necessary for the purpose of maintaining the value of assets owned or managed by the company, or

(ii) is in the public interest.

(5) The Court may appoint a provisional liquidator on such terms as it considers fit and may, as a condition precedent to the appointment, require the applicant to deposit at Court such sum as the Court considers reasonable to cover the remuneration of the provisional liquidator.

Rights and powers of provisional liquidator.

171. (1) Subject to subsection (2), a provisional liquidator has the rights and powers of a liquidator to the extent necessary to maintain the value of the assets owned or managed by the company or to carry out the functions for which he was appointed.

(2) The Court may limit the powers of a provisional liquidator in such manner and at such times as it considers fit.

Remuneration of provisional liquidator.

172. (1) The provisional liquidator of a company is entitled to be paid such remuneration as the Court may order applying the general principles specified in section 432.

(2) Subject to subsections (4) and (5), the remuneration of the provisional liquidator is payable out of the assets of the company.

(3) Where a liquidator is appointed, the remuneration of the provisional liquidator shall be paid in accordance with the prescribed priority.

(4) If a liquidator is not appointed, the Court may order the applicant for the appointment of the provisional liquidator to pay or contribute to the remuneration and expenses of the provisional liquidator if it is satisfied that the applicant

(a) misled the Court when making the application; or

(b) acted unreasonably in applying for the appointment of the provisional liquidator.

(5) If the assets of the company are not sufficient to pay the remuneration of the provisional liquidator, the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the appointment of the provisional liquidator.

(6) Unless the Court otherwise orders, where subsection (4)(a) applies, the provisional liquidator may retain out of the company's assets such sums or assets as are, or may be, required for meeting his remuneration.

Termination of appointment of provisional liquidator.

173. (1) The Court may, on the application of the provisional liquidator or of any person specified in section 170(2) or on its own motion, terminate the appointment of a provisional liquidator.

(2) If the Court has not previously terminated the appointment of a provisional liquidator under subsection (1), it terminates on the determination by the Court of the application to appoint a liquidator.

(3) On the termination of the appointment of a provisional liquidator, the Court may give such directions or make such order with respect to the accounts of his administration, or to any other matters, as it considers appropriate.

Power to stay or restrain proceedings etc.

174. (1) Where an application for the appointment of a liquidator of a company has been filed but not yet determined or withdrawn, a person specified in section 170(2) may,

(a) where any action or proceeding is pending against the company in the Court, the Court of Appeal or the Privy Council, apply to the Court, the Court of Appeal or the Privy Council, as the case may be, for a stay of the action or proceeding; and

(b) where any action or proceeding is pending against the company in any other Virgin Islands court or tribunal in the Virgin Islands, apply to the Court for a stay of the action or proceeding.

EFFECT OF LIQUIDATION

Effect of liquidation.

175. (1) Subject to subsection (2), with effect from the commencement of the liquidation of a company

(a) the liquidator has custody and control of the assets of the company;

(b) the directors and other officers of the company remain in office, but they cease to have any powers, functions or duties other than those required or permitted under this Part;

(c) unless the Court otherwise orders, no person may

(i) commence or proceed with any action or proceeding against the company or in relation to its assets, or

(ii) exercise or enforce, or continue to exercise or enforce any right or remedy over or against assets of the company;

(d) unless the Court otherwise orders, no share in the company may be transferred;

(e) no alteration may be made in the status of or to the rights or liabilities of a member, whether by an amendment of the memorandum or articles or otherwise;

(f) no member may exercise any power under the memorandum or articles, or otherwise, except for the purposes of this Act; and

(g) no amendment may be made to the memorandum or articles of the company.

(2) Subsection (1) does not affect the right of a secured creditor to take possession of and realise or otherwise deal with assets of the company over which that creditor has a security interest.

(3) Any thing or matter done or purported to be done in contravention of subsection (1) is void and of no effect.

Restriction on execution or attachment.

176. (1) Subject to subsections (2) and (3), a creditor is not entitled to retain the benefit of any execution process, distress or attachment over or against the assets of a company in liquidation unless the execution, process or attachment is completed before the first occurring of the commencement of the liquidation and,

(a) where the liquidator was appointed by the members under section 159(2), the date upon which the creditor had notice of the calling of the meeting at which the resolution was proposed; or

(b) where the liquidator was appointed by Court, the date upon which the application to appoint the liquidator was filed.

(2) A person who, in good faith and for value, purchases assets of a company from an officer charged with an execution process acquires a good title as against the liquidator of the company.

(3) The Court may set aside the rights conferred on a liquidator under subsection (1) to the extent and subject to such terms as it considers fit.

(4) For the purposes of this section,

(a) an execution or distraint against personal property is completed by seizure and sale;

(b) an attachment of a debt is completed by the receipt of the debt; and

(c) an execution against land is completed by sale, and in the case of an equitable interest, by the appointment of a receiver.

Duties of officer in execution process.

177. (1) Subject to subsection (6), where

(a) assets of a company are taken in an execution process; and

(b) before completion of the execution process the officer charged with the execution process receives notice that a liquidator or a provisional liquidator of a company has been appointed;

he shall, on being required by the liquidator or provisional liquidator to do so, deliver or transfer the assets and any money received in satisfaction or partial satisfaction of the execution or paid to avoid a sale of the assets, to the liquidator.

(2) The costs of the execution process are a first charge on any asset delivered or transferred to the liquidator under subsection (1) and the liquidator may sell all or some of the assets to satisfy that charge.

(3) Subject to subsections (4) and (6), if in an execution process in respect of a judgement for a sum exceeding $500, assets of a company are sold or money

is paid to avoid a sale, the officer charged with the execution process shall retain the proceeds of sale or the money paid for a period of 14 days.

(4) If

(a) within the period of 14 days referred to in subsection (3), the officer has notice that

(i) an application for the appointment of a liquidator of the company has been filed, or

(ii) a meeting of the members of the company has been called at which a resolution to appoint a liquidator is to be proposed; and

(b) a liquidator is appointed in respect of the company;

the officer shall deduct the costs of execution from the amount that he has retained under subsection (3) and pay the balance to the liquidator.

(5) A liquidator to whom money has been paid under subsection (4) is entitled to retain it as against the execution creditor.

(6) The Court may set aside the rights conferred on a liquidator under this section to the extent and subject to such terms as it considers fit.

NOTICE OF APPOINTMENT AND FIRST MEETINGS OF CREDITORS

Notice of appointment of liquidator.

178. (1) The liquidator of a company shall, within 14 days of the date of his appointment

(a) advertise his appointment in

(i) the *Gazette*,

(ii) a newspaper published and circulating in the Virgin Islands, and

(iii) a newspaper published and circulating in the place of the company's principal place of business;

(b) file notice of his appointment with the Registrar;

(c) serve notice of his appointment on the company in respect of which he was appointed; and

(d) if he has been appointed in respect of a company that is or has been a regulated person, serve notice of his appointment on the Commission.

(2) A liquidator who contravenes subsection (1) commits an offence.

Liquidator to call first meeting of creditors.

179. (1) Subject to section 183, the liquidator of a company shall call a meeting of the creditors of the company (the first creditors' meeting) to be held within 14 days of the date of his appointment

(a) by sending a notice of the meeting to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting.

(2) During the period before the date of the first creditors' meeting, the liquidator shall, at the request of a creditor, furnish that creditor with

(a) a list of the creditors of the company known to the liquidator; and

(b) such other information concerning the affairs of the company as the creditor may reasonably require and that the liquidator is reasonably able to provide.

(3) The liquidator shall attend the first creditors meeting and, if appointed by the members, shall report to the meeting on any exercise by him of his powers since his appointment.

(4) At the first creditors' meeting, the creditors may,

(a) in the case of a liquidator appointed by the members, appoint another liquidator in his place; or

(b) in the case of a liquidator appointed by the Court, resolve to make application to the Court for the appointment of another liquidator in his place; and

(c) in either case, appoint a creditors' committee.

(5) A liquidator who contravenes subsections (1), (2) or (3) commits an offence.

Application to Court by members.

180. Where at a meeting held under section 179 the creditors appoint a liquidator in the place of the liquidator appointed by the members, a director, member or creditor of the company may apply to the Court for an order that

(a) the person appointed by the members is appointed liquidator; or

(b) some other insolvency practitioner is appointed as liquidator;

in either case, instead of or jointly with the liquidator appointed by the creditors.

Application of sections 178 and 179.

181. (1) Subject to subsection (2), sections 178 and 179 do not apply to a liquidator appointed to act

(a) with an existing liquidator; or

(b) in place of a liquidator who has died or otherwise ceased to act.

(2) Where the first liquidator of a company dies or ceases to act before sections 178 and 179 have been fully complied with, those sections apply to his successor and any continuing liquidator until the sections have been fully complied with.

Restrictions on powers of liquidator appointed by members.

182. Notwithstanding section 186, in the case of a liquidator appointed by the members of a company, during the period before the holding of the first creditors' meeting called under section 179, the powers of the liquidator are limited to

(a) taking into his custody and control all the assets to which the company is or appears to be entitled;

(b) disposing of perishable goods and other assets the value of which is likely to diminish if they are not immediately disposed of;

(c) doing all such things as may be necessary to protect the company's assets; and

(d) exercising such other of the powers conferred on a liquidator by section 186 as the Court may, on his application, sanction.

Court appointed liquidator may dispense with creditors' meeting.

183. A liquidator appointed by the Court is not required to call a meeting of creditors under section 179 if

(a) he considers that, having regard to the assets and liabilities of the company, the likely result of the liquidation of the company and any other relevant matters that it is not necessary for a meeting to be held;

(b) he gives notice to the creditors stating

(i) that he does not consider it necessary for a meeting to be held,

(ii) the reasons for his view, and

(iii) that a meeting will not be called unless 10 per cent in value of the creditors give written notice to the liquidator within ten days of receiving the notice, that they require a meeting to be called; and

(c) no notice requiring a meeting to be held is received by him.

LIQUIDATORS

Status of liquidator.

184. (1) In performing his functions and undertaking his duties under this Act, a liquidator, whether appointed by resolution of the members or by the Court, acts as an officer of the Court.

(2) A liquidator is the agent of the company in liquidation.

General duties of liquidator.

185. (1) The principal duties of a liquidator of a company are

(a) to take possession of, protect and realise the assets of the company;

(b) to distribute the assets or the proceeds of realisation of the assets in accordance with this Act; and

(c) if there are surplus assets remaining, to distribute them, or the proceeds of realisation of the surplus assets, in accordance with this Act;

(2) The liquidator shall, subject to this Act and the Rules, use his own discretion in undertaking his duties.

(3) A liquidator also has the other duties imposed by this Act and the Rules and such duties as may be imposed by the Court.

General powers of liquidator.

186. (1) A liquidator of a company has the powers necessary to carry out the functions and duties of a liquidator under this Act and the powers conferred on him by this Act.

(2) Without limiting subsection (1), a liquidator has the powers specified in Schedule **2**.

Schedule 2

(3) The Court may provide that certain powers may only be exercised with the sanction of the Court

(a) where the liquidator is appointed by the Court, on his appointment or subsequently; or

(b) where the liquidator is appointed by the members, at any time.

(4) Where a liquidator disposes of any assets of the company to a person connected with the company, he shall notify the creditors' committee, if any, of such disposition.

(5) The liquidator of a company, whether or not appointed by the Court, may at any time apply to the Court for directions in relation to a particular matter arising in the liquidation.

Removal of liquidator.

187. (1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if

(a) the liquidator

(i) is not eligible to act as an insolvency practitioner in relation to the company,

(ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Rules or any other enactment or law in the Virgin Islands, or

(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that

(i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator,

(ii) the liquidator has an interest that conflicts with his role as liquidator, or

(iii) that for some other reason he should be removed as liquidator.

(2) An application to the Court to remove the liquidator of a company may be made by

(a) the creditors' committee;

(b) a creditor or member of the company; or

(c) the Official Receiver.

(3) Where the Court removes a liquidator from office under this section

(a) if, following his removal, there is at least one liquidator remaining in office, the Court may appoint another liquidator in his place; or

(b) if the liquidator removed was the sole liquidator of the company, the Court shall appoint another liquidator in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers fit.

Resignation of liquidator.

188. (1) A liquidator of a company

(a) shall resign if he is no longer eligible to act as an insolvency practitioner in relation to the company; but

(b) otherwise may only resign in accordance with this section.

(2) Where a liquidator resigns under subsection (1)(a), he shall send a notice of his resignation to the creditors of the company and to the Official Receiver and, if he was appointed by the Court, to the Court.

(3) A liquidator may resign in accordance with subsection (5)

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(4) Notwithstanding subsection (3), where joint liquidators are appointed in respect of a company, one or more of the joint liquidators may resign in accordance with subsection (5) if

(a) all the joint liquidators are of the opinion that it is no longer necessary or expedient for the resigning liquidator or liquidators to continue in office; and

(b) at least one of them will remain in office.

(5) Where the liquidator of a company intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he shall call a meeting of creditors for the purpose of accepting his resignation as liquidator.

(6) If, at the meeting called under subsection (5), the creditors resolve to accept the resignation of the liquidator, he ceases to hold office as liquidator with effect from the date of the meeting.

(7) This section does not apply to the Official Receiver when acting as the liquidator of a company.

Vacancy in office of liquidator.

189. (1) Where the liquidator of a company

(a) dies;

(b) is removed under section 187; or

(c) resigns under section 188;

the Court may, on the application of a person specified in subsection (2) or on its own motion, fill the vacancy.

(2) An application under subsection (1) may be made

(a) by any continuing liquidator;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

Remuneration of liquidator.

190. The remuneration payable to the liquidator of a company shall be fixed applying the principles set out in section 432.

Notification of liquidation.

191. (1) Where a company is in liquidation, every document of a type specified in subsection (2) shall

(a) state that the company is in liquidation; and

(b) specify the name of the liquidator.

(2) Subsection (1) applies to

(a) every public document issued by or on behalf of the company;

(b) every public document issued by or on behalf of the liquidator of the company or a receiver of the assets of that company on which, in either case, the name of the company appears.

(3) If subsection (1) is contravened the company, and each officer, receiver or liquidator of the company who causes, permits or acquiesces in the contravention, commits an offence.

Vesting of assets in liquidator.

192. (1) On the application of the liquidator of a company, the Court may order that all or any part of the assets of the company, or held by trustees on its behalf, shall vest in the liquidator from the date of the order.

(2) On the making of an order under subsection (1), the assets covered by the order vest in the liquidator by his official name.

(3) The liquidator of a company may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any action or other legal proceeding which relates to the vested assets or which it is necessary to bring or defend for the purposes of liquidating the company and recovering its assets.

MEMBERS

Settlement of list of members.

193. (1) The liquidator of a company shall, as soon as practicable after his appointment, settle a list of the members of the company containing the information and in the form prescribed.

(2) Forthwith after settling the list of members, the liquidator shall give notice to every person included in the list that he has done so in accordance with the Rules.

(3) If a person objects to any entry in, or exclusion from, the list of members as settled by the liquidator which is not accepted by the liquidator, he may apply to the Court for an order removing the entry to which he objects or, as the case may be, modifying the entry.

(4) An application under subsection (3) shall be made within 21 days of the service on the applicant of the liquidator's notice declining to accept the objection.

(5) The liquidator of a company is not personally liable for the costs incurred by a person in an application under subsection (3) unless the Court makes an order to that effect.

(6) The liquidator may from time to time vary or add to the list of members as previously settled by him and any variation or addition is subject, as regards any person affected, to the provisions of the Act and the Rules applicable to the settling of the list.

Rectification of register of members.

194. (1) If it appears to the liquidator of a company that the register of members of the company should be rectified, he may apply to the Court for an order under this section.

(2) On an application under subsection (1), the Court may rectify the register of members of the company.

Liability of members limited.

195. (1) Unless the memorandum of a company provides that the liability of a member is unlimited, the liability of a member to contribute to the assets of a company in liquidation for the payment of its liabilities, for the expenses of the liquidation and for the adjustment of the rights of the members between themselves is limited to

(a) any amount unpaid on a share held by the member, including any liability for calls; and

(b) any liability expressly provided for in the memorandum or articles, including such contribution as the member of a company limited by guarantee, or by shares and guarantee, may have undertaken to make in the event of the company being wound up.

(2) Subsection (1) does not affect

(a) any liability of the member to pay or repay monies to the company imposed by a provision of this Act, the Companies Act or the International Business Companies Act; or

(b) any liability of a member to the company under a contract, including a contract for the issue of shares, or for any tort, breach of fiduciary duty or other actionable wrong committed by the member.

Liability of past members.

196. (1) For the purposes of this section, a "past member" of a company is a person who ceased to be a member of the company at any time during the period of one year before the commencement of the liquidation of the company.

(2) Unless the Court is satisfied that the members of a company are able to discharge the liabilities set out in 195(1), a past member of a company in liquidation is liable to contribute to the assets of the company for the purposes specified in that subsection to the same extent as a member.

(3) Notwithstanding subsection (2), a past member is not liable to contribute to the assets of the company in respect of any liability of the company contracted after he ceased to be a member.

Dividends payable to member.

197. A member, and a past member, of a company may not claim in the liquidation of the company for a sum due to him in his character as a member, whether by way of dividend, profits, redemption proceeds or otherwise, but such sum is to be taken into account for the purposes of the final adjustment of the rights of members and, if appropriate, past members between themselves.

Liability where limited company becomes unlimited company.

198. (1) This section applies where an unlimited company in liquidation was at some former time registered as a limited company.

(2) A person who ceased to be a member of a company before the company became registered as an unlimited company, and has not since become a member of the company, is liable to contribute to the assets of the company only to the extent that he would have been liable had the company remained registered as a limited company.

Liability where unlimited company becomes limited company.

199. (1) This section applies where a limited company in liquidation was at some former time registered as an unlimited company.

(2) Notwithstanding section 196, if a company referred to in subsection (1) goes into liquidation within the period of one year from the date on which it was registered as a limited company, a person who was a member of the company at the date of its registration as a limited company is liable, without limit, to contribute to the assets of the company in respect of liabilities contracted before that time.

Liability of personal representative.

200. The personal representatives of a member or past member who has died are liable to contribute out of his estate to the assets of the company under sections 195, 196, 198 and 199 to the same extent as the member.

Effect of member or past member becoming bankrupt.

201. The liquidator of a company is entitled to submit a claim in the bankruptcy or liquidation of any member or past member of the company in respect of any contribution that the member or past member is required to make under sections 195, 196, 198 and 199.

Status of personal representatives or trustee in bankruptcy.

202. The personal representatives and the trustee in bankruptcy of a member or past member of a company in liquidation are entitled to make any application to Court, or take any such other action, as could be made or taken by the member or past member.

Insurance and other contracts not affected.

203. Nothing in this Act invalidates any provision contained in a policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract.

Power of liquidator to enforce liability of member or past member.

204. (1) The liquidator of a company may,

(a) if a member is liable to calls, make calls on that member; and

(b) if a member or past member is liable to the company, as a member, require him, by notice in writing, to discharge that liability.

(2) A call made under subsection (1)(a) shall be in writing and shall specify the amount of, or balance due in respect of, the call.

(3) The liability of a member under subsection (1) includes a liability of the estate of the person he represents.

(4) In the case of an unlimited company, a member may set-off against a liability under subsection (1)(b) any money due to him, or to the estate which he represents, from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit.

(5) The liquidator may enforce the liability of a member under subsection (1) only if that member is on the list of members settled by him under section 193.

Summary remedy against members and past members.

205. (1) The liquidator may apply to the Court for an order under this section if

(a) a member of a company fails to comply with a call made under section 204(1)(a); or

(b) a member or past member fails to satisfy a liability when required to do so under 204(1)(b).

(2) On an application under subsection (1), the Court may order a member or past member to pay to the company any money due from him, or due from the estate of the person who he represents in accordance with section 204(1).

(3) In the case of any company, whether limited or unlimited, when all the creditors are paid in full, together with interest at the official rate, any money due on any account whatever to a member from the company may be allowed to him by way of set-off against any subsequent call.

206. An order made against a member under section 205 is, subject to any right of appeal, conclusive evidence that the money, if any, ordered to be paid is due. Order under section 205 to be conclusive evidence.

CLAIMS

207. (1) Unless and to the extent that this Act or any other enactment provides otherwise, the assets of a company in liquidation shall be applied Distribution of assets of company.

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the liquidation in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the liquidation, in paying the preferential claims admitted by the liquidator in accordance with the provisions for the payment of preferential claims prescribed;

(c) after payment of the preferential claims, in paying all other claims admitted by the liquidator; and

(d) after paying all admitted claims, in paying any interest payable under section 215.

(2) Subject to section 151, the claims referred to in subsection (1)(c) rank equally between themselves if the assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(3) Any surplus assets remaining after payment of the costs, expenses and claims referred to in subsection (1) shall be distributed to the members in accordance with their rights and interests in the company.

(4) For the purposes of this Act, assets held by a company in liquidation on trust for another person are not assets of the company.

208. (1) So far as the assets of a company in liquidation available for payment of the claims of unsecured creditors are insufficient to pay Claims having priority over floating charges.

(a) the costs and expenses of the liquidation in accordance with the prescribed priority; and

(b) the preferential creditors;

those costs, expenses and claims have priority over the claims of chargees in respect of assets that are subject to a floating charge created by the company and shall be paid accordingly out of those assets.

Claims by unsecured creditors.

209. (1) An unsecured creditor may make a claim against a company in liquidation by submitting to the liquidator a written claim, signed by him or on his behalf.

(2) The liquidator may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) As soon as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the liquidator may have imposed under subsection (2), the liquidator shall either admit or reject the claim in whole or in part.

(4) If the liquidator rejects the claim, whether in whole or in part, he shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the liquidator under subsection (2).

(6) The liquidator shall not admit a claim against the company unless it has been made in accordance with this section.

(7) A person who makes or authorizes the making of a claim under this section knowing that

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim;

commits an offence.

Variation , withdrawal and expunging of claims.

210. (1) A claim made under section 209 may

(a) be amended or withdrawn by the creditor at any time before the liquidator has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the liquidator at any time after the liquidator has admitted it

(2) The Court, on the application of the liquidator or, where the liquidator declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

Claims by secured creditors.

211. (1) A secured creditor may

(a) value the assets subject to the security interest and claim in the liquidation of a company as an unsecured creditor for the balance of his debt; or

(b) surrender his security interest to the liquidator for the general benefit of creditors and claim in the liquidation as an unsecured creditor for the whole of his debt;

but he is not obliged to do either.

(2) A secured creditor may, at any time apply to the liquidator to amend the value that he placed on the security interest in his claim.

(3) If, on receiving an application under subsection (2), the liquidator is satisfied that

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed;

he may permit the secured creditor to amend the value that he places on the security interest.

(4) If the liquidator of a company is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)(a) or on an

amendment under subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the liquidator or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the liquidator are entitled to bid for and purchase them.

Redemption of security interest by liquidator.

212. (1) Where a secured creditor has claimed in the liquidation of a company under section 211(1)(a), the liquidator may at any time give notice to the creditor that he proposes at the expiration of 28 days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within 21 days of the date of the notice, apply to the liquidator to revise the value that he places on the security interest in accordance with section 211(2).

(3) At the expiration of 28 days from the date of the notice under subsection (1), the liquidator may redeem the security interest at the value placed on it by the creditor unless

(a) the secured creditor has applied to the liquidator to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the liquidator to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) Where, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the liquidator or on appeal to the Court, the liquidator may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the liquidator, require him to elect whether or not to exercise his power to redeem under this section.

(6) Where a notice to elect is served on a liquidator under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

Realization of security interest by secured creditor.

213. (1) Where a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the liquidator for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) Where a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the liability secured

(a) if the creditor has previously valued his security interest and claimed in the liquidation for the balance under section 211(1)(a), the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the liquidation as an unsecured creditor for the balance of the secured liability.

(3) For the purposes of this section, the secured liability includes contractual interest payable to the secured creditor on the liability up to the time of its satisfaction.

Surrender for non-disclosure.

214. (1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in the liquidation of a company, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct

(a) that he is not required to surrender his security interest; and

(b) that he values his security interest and amends his claim accordingly.

Interest after commencement of liquidation.

215. (1) Interest is payable on any claim in the liquidation of a company in respect of the period after the commencement of the liquidation in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the liquidation of a company shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the liquidation.

(3) Subject to section 151, all interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally and if the

assets of the company are insufficient to meet the claims in full, they shall be paid rateably.

(4) The rate of interest payable under this section is the greater of

(a) the court rate; and

(b) the rate that would be applicable to the claim if a liquidator of the company had not been appointed.

DISTRIBUTIONS

Power to exclude creditors not claiming in time.

216. (1) The liquidator of a company may, by written notice sent to the creditors of the company, fix a date on or before which creditors shall submit their claims to him.

(2) Where the liquidator sends a notice to creditors under subsection (1), a creditor who does not submit a claim on or before the date specified in the notice is excluded form the benefit of any distribution on or after that date that is made before he submits his claim.

DISCLAIMER

Liquidator may disclaim onerous property.

217. (1) For the purposes of this section, "onerous property" means

(a) an unprofitable contract; or

(b) assets of the company which are unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to section 219, the liquidator of a company may, by filing a notice of disclaimer with the Court, disclaim any onerous property of the company even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A liquidator who disclaims onerous property shall, within 14 days of the date on which the disclaimer notice is filed, give notice to every person whose rights are, to the knowledge of the liquidator, affected by the disclaimer.

(4) A liquidator who contravenes subsection (3) commits an offence.

When disclaimer takes effect.

218. (1) Subject to subsection (2), a disclaimer takes effect on the date when the notice of disclaimer is filed at Court.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the liquidator is aware of their addresses, to every person claiming under the company as underlessee or mortgagee and either

(a) no application for a vesting order is made under section 221 with respect to that property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer shall take effect.

(3) Where the Court gives a direction under subsection (2)(b), it may also, instead of or in addition to any order it makes under section 221, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers fit.

Notice to liquidator to elect whether to disclaim.

219. (1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the liquidator, require him to elect whether or not to disclaim the property.

(2) Where a notice to elect is served on a liquidator, he is not entitled to disclaim the property under section 217 unless he does so within 28 days of the date of service of the notice on him or within such extended period as the Court may allow.

Effect of disclaimer.

220. (1) A disclaimer of onerous property under section 217

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) except so far as is necessary to release the company from liability, does not affect the rights or liabilities of any other person.

(2) A person suffering loss or damage as a result of a disclaimer of onerous property under section 217 may claim in the liquidation of the company as a creditor for the amount of the loss or damage.

Vesting orders and orders for delivery.

221. (1) Subject to section 222, if a liquidator disclaims onerous property under section 217, the Court may make an order under subsection (2) on the application of

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

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer.

(2) On an application under subsection (1), the Court may, on such terms as it considers fit, order that the disclaimed property be vested in or delivered to

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer; or

(c) a trustee for a person referred to in paragraph (a) or (b).

(3) The Court shall not make an order in respect of a person specified in subsection (2)(b), or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage suffered by a person for the purposes of section 220(2).

(5) Subject to subsection (6), where a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) Where another Virgin Islands enactment

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that enactment enables the order to be registered;

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

Vesting orders in respect of leases.

222. (1) Where the Court makes an order under section 221 vesting property of a leasehold nature in a person claiming under the company in liquidation as an underlessee or a mortgagee, the vesting order shall be made on terms that make that person subject

(a) to the same liabilities and obligations as the company was subject to under the lease at the commencement of the liquidation; or

(b) to the same liabilities and obligations as that person would have

been subject to if the lease had been assigned to him at the commencement of the liquidation.

(2) Where the property vested by an order under section 221 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) Where no underlessee or mortgagee is willing to accept a vesting order made subject to subsection (1), the Court, by order

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the company, to perform the lessee's covenants in the lease; and

(b) where a vesting order is made under paragraph (a), may vest the property free from all estates, encumbrances and interests created by the company.

(4) Where an underlessee or a mortgagee declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

Land subject to rentcharge.

223. Where land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums except sums becoming due after he, or some person claiming title under or through him, has taken possession or control of the land or has entered into occupation of it.

Disclaimer presumed valid.

224. Unless it is proved that a liquidator has breached his duty to give notice under section 217(3) or that he has otherwise breached his duties under this Act or the Rules with regard to disclaimer, a disclaimer of property by the liquidator is presumed to be valid and effective.

INVESTIGATION OF ASSETS AND AFFAIRS OF COMPANY

Statement of affairs.

225. (1) In this section, "relevant person" has the meaning specified in section 275.

(2) The liquidator or provisional liquidator of a company may require one or more relevant persons to prepare a statement of affairs of the company in accordance with Part **XI**, Division **2**.

(3) Subject to section 280, the liquidator or provisional liquidator shall file with the Court each statement of affairs and each affidavit of concurrence that he receives.

Preliminary report.

226. (1) The liquidator of a company shall, within sixty days of the commencement of the liquidation, prepare a preliminary report covering, to the best of his knowledge and belief, the following matters:

(a) in the case of a company with share capital, the amount of capital issued, subscribed and paid up;

(b) the assets and liabilities of the company;

(c) if the company has failed, the causes of the failure; and

(d) whether, in his opinion, further enquiries are desirable with respect to

(i) any matter relating to the promotion, formation or insolvency of the company or the conduct of the business or affairs of the company; and

(ii) possible claims under Part **IX**.

(2) The liquidator shall send a copy of the report prepared under subsection (1)

(a) to each creditor of the company; and

(b) if in his report he states that further enquiries are desirable with respect to a matter referred to in subsection (1)(d), to the Official Receiver.

(3) Subsection (2)(b) does not apply to the Official Receiver when he is acting as the liquidator of a company.

(4) The Court may, on the application of the liquidator, extend the period specified in subsection (1) on such terms and conditions as it considers fit.

Duty of Official Receiver concerning report under section 226.

227. Where the Official Receiver receives a report under section 226, he shall carry out such investigation, if any, as he considers appropriate.

MISCELLANEOUS PROVISIONS

Liquidator to call meetings of creditors.

228. (1) The liquidator shall call a meeting of the creditors of a company in liquidation if

(a) a meeting is requisitioned by the creditors of the company in accordance with subsection (2); or

(b) he is directed to do so by the Court.

(2) A creditors' meeting may be requisitioned in accordance with the Rules by 10 per cent in value of the creditors of the company.

Recession of contracts by the Court.

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

(2) Any damages payable to a person under an order made under subsection (1) may be claimed by him as a debt in the liquidation of the company.

Inspection of books by creditors.

230. (1) At any time after the appointment of a liquidator of a company, the Court may, on such terms as it considers appropriate, make an order for the inspection of specified books, records and documents of the company that are in its possession.

(2) Application for an order under subsection (1) may be made by a creditor or member of the company.

Enforcement of liquidator's duties.

231. (1) In this section "specified person" means

(a) the Official Receiver;

(b) a creditor of a company in liquidation; or

(c) a member of a company in liquidation.

(2) If a liquidator fails to file any notice, return, account or other document, a specified person may serve a notice on the liquidator requiring him to remedy the default.

(3) If a liquidator fails to remedy the default specified in a notice served under subsection (1) within 14 days of service of the notice on him, any specified person may apply to the Court for an order that the liquidator remedy the default within such time as the Court may specify.

(4) The Court may order that the costs of and incidental to an application under this section are payable by the liquidator personally.

(5) A liquidator who fails to comply with an order made under subsection (3) commits an offence.

(6) This section does not prejudice any other provision of this Act or any other enactment

TERMINATION OF LIQUIDATION

Termination of liquidation.

232. The liquidation of a company terminates on the first occurring of

(a) the making by the Court of an order terminating the liquidation under section 233, or such later date as may be specified in the order;

(b) the filing by the liquidator of a certificate of compliance with the provisions of section 234(2), as modified by the Court under section 234(4), if appropriate; or

(c) the making by the Court of an order under section 234(4) exempting the liquidator from compliance with 234(2), or such later date as may be specified in the order.

Order terminating liquidation.

233. (1) The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is just and equitable to do so.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company or the Official Receiver.

(3) Before making an order under subsection (1), the Court may require the liquidator to file a report with respect to any matters relevant to the application.

(4) An order under subsection (1) may be made subject to such terms and conditions as the Court considers appropriate and, on making the order or at any time thereafter, the Court may give such supplemental directions or make such other order as it considers fit in connection with the termination of the liquidation.

(5) Where the Court makes an order under subsection (1), the company ceases to be in liquidation and the liquidator ceases to hold office with effect from the date of the order or such later date as may be specified in the order.

(6) Where the Court makes an order under subsection (1), the person who applied for the order shall, within ten days of the date of the order, file a sealed copy of the order with the Registrar.

(7) A person who contravenes subsection (6) commits an offence.

Completion of liquidation.

234. (1) In this section "Register" means, as appropriate

(a) the register of international business companies maintained by the Registrar under the International Business Companies Act; or Cap. 291

(b) the register of companies maintained by the Registrar under the Companies Act. Cap. 285

(2) As soon as practicable after completing his duties in relation to the liquidation of a company, the liquidator shall

(a) prepare and send to every creditor of the company whose claim has been admitted and to every member of the company

(i) his final report, complying with subsection (3), and a statement of realisation and distribution in respect of the liquidation, and

(ii) a summary of the grounds upon which a creditor or member may object to the striking of the company from the Register; and

(b) file with the Registrar a copy the final report and the statement realisations and distributions sent to the creditors and members of the company.

(3) The final report of a liquidator shall contain a statement

(a) that all known assets of the company have been disclaimed, realised or distributed without realisation;

(b) that all proceeds of realisation have been distributed; and

(c) that there is no reason why, in his opinion, the company should not be struck from the Register, and dissolved.

(4) On the application of the liquidator, the Court may on such terms and conditions as it considers just,

(a) exempt the liquidator from compliance with subsection (2)(a); or

(b) modify the application of the provisions of subsection (2) to the liquidator.

Release of liquidator.

235. (1) A person who ceases to be the liquidator, or provisional liquidator, of a company may apply to the Court for his release and the Court my grant the release unconditionally or upon such conditions as it considers fit, or it may withhold it.

(2) If the Court withholds the release, it may make a compensation order against the former liquidator under section 254.

(3) Subject to subsection (5), where a former liquidator is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the company.

(4) An order for the release of a former liquidator may be revoked by the Court if the release was obtained by fraud or the suppression or concealment of any material fact.

(5) Subsection (3) does not prevent the Court from making an order under section 254 against a liquidator who has been released under this section.

(6) Where the Official Receiver ceases to be liquidator and another liquidator is appointed in his place, the Official Receiver obtains his release

(a) from the appointment of the new liquidator; or

(b) such later date as the Court may determine.

(7) A liquidator who obtains his release under this section shall file a notice in the prescribed form with the Registrar.

Dissolution.

236. The Rules shall provide for the dissolution of a company on the termination and completion of the liquidation of the company.

PART VII

LIQUIDATION OF INSURANCE COMPANIES

Interpretation for and scope of this Part.

237. (1) In this Part,

"general business" and "long term business" have the meanings specified in section 2(1) of the Insurance Act; No. 15 of 1994

"general insurance company" means an insurance company that is authorised by its licence to carry on general business only;

"long term insurance company" means an insurance company that is authorised by its licence to carry on long term business, whether or not it is also authorised to carry on general business.

Modification of Act in respect of insurance companies.

238. The provisions of this Act relating to the liquidation of companies and foreign companies are modified in respect of insurance companies to the extent specified in this Part.

Appointment of liquidator by members.

239. (1) The members of a long term insurance company may not appoint a liquidator under Part **VI**.

(2) The members of a general insurance company, that is not a foreign company, may only appoint a liquidator under Part **VI** if the Commission has given its prior written consent to the appointment.

(3) Any resolution of the members

(a) of a long term insurance company to appoint a liquidator under Part **VI** in contravention of subsection (1); or

(b) of a general insurance company to appoint a liquidator under Part **VI** in contravention of subsection (2);

is void and of no effect.

(4) Where the members of general insurance company appoint a liquidator in accordance with this section, without limiting section 178(1)(a), the Commission may by notice in writing direct the liquidator to advertise his appointment in such manner as is specified in the notice.

(5) A liquidator who fails to advertise his appointment in accordance with a direction of the Commission issued under subsection (4) commits an offence.

Application for appointment of liquidator by Court.

240. (1) For the purposes of sections 162(1)(c) and 163(1)(c), the public interest includes the interests of the policyholders of an insurance company.

(2) The Court may, on the application of the Commission, appoint a liquidator of an insurance company if

(a) the company has failed to deliver to the Commission within the time
period specified in the Insurance Act

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(i) a statement of the conditions of its affairs under section 22(1)(b) of that Act, or

(ii) being a long term insurer, an actuarial valuation of its assets and liabilities under section 43(1) or (2) of that Act;

(b) the company has entered into a contract, is carrying on, or has carried on, business or is using, or has used, its funds in a manner or for a purpose prohibited or not authorized by the Insurance Act, any regulations made under that Act or the company's memorandum or articles; or

(c) the total value of the company's assets does not exceed the total amount of its liabilities by at least the minimum margin of solvency
prescribed in respect of the company in the Insurance Regulations, 1995.

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(3) On an application for the appointment of a liquidator under this section or under sections 162 or 179, evidence that an insurance company has at any time prior to the date of the application been insolvent is, unless the contrary is proved, evidence that the company continues to be insolvent.

(4) This section is in addition to, and not in substitution for, sections 162 and 179.

Reduction of contracts as alternative to winding up.

241. Where on an application for the appointment of a liquidator, the Court is satisfied that an insurance company is insolvent, it may reduce the amount of the insurance company's contracts on such conditions as it considers just, instead of appointing a liquidator.

Continuation of long term business by liquidator appointed by Court.

242. (1) The liquidator of a long term insurance company shall, unless the Court otherwise orders, carry on the long term business of the company with a with a view to it being transferred as a going concern to another insurance company, whether in existence or to be incorporated for the purpose.

(2) In carrying on the insurance company's long term business under subsection (1), the liquidator may agree to the variation of any contracts of insurance at the commencement of the liquidation, but he shall not effect any new contracts of insurance.

(3) On the application of the liquidator of a long term insurance company, the Court may by order reduce the amounts of the contracts made by the company in the course of carrying on its long term business.

(4) An order under subsection (3) may be made subject to such conditions as the Court considers appropriate.

(5) Without limiting section 186 or Schedule **2**, the liquidator of a long term insurance company may appoint an actuary to investigate and report to him on the long term business of the company and, if appropriate, to conduct actuarial valuations of the business. Schedule 2

243. (1) In the liquidation of a long term insurance company, the assets of the segregated funds of the company shall first be applied to meet the company's long term liabilities attributable to such funds. Protection of segregated funds and assets.

(2) If the value of the assets referred to in subsection (1) exceeds the amount of the long term liabilities of the company attributable to the segregated funds, the excess is an asset of the company available for distribution in accordance with this Act.

(3) Where the Court makes an order under section 254(3) in respect of a long term insurance company requiring a person to repay, restore or account for money or other assets, to pay compensation to the company or to pay interest to the company, the Court shall, insofar as the delinquency relates to assets belonging to the company's segregated funds, order that the money, assets or contribution is to be treated for the purposes of subsection (1) as assets of those funds.

PART VIII

VOIDABLE TRANSACTIONS

244. (1) In this Part, Interpretation for this Part.

"insolvent liquidation" means a liquidation of a company where the assets of the company are insufficient to pay its liabilities and the expenses of the liquidation;

"insolvency transaction" has the meaning specified in subsection (2).

"onset of insolvency" means

(a) the date on which the application for the administration order was filed, where a company is in liquidation and the liquidator was appointed by the Court immediately following the discharge of an administration order;

(b) the date on which the application for the appointment of the liquidator was filed, where a company is in liquidation and the liquidator was appointed by the Court in circumstances other than those set out in paragraph (a); or

(c) the date of the appointment of the liquidator, where a company is in liquidation and the liquidator was appointed by the members.

"voidable transaction" means

(a) an unfair preference;

(b) an undervalue transaction;

(c) a floating charge that is voidable under section 247; and

(d) an extortionate credit transaction.

"vulnerability period", means,

(a) for the purposes of sections 245, 246 and 247

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing 2 years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator; and

(b) for the purposes of section 248, the period commencing 5 years prior to the onset of insolvency and ending on the appointment of the administrator or, if the company is in liquidation, the liquidator;

(2) A transaction is an insolvency transaction if

(a) it is entered into at a time when the company is insolvent; or

(b) it causes the company to become insolvent;

(3) For the purposes of subsection (2), "insolvent" has the meaning specified in section 8(1) with the deletion of paragraph (c)(i).

(4) This Part applies in respect of

(a) a company that is in administration; and

(b) a company and a foreign company that is in liquidation and, where appropriate, "company" includes a foreign company.

Unfair preferences.

245. (1) Subject to subsection (2), a transaction entered into by a company is an unfair preference given by the company to a creditor if the transaction

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where a transaction entered into by a company within the vulnerability period has the effect specified in subsection (1)(c) in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

Undervalue transactions.

246. (1) Subject to subsection (2), a company enters into an undervalue transaction with a person if

(a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company; and

(c) in either case, the transaction concerned

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) A company does not enter into an undervalue transaction with a person if

(a) the company enters into the transaction in good faith and for the purposes of its business; and

(b) at the time when it enters into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where a company enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)(a) or subsection (1)(b), unless the contrary is proved, it is presumed that

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

Voidable floating charges.

247. (1) Subject to subsection (2), a floating charge created by a company is voidable if

(a) it is created within the vulnerability period; and

(b) it is an insolvency transaction.

(2) A floating charge is not voidable to the extent that it secures

(a) money advanced or paid to the company, or at its direction, at the same time as, or after, the creation of the charge;

(b) the amount of any liability of the company discharged or reduced at the same time as, or after, the creation of the charge;

(c) the value of assets sold or supplied, or services supplied, to the company at the same time as, or after, the creation of the charge; and

(d) the interest, if any, payable on the amount referred to in paragraphs (a) to (c) pursuant to any agreement under which the money was advanced or paid, the liability was discharged or reduced, the assets were sold or supplied or the services were supplied.

(3) For the purposes of this section, where a company creates a floating charge in favour of a connected person within the vulnerability period, unless the contrary is proved, it is presumed that the charge was an insolvency transaction.

(4) For the purposes of subsection (2)(c), the value of assets or services sold or supplied is the amount in money which, at the time they were sold or supplied, could reasonably have been expected to be obtained for the sale or supply of the goods or services in the ordinary course of business and on the same terms, apart from the consideration, as those on which the assets or services were sold or supplied to the company.

Extortionate credit transactions.

248. A transaction entered into by the company within the vulnerability period for, or involving the provision of, credit to the company is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit

(a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

Orders in respect of voidable transactions.

249. (1) Subject to section 250, where it is satisfied that a transaction entered into by a company is a voidable transaction the Court, on the application of the liquidator of the company,

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers fit for restoring the position to what it would have been if the company had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following:

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the liquidator of any sums paid by the company to that person by virtue of the transaction;

(iii) the surrender by any person to the liquidator of any asset held by him as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)(b), an order under that paragraph may

(a) require any assets transferred as part of the transaction to be vested in the company;

(b) require any assets to be vested in the company if it represents in any person's hands the application either of the proceeds of sale of assets transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the company or the liability of the company under any contract;

(d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that

person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any assets and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to prove in the liquidation of the company in such amount as the Court considers fit; and

(h) require the company to make a payment or transfer assets to any person affected by an order made under subsection (1).

(3) Subject to section 250, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the company in question entered into the transaction.

Limitations on orders under section 249.

250. (1) This section applies to an order made under section 249(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not

(a) prejudice any interest in assets that was acquired in good faith and for value from a person other than the company, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the company.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph (a) or (b), it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person

(a) who, at the time of the transaction, had notice of

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if,

(a) in the case of a company in administration, he had notice of the filing of the application on which the administration order was made;

(b) in the case of a company where a liquidator was appointed immediately following the discharge of an administration order, he had notice of the filing of the application on which the administration order was made or the filing of the application on which the order appointing a liquidator was made; or

(c) in the case of a company where a liquidator was appointed in circumstances other than those set out in paragraph (b), he had notice of the filing of the application on which the order appointing a liquidator was made.

Recoveries.

251. Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 249 are deemed to be assets of the company available to pay unsecured creditors of the company.

Remedies not exclusive.

252. The provisions of this Part apply without prejudice to the availability of any other remedy, even in relation to a transaction that the company had no power to enter into.

PART IX

MALPRACTICE

Interpretation for this Part.

253. In this Part,

(a) a company or a foreign company goes into insolvent liquidation if a liquidator is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation; and

(b) a relevant company is a company or a foreign company that has gone into insolvent liquidation.

Summary remedy against delinquent officers and others.

254. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (3) where it is satisfied that a person specified in subsection (2)

(a) has misapplied or retained, or become accountable for any money or other assets of the company; or

(b) has been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company.

(2) An order under subsection (3) may be made against a person

(a) who is or has been an officer of the company;

(b) who has acted as liquidator of the company;

(c) who, in the case of a relevant company that is not a foreign company, has acted as administrator, administrative receiver, supervisor or interim supervisor of the company; or

(d) who, not being a person falling within paragraphs (a) or (b), is or has been concerned in the promotion, formation, management, liquidation or dissolution of the company.

(3) Where subsection (1) applies, the Court may make one or more of the following orders against the person:

(a) that he repays, restores or accounts for the money or other assets, or any part of it;

(b) that he pays to the company as compensation for the misfeasance or breach of duty such sum as the Court considers just; and

(c) that he pays interest to the company at such rate as the Court considers just.

(4) The Court shall not make an order under subsection (3) unless it has given the person the opportunity

(a) to give evidence, call witnesses and bring other evidence in relation to the application; and

(b) to be represented, at his own expense, by a legal practitioner who may put to him, or to other witnesses, such questions as the Court may allow for the purpose of explaining or qualifying any answers or evidence given.

(5) Application may not be made for an order under this section against a liquidator or an administrator who has been released, except with the leave of the Court.

(6) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Fraudulent trading.

255. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) where it is satisfied that, at any time before the commencement of the liquidation of the company, any of its business has been carried on

(a) with intent to defraud creditors of the company or creditors of any other person; or

(b) for any fraudulent purpose.

(2) Where subsection (1) applies, the Court may declare that any person who was knowingly a party to the carrying on of the business in such manner are liable to make such contribution, if any, to the company's assets as the Court considers proper.

Insolvent trading.

256. (1) On the application of the liquidator of a relevant company, the Court may make an order under subsection (2) against a person who is or has been a director of the company if it is satisfied that

(a) at any time before the commencement of the liquidation of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation, and

(b) he was a director of the company at that time.

(2) Subject to subsection (3), where subsection (1) applies, the Court may order that that the person concerned makes such contribution, if any, to the company's assets as the Court considers proper.

(3) The Court shall not make an order against a person under subsection (2) if it is satisfied that after he first knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation, he took every step reasonably open to him to minimise the loss to the company's creditors.

(4) For the purposes of subsections (1) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps reasonably open to him which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company; and

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

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he does not carry out but which have been entrusted to him.

(6) Nothing in this section affects section 255.

Recoveries under sections 255 and 256.

257. Any money paid to, assets recovered or other benefit received by the liquidator as a result of an order made under section 255 or section 256 are deemed to be assets of the company available to pay unsecured creditors of the company.

Ancillary orders.

258. (1) Where the Court makes an order under section 255 or section 256, it may make give such directions or make such further order as it considers proper for giving effect to the order.

(2) Without limiting subsection (1), the Court may

(a) provide for the liability of any person under the order to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and

(b) from time to time make such further order as may be necessary for enforcing any charge imposed under this subsection.

(3) For the purposes of subsection (2), "assignee"

(a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created, but

(b) does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the court makes a declaration under either section 255 or 256 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest on the debt shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 255 and 256 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

PART X

DISQUALIFICATION ORDERS AND UNDERTAKINGS

Interpretation for this Part.

Cap. 291

259. (1) In this Part "voluntary liquidator" means a liquidator appointed by the directors or members of an international business company under Part IX of the International Business Companies Act.

(2) For the purposes of this Part, a company becomes insolvent if

(a) an administration order is made in respect of the company;

(b) an administrative receiver of the company is appointed;

(c) a liquidator of the company is appointed at a time when its assets are insufficient to pay its liabilities and the expenses of the liquidation; or

(d) a liquidator is appointed by the Court on the ground specified in section 162(1)(c).

Disqualification orders and undertakings.

260. (1) A disqualification order is an order that a person shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A disqualification undertaking is an undertaking in writing given by a person to the Official Receiver that he will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, a person engages in a prohibited activity if

(a) he is a director of a company;

(b) he acts as the voluntary liquidator of a company;

(c) he acts as the receiver of the assets of a company;

(d) he acts as an insolvency practitioner; or

(e) in any way, whether directly or indirectly, he is concerned with or takes part in the promotion, formation or management of a company; or

(e) he undertakes any activity prescribed as a prohibited activity.

(4) A person is a "disqualified person" for the period in which

(a) a disqualification order has effect against him; or

(b) a disqualification undertaking is in place in respect of him.

(5) The period specified in a disqualification order, or disqualification undertaking, made against or in respect of a person, runs concurrently with the period specified in any other disqualification order or disqualification undertaking made against or in respect of that person.

Application for disqualification order.

261. (1) Subject to subsection (2), the Official Receiver may apply to the Court for a disqualification order against a person under section 262.

(2) An application for a disqualification order may not be made more than six years after the date on which the company concerned became insolvent.

Hearing of application for disqualification order.

262. (1) On an application under section 261, the Court may, make a disqualification order against a person

(a) who has been convicted on indictment

(i) of an offence in connection with the promotion, formation, management or dissolution of a company that is or becomes insolvent, or

(ii) of an offence under this Act that relates to a company that at any time becomes insolvent,

whether the person was convicted before or after the company became insolvent;

(b) who has had an order under section 255 or section 256 made

against him;

(c) who is or has been a director, voluntary liquidator or receiver of a company that is or becomes insolvent, whether while he was a director, voluntary liquidator or receiver or subsequently, and

(i) has been guilty of fraud in relation to the company or of any misfeasance or breach of duty as a director, voluntary liquidator or receiver of the company,

(ii) where the Court is of the opinion that the person's conduct as director, voluntary liquidator or receiver, either taken alone or taken together with his conduct as a director, voluntary liquidator or receiver of any other company or companies, makes him unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution; or

(d) who, being a person to whom this paragraph applies, has been guilty of fraud in relation to the company or of any misfeasance or breach of duty in relation to the company.

(2) For the purposes of subsection (1)(c), "receiver" means a receiver other than an administrative receiver.

(3) The reference in subsection (1)(c)(ii) to a person's conduct as a director, voluntary liquidator or receiver of a company includes that person's conduct in relation to any matter connected with or arising out of the insolvency of that company.

(5) The Court shall, on making a disqualification order, specify the period for which the order has effect.

(6) The period referred to in subsection (5) shall commence on a date no earlier than the date of the order and no later than 28 days after the date of the order and shall not exceed ten years.

(7) A person against whom an application for a disqualification order is made may appear and give evidence or call witnesses on the hearing of the application.

Matters for determining unfitness of directors.

263. Without limiting section 262(1)(c)(ii), in determining whether a person's conduct as a director, voluntary liquidator or receiver of a company makes him unfit to be concerned in the promotion, formation or management of companies or in their liquidation or dissolution, the Court shall, as respects his conduct as a

director, voluntary liquidator or receiver of that company, have regard in particular to

(a) any misfeasance or breach of any fiduciary or other duty by him in relation to the company;

(b) any misapplication or retention by him of, or any conduct by the director giving rise to an obligation to account for, any money or other assets of the company;

(c) the extent of his responsibility for the company entering into any transaction liable to be set aside under Part **VIII**;

(d) in the case of a director

(i) where the company or the board has persistently failed to comply with the Companies Act or the International Business Companies Act, as the case may be, the extent of his responsibility for such failure, Cap. 285 Cap. 291

(ii) the extent of his responsibility for the causes of the company becoming insolvent, and

(iii) the extent of his responsibility for any failure by the company to supply any goods or services which have been paid for (in whole or in part);

(e) his failure to comply with any obligation imposed on him under this Act; and

(f) in the case of a voluntary liquidator, any failure to comply with section 96(1)(b) of the International Business Companies Act.

Disqualification undertaking.

264. (1) A person against whom a disqualification order could be made under section 262 may offer the Official Receiver a disqualification undertaking, whether or not the Official Receiver has made an application against him under that section.

(2) The Official Receiver may accept an offer made to him under subsection (1) if he considers that

(a) there is a reasonable prospect that, on the hearing of an application under section 262, the Court would make a disqualification order against the person offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A disqualification undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed ten years.

General provisions concerning disqualification orders and undertakings.

265. (1) A disqualification order may be made, or a disqualification undertaking accepted, on grounds which are or include matters other than criminal convictions, notwithstanding that the person concerned may be criminally liable in respect of those matters.

(2) Where the Court makes a disqualification order, or the Official Receiver accepts a disqualification undertaking, the Official Receiver shall, within 14 days of the date of the order or of his acceptance of the undertaking, file a notice in the prescribed form with the Registrar.

Variation of disqualification order or undertaking.

266. (1) The Court may, on the application of a disqualified person, vary a disqualification order or a disqualification undertaking.

(2) Without limiting subsection (1), an order under that subsection may

(a) reduce the period for which the disqualification order, or undertaking, is in force; or

(b) in the case of a disqualification undertaking, provide for it to cease to be in force.

(3) An application for an order under subsection (1) shall be served on the Official Receiver no less than 14 days prior to the date of the hearing and the Official Receiver shall appear or be represented and is entitled to call or give evidence at the hearing.

(4) Where the Court varies a disqualification order or undertaking, the Official Receiver shall, within 14 days of the date of the order, file a notice in the prescribed form with the Registrar.

Offence provisions.

267. A disqualified person who engages in a prohibited activity commits an offence.

Liability for engaging in prohibited activity.

268. (1) A disqualified person incurs personal liability for the debts of a company in accordance with subsection (2) if, without the leave of the Court,

(a) he is involved in the management of a company; or

(b) as a person involved in the management of a company, he acts on the instructions of a person he knows to be a disqualified person

or an undischarged bankrupt.

(2) Subject to subsection (3), the liability of a person to whom subsection (1) applies is

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(a) to a liquidator of the company for every outstanding liability; and

(b) to a creditor of the company for a liability to that creditor;

incurred by the company at a time when subsection (1) applies to him.

(3) A creditor may not take action against a person under subsection (2)(b) if the company is in liquidation.

(4) For the purposes of subsection (1), a person is involved in the management of a company if

(a) he is a director of the company; or

(b) he is concerned, whether directly or indirectly, or takes part, in the management of the company.

(5) For the purposes of this section, a person who, as a person involved in the management of a company, has at any time acted on instructions given without the leave of the court by a person whom he knew at that time to be a disqualified person or to be an undischarged bankrupt is presumed, unless the contrary is shown, to have been willing at any time thereafter to act on any instructions given by that person.

Official Receiver to appear on certain applications.

269. The Official Receiver shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses on the hearing of

(a) an application by the Official Receiver for a disqualification order;

(b) an application made by any person for leave under this Part.

Register of disqualification orders.

270. (1) The Registrar shall register in a Register of Disqualification Orders and Undertakings to be maintained by him for the purpose

(a) each disqualification order or undertaking in respect of which notice is filed under section 265; and

(b) each variation of a disqualification order or undertaking in respect of which notice is filed under section 266.

(2) When a disqualification order or undertaking ceases to be in force, the Registrar shall delete the entry from the Register.

(3) The Register of Disqualification Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a disqualified person by virtue of an entry in the Register of Disqualification Orders.

Duties of office holders.

271. (1) If it appears to the liquidator, administrator or administrative receiver of a company that the conduct of a director or former director of the company, either taken alone or taken together with his conduct as a director of any other company or companies, makes him unfit to be concerned in the management of companies, he shall prepare a written report in the prescribed form and send it to the Official Receiver.

(2) The Official Receiver may by notice in writing require a liquidator, administrator or administrative receiver who has sent him a report under subsection (1) to

(a) provide him with such information or explanations; or

(b) to produce such books, records or other documents;

as he may reasonably require for considering or preparing an application for an order under section 262.

(3) If a liquidator, administrator or administrative receiver fails to comply with a notice issued under subsection (2), the Court may, on the application of the Official Receiver, make an order directing compliance within the period specified in the order.

(4) The Court may order that the costs of and incidental to an application under subsection (3) shall be borne by the person against whom the order is made.

(5) A person who fails to comply with an order made under subsection (3) commits an offence.

PART XI

GENERAL PROVISIONS WITH REGARD TO COMPANIES THAT ARE INSOLVENT OR IN LIQUIDATION

Division 1 - General

Interpretation.

272. (1) Subject to subsection (2), in this Part "office holder", in respect of a company, means its administrator, its liquidator, its provisional liquidator or its administrative receiver.

(2) In Division **2**, "office holder" has the meaning specified in section 275.

Application to Court concerning office holder.

273. A person aggrieved by an act, omission or decision of an office holder may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the office holder.

Company's books.

274. Where a company is in administration or liquidation, all documents of the company and of the administrator or liquidator are, as between the members of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in them.

Division 2 - Statement of Affairs

Interpretation for this Division.

275. (1) In this Division,

"office holder", in respect of a company, means its administrator, its liquidator, its provisional liquidator or its administrative receiver;

"relevant period" means the period of two years prior to,

(a) in the case of a company in administration, the date of the administration order,

(b) in the case of a company in liquidation, the date of the appointment of the liquidator,

(c) where a provisional liquidator has been appointed, the date of his appointment, and

(d) where an administrative receiver has been appointed, the date of his appointment;

"relevant person" means

(a) a person who is or who, within the relevant period, has been an officer of the company,

(b) a person who is or who, within the relevant period, has been in the employment of the company and who, in the office holder's opinion is capable of providing the information required,

(c) a person who is or who, within the relevant period, has been an officer of or in the employment of a company which is an officer of the company, or

(d) a person who, within the relevant period, has promoted the formation of the company;

(2) For the purposes of the definition of "relevant person", "employment" includes employment under a contract for services.

Notice to be given by office holder.

276. (1) Where, pursuant to a provision in this Act, an office holder requires a relevant person to prepare a statement of affairs and submit it to him, he shall send a notice to that person in the prescribed form.

(2) A notice sent under subsection (1) shall specify a date by which the statement of affairs is to be delivered to him, which shall be no earlier than 24 days after the date upon which the notice is sent to the relevant person.

Statement of Affairs.

277. (1) A statement of affairs shall be in the prescribed form and contain the particulars prescribed.

(2) Without limiting subsection (1), the following particulars shall be set out in a statement of affairs:

(a) the assets and liabilities of the company;

(b) the names and addresses of the creditors of the company;

(c) the security interests held by creditors of the company and the dates upon which the security interests were created; and

(d) such further information as may be prescribed.

(3) Subject to section 278, a relevant person required by an office holder to prepare and submit a statement of affairs shall verify the statement of affairs by affidavit and submit the statement of affairs to the office holder, together with the

verifying affidavit, on or before the date specified in the notice sent to him under section 276(1).

(4) A relevant person who, without reasonable excuse, contravenes subsection (3) commits an offence.

Affidavit of concurrence.

278. (1) A relevant person required by an office holder to prepare and submit a statement of affairs may, instead, submit an affidavit of concurrence complying with the Rules.

(2) A relevant person who submits an affidavit of concurrence to an office holder on or before the date specified in the notice sent to him does not commit an offence under section 277(4).

Release from duty to submit statement of affairs.

279. (1) An office holder or the Court may, in accordance with the Rules,

(a) release a person from an obligation imposed on him to prepare and submit a statement of affairs; or

(b) extend the period of time for the submission of the statement of affairs.

(2) An order of the Court under this section may be made subject to such terms and conditions as the Court considers fit.

Application for order of limited disclosure.

280. (1) Where an office holder considers that it would prejudice the conduct of the insolvency proceeding for the whole or part of a statement of affairs submitted to him to be disclosed, he may apply to the Court for an order of limited disclosure in respect of the statement of affairs, or any specified part of it.

(2) The Court may, on an application under subsection (1), order that the statement of affairs or, as the case may be, the specified part of it,

(a) in the case of an administrative receivership, is not to be open to inspection otherwise than with leave of the Court; or

(b) in any other case, is not filed in Court, or that it is filed separately and that it is not to be open to inspection otherwise than with leave of the Court.

(3) An order of the Court under subsection (2) may include directions as to the delivery of documents to the Registrar and the disclosure of relevant information to other persons.

Division 3 - Investigation of Insolvent Company's Affairs

OFFICE HOLDER'S POWERS

Interpretation for this Division.

281. In this Division,

"relevant period" has the meaning specified in section 275;

"office holder", in respect of a company, means its administrator, its liquidator or its provisional liquidator;

Power to obtain information.

282. (1) Subject to subsection (2), an office holder may, by notice in writing, require a person specified in subsection (2)

(a) to provide him with such information concerning the company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs as he reasonably requires;

(b) to attend on him at such reasonable time and at such place as may be specified in the notice; or

(c) to be examined on oath or affirmation by him, or by his legal practitioner, on any matter referred to in paragraph (a).

(2) A notice under subsection (1) may be sent to

(a) an officer or former officer of the company;

(b) a member or former member of the company;

(c) a person who was involved in the promotion or formation of the company;

(d) a person who is, or within the relevant period has been, employed by the company, including a person employed under a contract for services;

(e) a person who is, or at any time has been, a receiver, accountant or auditor of the company;

(f) a person who is or who, at any time has been, an officer of or in the employment of a company which is an officer of the company; or

(g) if the office holder is a liquidator or provisional liquidator to any person who has acted as administrator, liquidator or provisional

liquidator of the company.

(3) A person who receives a notice under subsection (1) and who, without reasonable excuse, fails to comply with the notice, commits an offence.

Examination by office holder.

283. (1) This section applies to the examination of a person under section 282(1)(c) by an office holder.

(2) The office holder, or the legal practitioner conducting the examination on his behalf, may administer an oath to, or take the affirmation of, a person to be examined.

(3) A person required to be examined is entitled to be represented by a legal practitioner.

(4) The office holder shall ensure that the examination is recorded in writing or by means of a tape recorder or other similar device.

EXAMINATION BEFORE COURT

Application for examination before Court.

284. (1) Where a company is in liquidation, an application may be made to the Court, ex parte, by the liquidator or by the Official Receiver, for an order that a person specified in subsection (2) appear before the Court for examination concerning the company, or a connected company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected company.

(2) An application under subsection (1) may be made in respect of

(a) a person specified in section 282(2); or

(b) any other person who the applicant considers is capable of giving information concerning the company or a connected company.

(3) An application under subsection (1) shall state whether the applicant seeks a public or a private examination.

Order for examination.

285. (1) In this section, "examinee" means the person to be examined before the Court.

(2) On hearing an application made under subsection 284, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (1)

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the company, or a connected company, including the promotion, formation, business, dealings, accounts, assets, liabilities or affairs of the company or connected company;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

(f) where the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) Where the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, where the liquidator is not the Official Receiver

(a) if the applicant is the liquidator of the company, send a sealed copy of the notice to the Official Receiver; or

(b) if the applicant is the Official Receiver, send a sealed copy of the notice to the liquidator of the company.

(5) Where an order under subsection (2) is for the public examination of an examinee, the applicant shall give not less than 14 days notice of the examination to each creditor and member of the company.

(6) The Court may as part of an order made under this section, or at any subsequent time, make one or more of the following directions:

(a) a direction specifying the matters upon which the examinee may be examined; and

(b) a direction specifying the procedures to be followed at the examination.

Conduct of examination.

286. (1) This section applies to an examination held pursuant to an order made under section 285.

(2) An examinee shall be examined on oath and he shall answer such questions as the Court may put, or allow to be put to him.

(3) Subject to subsection (2), an examination is conducted by the applicant, or by his legal practitioner, and the person examined is entitled to be represented by a legal practitioner who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

(4) The examinee may also be examined

(a) if the applicant is the Official Receiver, by the liquidator; or

(b) if the applicant is the liquidator of the company, by the Official Receiver.

(5) At a public examination questions may, with the leave of the Court, be put to the examinee by any creditor or member of the company present at the examination or by the legal practitioner representing such creditor or member.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 287, the written record of an examination is admissible in evidence in any proceedings under this Act.

Incriminating answers and admissibility of record.

287. (1) An examinee is not excused from answering a question put to him by an office holder under section 282 or at an examination held pursuant to an order made under section 285 on the ground that the answer may incriminate him or tend to incriminate him.

(2) The record of an examination held under section 282 or pursuant to an order made under section 285 is not admissible as evidence in any criminal proceedings against the examinee except where he is charged with the offence of perjury.

Offence.

288. (1) A person who, without reasonable excuse, fails to attend an examination ordered to be held under section 285, commits an offence.

(2) Where a person without reasonable excuse fails at any time to attend an examination ordered to be held under section 285, or there are reasonable grounds for believing that a person has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may cause a warrant to be issued to *(AG's Chambers to complete)*

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(3) In such a case the Court may authorize the person arrested under the warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Rules, until such time as the court may order.

Division 4 - Offence Provisions

Fraudulent conduct.

289. (1) Where a liquidator of a company is appointed under section 159, a person who is or has been an officer of the company is deemed to have committed an offence if, at any time during the period of 12 months preceding the commencement of the liquidation, he has

(a) made or caused to be made any gift or transfer of, or charge on, or has caused, permitted or acquiesced in the levying of any execution against the company's assets; or

(b) has concealed or removed any of the company's assets since, or within, sixty days of the date of any unsatisfied judgment or order for the payment of money obtained against the company.

(2) A person is not guilty of an offence under this section

(a) by reason of conduct constituting an offence under subsection (1)(a) which occurred more than five years before the commencement of the liquidation; or

(b) if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud the company's creditors.

PART XII

BANKRUPTCY

PRELIMINARY

Interpretation.

290. In this Part,

"bankrupt" means the individual against whom a bankruptcy order is made;

"bankruptcy offence" means an offence under Part **XIII**;

"debtor" means the individual to whom an application for a bankruptcy order relates;

"prescribed minimum" means the minimum amount of the debt for which a statutory demand may be issued under section 155; and

"trustee" means the bankruptcy trustee of a bankrupt.

Application of this Part to Official Receiver.

291. Where the Official Receiver is appointed as the trustee of a bankrupt, the provisions of this Act that apply to a trustee apply to the Official Receiver, as trustee, unless otherwise provided.

BANKRUPTCY ORDER

Meaning and duration of bankruptcy order.

292. (1) A bankruptcy order is an order of the Court vesting the assets of an individual in a bankruptcy trustee appointed by the Court for the purposes of division amongst his creditors in accordance with this Part.

(2) The bankruptcy of an individual commences at the time at which the bankruptcy order is made and continues until it is terminated by the discharge of the bankrupt under section 376 or 379.

(3) Throughout the period referred to in subsection (2), the individual is referred to in this Act as "in bankruptcy".

Conditions for making of bankruptcy order.

293. (1) The Court shall not make a bankruptcy order against a debtor under this Part unless it is satisfied

(a) that on the date of the application, the debtor

(i) was ordinarily resident in the Virgin Islands,

(ii) was personally present in the Virgin Islands,

(iii) was carrying on business in the Virgin Islands, either personally or by means of an agent or manager,

(iv) was a member of a partnership carrying on business in the Virgin Islands by means of a partner or partners or of an agent or manager, or

(v) had a place of residence or a place of business in the Virgin Islands;

(b) that the debtor has or appears to have assets in the Virgin Islands; or

(c) that there is a reasonable prospect that the making of a bankruptcy order will benefit the creditors of the debtor.

(2) For the purposes of subsection (1)(a)(iii) and (iv), a debtor or a partnership is deemed to be carrying on business in the Virgin Islands if liabilities incurred in the course of a business formerly carried on in the Virgin Islands remain unpaid.

Persons who may apply for a bankruptcy order.

294. Application to the Court for a bankruptcy order in respect of a debtor may be made

(a) by the debtor himself under section 295;

(b) by a creditor of the debtor, or by one or more of his creditors jointly, under section 300; or

(c) by the supervisor of a voluntary arrangement or by a creditor of the debtor under section 301.

Application by debtor.

295. (1) The Court may make a bankruptcy order against a debtor on the application of the debtor himself if it is satisfied

(a) that the debtor is unable to pay his debts as they fall due;

(b) that the unsecured liabilities of the debtor exceed the prescribed minimum; and

(c) that, if a bankruptcy order is made, the value of the debtor's assets available for distribution to his unsecured creditors will exceed the prescribed minimum.

(2) An application for a bankruptcy order filed by a debtor under subsection (1) shall be accompanied by a statement of his assets and liabilities.

Creditor's application.

296. (1) A creditor's application for a bankruptcy order shall be made in respect of a liability or liabilities where, at the time of the application,

(a) the amount of the liability, or the aggregate amount of the liabilities, exceeds the prescribed minimum; and

(b) the liability, or each of the liabilities, is for a liquidated sum payable to the applicant creditor immediately.

(2) An application under subsection (1) may not be made in respect of a liability incurred outside the Virgin Islands unless the liability is payable by the debtor to the creditor by virtue of a judgment or award enforceable by execution in the Virgin Islands.

Substitution of applicant.

297. (1) In the circumstances specified in subsection (2), the Court may, by order, substitute as applicant in a creditor's application for a bankruptcy order, a creditor

(a) who has given notice of his intention to appear at the hearing of the application in accordance with the Rules;

(b) who would otherwise have been entitled to make such an application on the date that the original application was made; and

(c) who consents to being substituted as the applicant.

(2) The Court may make a substitution order under subsection (1) if it considers it appropriate to do so

(a) because the applicant applies to withdraw the application or consents to it being dismissed;

(b) because the Court considers that the application is not being diligently proceeded with;

(c) where the applicant is not entitled to make the application; or

(d) for any other reason.

Application by secured creditor.

298. (1) Where the applicant for a bankruptcy order is a secured creditor, he shall in his application state the full amount of the liability of the debtor to him and

(a) state that he is willing, in the event of a bankruptcy order being made, to give up his security interest for the benefit of the other creditors of the bankrupt; or

(b) give an estimate of the value of his security interest and make the application in respect of the full amount of the liability of the debtor to him less the estimated value of his security interest.

(2) In a case falling within subsection (1)(b), the secured creditor is treated as an unsecured creditor in respect of the unsecured liability of the debtor to him.

Secured creditor failing to disclose security interest.

299. (1) Subject to subsection (2), a secured creditor who fails to disclose his security interest in an application for a bankruptcy order against a debtor is, in the event that a bankruptcy order is made on the application, deemed to have given up his security interest for the benefit of the other creditors of the bankrupt.

(2) If on the application of a secured creditor the Court is satisfied that the failure of the creditor to disclose his security interest was inadvertent or due to an honest mistake, it may disapply subsection (1) subject to such terms and conditions as it considers appropriate.

(3) Where subsection (1) applies, the secured creditor concerned

(a) is not entitled to enforce his security interest against the estate of the bankrupt or to retain any proceeds from the realisation of the security interest; and

(b) shall execute such document of release as is required by the trustee or account and pay over to the trustee all proceeds from any realisation of his security interest.

(4) Where a secured creditor fails to execute a document of release as required by subsection (2)(b), the trustee may apply to the Court for an order that the trustee may execute the document on his behalf and, where the Court makes such an order, the execution of the document by the trustee takes effect as if executed by the secured creditor.

(5) A secured creditor who fails to account or pay to the trustee the proceeds from any realisation of his security interest in accordance with subsection (3)(b) commits an offence.

Hearing of creditor's application.

300. (1) Subject to subsection (2), the Court may make a bankruptcy order on an application made under section 296 if it is satisfied that the debtor is insolvent within the meaning of section 8(2) and

(a) where the debtor has failed to comply with the requirements of a statutory demand, the demand was made by the creditor making the application; or

(b) where execution or other process has been returned unsatisfied, the debt is payable to the creditor making the application.

(2) The Court shall not make a bankruptcy order under subsection (1) unless it is satisfied that

(a) the debt, or one of the debts, in respect of which the application is made is a debt which, having been payable at the date of the application, has neither been paid nor secured nor compounded for; and

(b) where the debtor does not appear at the hearing, he has been served with the application.

(3) The Court may dismiss an application made under section 296 if

(a) it is not satisfied with the proof of the liability or liabilities in respect of which the application is made;

(b) it is not satisfied with the proof of the service of the application on the debtor;

(c) it is satisfied that the debtor is able to discharge all his liabilities;

(d) is satisfied that the debtor has made an offer to secure or compound for a liability in respect of which the application is made, the acceptance of which would have required the dismissal of the application and that offer has been unreasonably refused by the creditor making the application;

(e) it is satisfied that for some other sufficient reason, a bankruptcy order ought not to be made.

(4) Nothing in section 296 or in this section limits the power of the Court, in accordance with the rules, to authorise a creditor's application to be amended by the omission of any creditor or liability.

(5) Where an application is amended under subsection (4), the Court may order that the application is proceeded with as if anything done for the purposes of this section or section 296 had been done only by or in relation to the remaining creditors or debts.

Application where individual creditors' arrangement in place.

301. (1) Where an individual creditors' arrangement has been approved under Part **II** and has not been completed or otherwise come to an end, the Court may make a bankruptcy order against a debtor on the application of the supervisor or a creditor bound by the arrangement if it is satisfied

(a) that the debtor has failed to comply with his obligations under the arrangement; or

(b) that information which was false or misleading in any material particular or which contained material omissions

(i) was contained in any statement of assets and liabilities or other document supplied by the debtor under Part **II** to any person, or

(ii) was otherwise made available by the debtor to his creditors at or in connection with a meeting summoned under that Part, or

(c) that the debtor has failed to do all such things as may for the purposes of the voluntary arrangement have been reasonably required of him by the supervisor of the arrangement.

(2) Where a bankruptcy order is made on an application under subsection (1), any remuneration of the supervisor is a first charge on the bankrupt's estate.

Consolidation of applications.

302. Where two or more applications for bankruptcy orders are presented against the same debtor, the Court may consolidate the proceedings or any of them on such terms as it considers fit.

Withdrawal of application.

303. An application for a bankruptcy order may not be withdrawn except with the leave of the Court.

Court's powers on hearing of application for bankruptcy order.

304. On the hearing of an application for a bankruptcy order under section 295, section 296 or section 301, the Court may

(a) make a bankruptcy order;

(b) if it appears appropriate to do so on the grounds that there has been a contravention of the Rules or for any other reason, dismiss the application or stay proceedings on the application on such terms and conditions as it considers fit;

(c) adjourn the hearing conditionally or unconditionally; or

(d) make any interim order or other order that it considers fit.

Appointment of bankruptcy trustee.

305. Where the Court makes a bankruptcy order under section 295, 300 or 301, it shall appoint either the Official Receiver or an eligible insolvency practitioner to be the bankruptcy trustee of the bankrupt.

Period within which application shall be determined.

306. (1) Subject to subsection (2), an application for a bankruptcy order shall be determined within three months after it is filed.

(2) The Court may, upon such conditions as it considers fit, extend the period referred to in subsection (1) for a period of, or where it grants more than one extension for an aggregate period not exceeding, three months if

(a) it is satisfied that special circumstances justify the extension; and

(b) the order extending the period is made before the expiry of that period or, if a previous order has been made under this subsection, that period as extended.

(3) If an application is not determined within the period referred to in subsection (1) or within that period as extended, it is deemed to have been dismissed.

INTERIM RELIEF

Protection of assets after application for bankruptcy order.

307. (1) Where an application for a bankruptcy order has been filed in respect of a debtor but not yet determined or withdrawn, the Court may, if it considers it necessary for the protection of the debtor's assets, make an order

(a) directing the Official Receiver or an eligible insolvency practitioner to take control of

(i) the debtor's assets, or any part of them, and

(ii) such books or other documents of the debtor as may be specified in the order; and

(b) make any other order in relation to the debtor's assets.

(2) An application for an order under subsection (1) may be made by

(a) the applicant for the bankruptcy order;

(b) the debtor himself; or

(c) any creditor of the debtor.

(3) An order under subsection (1) may be made on such terms as it considers fit and may, as a condition precedent, require the applicant to deposit at Court such sum as the Court considers reasonable to cover the remuneration of the Official Receiver or the insolvency practitioner appointed.

(4) An order under subsection (1) remains in effect until the earlier of

(a) the discharge of the order by the Court of its own motion or on the application of

(i) the Official Receiver or eligible insolvency practitioner appointed under subsection (1)(a), or

(ii) any person specified in subsection (2); or

(b) the determination or withdrawal of the application for a bankruptcy order;

whereupon the appointment of the Official Receiver or insolvency practitioner is terminated.

(5) On the order ceasing to have effect, the Court may give such directions or make such order with respect to the accounts of the administration of the appointee, or to any other matter, as it considers appropriate.

Effect of order under section 307.

308. Whilst an order under section 307(1) is in effect, unless the leave of the Court has been obtained

(a) no steps may be taken to enforce any security interest over the debtor's assets;

(b) no steps may be taken to repossess assets that are being used or occupied by or are in the possession of the debtor, including

(i) goods supplied under a hire purchase, conditional sale or chattel leasing agreement, and

(ii) goods supplied subject to a retention of title agreement; and

(c) no proceedings, execution or other legal process may be commenced or continued or distress levied against the debtor or his assets.

Remuneration of person appointed under section 307.

309. (1) The Official Receiver or the insolvency practitioner directed to take control of a debtor's assets under section 307(1) is entitled to be paid such remuneration as the Court may order.

(2) Subject to subsections (3) and (4), the remuneration ordered to be paid under subsection (1) is payable,

(a) where a bankruptcy order is not made, out of the assets of the debtor;

(b) where a bankruptcy order is made out of the bankrupt's estate in accordance with the prescribed priority.

(3) If a bankruptcy order is not made, the Court may order the applicant for the order under section 307 to pay or contribute to the remuneration of the Official Receiver or insolvency practitioner directed to take control of the assets under section 307(1) if it is satisfied that the applicant

(a) misled the Court when making the application; or

(b) acted unreasonably in making the application.

(4) If the assets of the company are not sufficient to pay the remuneration ordered to be paid by the Court under subsection (1), the Court may order the shortfall, or part of the shortfall, to be paid by the applicant for the order under section 307.

(5) Unless the Court otherwise orders, where subsection (2)(a) applies, the Official Receiver, or the insolvency practitioner appointed under section 307, may retain out of the debtor's assets such sums or assets as are, or may be, required for meeting his remuneration.

Examination.

310. The Official Receiver or the insolvency practitioner directed to take control of a debtor's assets under section 307(1) may apply for an order to examine the debtor under section 369, and sections 369 to 373 apply as if

(a) references to the Official Receiver or the trustee were to the person directed to take control of the debtor's assets; and

(b) references to the bankrupt and to his estate were to the debtor and his assets.

EFFECT OF BANKRUPTCY

Effect of bankruptcy order.

311. (1) On the making of a bankruptcy order, the assets comprised in the bankrupt's estate

(a) vest in his trustee without any conveyance, assignment or transfer; and

(b) become divisible among his creditors in accordance with this Act.

Power to stay or restrain proceedings.

312. (1) An order under subsection (2) or (3) may be made

(a) after an application for a bankruptcy order has been filed against an individual but not yet determined; or

(b) whilst an individual is an undischarged bankrupt.

(2) At any time during either period specified in subsection (1)

(a) the Court may stay any action, proceeding, execution, distress or other legal process against the person or the assets of the individual concerned; and

(b) any court in which proceedings are pending against any individual may, either stay the proceedings or allow them to continue on such terms as it thinks fit.

(3) After the making of a bankruptcy order no person who is a creditor of the bankrupt in respect of a debt that may be claimed in the bankruptcy shall

(a) have any remedy against the assets or person of the bankrupt in respect of that debt; or

(b) before the discharge of the bankrupt, commence any action or other legal proceedings against the bankrupt except with the leave of the court and in such terms as the court may impose.

(4) This section

(a) does not affect the right of a secured creditor to enforce his security; and

(b) is subject to section 351 (enforcement procedures) and section 352 (limited right to distress).

BANKRUPT'S ESTATE

Definition of bankrupt's estate.

313. (1) Subject to subsection (2), the bankrupt's estate comprises

(a) all assets belonging to or vested in the bankrupt at the date of the bankruptcy order;

(b) assets claimed by the trustee under section 318 or 319; and

(c) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of assets as might have been exercised by the bankrupt for his own benefit at the date of the bankruptcy order.

(2) Subsection (1) does not apply to

(a) assets held by the bankrupt on trust for any other person;

(b) such tools, books, vehicles and other items of equipment as are necessary to the bankrupt for use personally by him in his employment or business;

(c) such clothing, bedding, furniture, household equipment and provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his family; and

(d) any asset of the bankrupt which is excluded from his estate under any other enactment.

(3) The assets comprised in a bankrupt's estate are divisible amongst his creditors in accordance with this Part.

(4) Assets comprised in a bankrupt's estate are subject to the rights of any person other than the bankrupt in relation to those assets, whether as a secured creditor of the bankrupt or otherwise, but disregarding

(a) any rights given up under section 298(1)(a); and

(b) any rights which have been otherwise given up in accordance with the rules.

(5) Unless the context otherwise requires, a reference in this Part to the assets of the bankrupt means the assets comprised in the bankrupt's estate.

Acquisition by trustee of control of bankrupt's estate.

314. (1) A trustee shall forthwith after the making of a bankruptcy order take possession of

(a) all documents which relate to the bankrupt's estate or affairs and which belong to him or are under his control, including documents which would be privileged from disclosure in any proceedings; and

(b) all assets of the bankrupt that are capable of manual delivery.

(2) A trustee is, in relation to and for the purposes of acquiring or retaining possession of the assets of the bankrupt, in the same position as a receiver of the assets appointed by the Court, and the Court may, on his application, enforce the acquisition or retention accordingly.

(3) Where any part of the bankrupt's estate consists of stock, shares or shares in a ship or any other assets transferable in the books of a company, office or person, the trustee may exercise the right to transfer the assets to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the estate consists of things in action, they are deemed to have been assigned to the trustee.

(5) Notice of the deemed assignment of things in action under subsection (3) need not be given except in so far as it is necessary, in a case where the deemed assignment is from the bankrupt himself, for protecting the priority of the trustee.

Goods subject to pledge etc.

315. (1) Where any goods of a bankrupt are held by any person by way of pledge, pawn or other security, the trustee of the bankrupt may, after giving notice of his intention to do so, inspect the goods.

(2) Where a person receives a notice under subsection (1), he is not entitled to realise his security unless he has given the trustee a reasonable opportunity to inspect the goods and, if the goods are comprised in the estate of the bankrupt, to exercise the bankrupt's right of redemption.

Duties of bankrupt in relation to his assets and affairs.

316. (1) Where a bankruptcy order has been made, the bankrupt shall

(a) make discovery of and deliver to his trustee all the assets comprised in his estate that are in his possession or control; and

(b) deliver to his trustee all documents in his possession or control which relate to his assets or affairs, including any documents which, in any proceedings, would be privileged from disclosure.

(2) Where the bankrupt is unable to deliver any assets comprised in his estate to his trustee, the bankrupt shall do everything reasonably required by his trustee to protect those assets.

(3) The bankrupt shall

(a) give his trustee such information concerning his assets and affairs;

(b) attend on him at such times; and

(c) do all such other things;

as his trustee may reasonably require for the purposes of carrying out his functions under this Act.

(4) If at any time after the time of the bankruptcy order any assets are acquired by, or devolve on, the bankrupt or there is an increase in the bankrupt's income, he shall, within the prescribed time period, give the trustee notice of the assets or of the increased income.

(5) Subsection (3) applies to a bankrupt after his discharge.

(6) If the bankrupt without reasonable excuse fails to comply with any obligation imposed by this section, he commits an offence.

Delivery up by other persons.

317. (1) Any person who holds assets to the account of, or for, the bankrupt shall pay or deliver to the trustee the assets in his possession or under his control unless he is, by law, entitled to retain the assets against the bankrupt or the trustee.

(2) Any person who, without reasonable excuse, fails to comply with any obligation imposed by this section, commits an offence.

After-acquired assets.

318. (1) Subject to sections 313(2) and 321, the trustee may by notice in writing served on the bankrupt claim for the bankrupt's estate any assets which have been acquired by, or have devolved upon, the bankrupt after the date of the bankruptcy order but prior to the date of his discharge.

(2) Subject to subsection (3), on the service of a notice under subsection (1) on the bankrupt, the assets to which the notice relate vest in the trustee as part of the bankrupt's estate and the trustee's title to those assets relates back to the time at which the assets were acquired by, or devolved upon, the bankrupt.

(3) Where, whether before or after service of a notice under this section

(a) a person acquires assets in good faith, for value and without notice of the bankruptcy; or

(b) a banker enters into a transaction in good faith and without such notice;

the trustee is not in respect of those assets or that transaction entitled by virtue of this section to any remedy against that person or banker, or any person whose title to any assets derives from that person or banker.

(4) For the purposes of this section, a reference to "assets" does not include any asset which, as part of the bankrupt's income, may be the subject of an income payments order under section 322.

Vesting in trustee of certain items of excess value.

319. (1) Subject to section 321, where

(a) assets are excluded from the bankrupt's estate by virtue of section 313(2)(b) or (c); and

(b) it appears to the trustee that the realisable value of those assets or any of them exceeds the cost of a reasonable replacement;

the trustee may, by notice in writing served on the bankrupt, claim the asset or assets for the bankrupt's estate.

(2) On the service on the bankrupt of a notice under subsection (1), the assets to which the notice relates vest in the trustee as part of the bankrupt's estate; and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to those assets has relation back to the date of the bankruptcy order.

(3) The trustee shall apply funds comprised in the estate to the purchase by or on behalf of the bankrupt of a reasonable replacement for any assets vested in him under this section and the duty imposed by this subsection has priority over the obligation of the trustee to distribute the estate.

(4) For the purposes of this section, an asset is a reasonable replacement for another asset if it is reasonably adequate for meeting the needs met by the other asset.

Vesting in trustee of certain tenancies.

320. Upon the service on the bankrupt by the trustee of a notice in writing under this section, any tenancy to which the notice relates vests in the trustee as part of the bankrupt's estate and, except against a purchaser in good faith, for value and without notice of the bankruptcy, the trustee's title to that tenancy has relation back to the commencement of the bankruptcy.

Time limit for notice under sections 318, 319 or 320.

321. (1) Except with the leave of the Court, a notice may not be served

(a) under section 318, after the end of the period of 42 days beginning with the day on which it first came to the knowledge of the trustee that the assets in question had been acquired by, or had devolved upon, the bankrupt;

(b) under sections 319 or 320, after the end of the period of 42 days beginning with the day on which the assets in question first came to the knowledge of the trustee.

(2) For the purposes of this section,

(a) anything which comes to the knowledge of the trustee is deemed in relation to any successor of his as trustee to have come to the knowledge of the successor at the same time; and

(b) anything which comes to the knowledge of a person before he is the trustee, otherwise than under paragraph (a), is deemed to come to his knowledge on his appointment taking effect or, in the case of the Official Receiver, on his becoming trustee.

Income payments orders.

322. (1) The Court may, on the application of the trustee, make an income payments order claiming for the bankrupt's estate so much of the income of the bankrupt during the period for which the order is in force as may be specified in the order.

(2) The Court shall not make an income payments order the effect of which would be to reduce the income of the bankrupt below what appears to the Court to be necessary for meeting the reasonable domestic needs of the bankrupt and his family.

(3) An income payments order shall, in respect of any payments of income to which it is to apply, either

(a) require the bankrupt to pay the trustee an amount equal to so much of that payment as is claimed by the order; or

(b) require the person making the payment to pay so much of it as is so claimed to the trustee, instead of to the bankrupt.

(4) Where the court makes an income payments order it may, if it thinks fit, discharge or vary any attachment of earnings order that is for the time being in force to secure payments by the bankrupt.

(5) Sums received by the trustee under an income payments order form part of the bankrupt's estate.

(6) Subject to section 379(1)(c)(i), an income payments order shall not be made after the discharge of the bankrupt, and if made before, shall not have effect after his discharge.

(7) Subject to subsection (8), for the purposes of this section, the income of the bankrupt comprises every payment in the nature of income which is from time to time made to him or to which he from time to time becomes entitled, including any payment in respect of the carrying on of any business or in respect of any office or employment and any payment under a pension scheme.

BANKRUPTCY TRUSTEE

Bankruptcy trustee officer of Court.

323. In performing his functions and undertaking his duties under this Act, a bankruptcy trustee acts as an officer of the Court.

General duties of trustee.

324. (1) The principal duties of a trustee are

(a) to take possession of, protect and realise the bankrupt's estate; and

(b) to distribute the bankrupt's estate in accordance with this Act.

(2) Where the trustee is not the Official Receiver, he has a duty

(a) to provide the Official Receiver with such information;

(b) to produce to the Official Receiver, and permit inspection by the Official Receiver of, such documents; and

(c) to give the Official Receiver such other assistance;

as the Official Receiver may reasonably require for the purpose of enabling him to carry out his functions in relation to the bankruptcy.

(3) A trustee shall, subject to this Act and the Rules, use his own discretion in undertaking his duties.

(4) A trustee also has the other duties imposed by this Act and the Rules and such duties as may be imposed by the Court.

Powers of trustee.

325. (1) A trustee may,

(a) with the permission of the creditors' committee or court, exercise any of the powers specified in Part 1 of Schedule **4**; and

(b) without that permission, exercise any of the general powers specified in Part 2 of Schedule **4**.

(2) With the permission of the creditors' committee or the court, the trustee may appoint the bankrupt

(a) to superintend the management of his estate or any part of it;

(b) to carry on his business, if any, for the benefit of his creditors; or

(c) in any other respect to assist in administering the estate in such manner and on such terms as the trustee may direct.

(3) A permission given for the purposes of subsection (1)(a) or (2) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required in either case has been given.

(4) Subject to subsection (5), where the trustee has done anything without the permission required by subsection (1)(a) or (2), the Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(5) The creditors' committee shall not ratify the trustee's actions under subsection (4) unless it is satisfied that the trustee acted in a case of urgency and sought the committee's ratification without undue delay.

(6) Part 3 of Schedule **4** has effect with respect to the things which the trustee is able to do for the purposes of, or in connection with, the exercise of any of his powers under this Part.

(7) Where the trustee, not being the Official Receiver, in exercise of the powers conferred on him by any provision in this Part

(a) disposes of any asset comprised in the bankrupt's estate to an associate of the bankrupt; or

(b) employs a solicitor;

he shall give notice to any creditors' committee of that exercise of his powers.

(8) Nothing in this Act is to be construed as restricting the capacity of the trustee to exercise any of his powers outside the Virgin Islands.

Notice of appointment.

326. (1) A trustee shall, within 14 days of the date of his appointment,

(a) advertise his appointment

(i) in the *Gazette*; and

(ii) in a newspaper circulating in the Virgin Islands;

(b) serve notice of his appointment on the bankrupt;

(c) if he has been appointed in respect of an individual who is a regulated person, serve notice of his appointment on the Commission;

(d) send a notice of his appointment to every creditor of the bankrupt; and

(e) unless the Official Receiver is the trustee, file notice of his appointment with the Official Receiver.

(2) An advertisement under subsection (1)(a) and a notice under subsection (1)(d) shall set out the powers of the creditors under this Part to require him to call a meeting of creditors.

(3) A trustee who contravenes subsection (1) or (2) commits an offence.

Appointment of trustee in place of Official Receiver.

327. (1) When the Official Receiver is the trustee of a bankrupt's estate the Court may, on his application, appoint an eligible insolvency practitioner to act as trustee in his place.

(2) An application may be made under subsection (1) notwithstanding that the Court has refused to make an appointment on a previous application by the Official Receiver.

Removal of trustee.

328. (1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove a trustee from office if

(a) the trustee

(i) is not eligible to act as an insolvency practitioner in relation to the bankrupt;

(ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Rules or any other enactment or law in the Virgin Islands, or

(iii) fails to comply with any direction or order of the Court made in relation to the bankruptcy; or

(b) the Court is satisfied that

(i) the trustee's conduct of the bankruptcy is below the standard that may be expected of a reasonably competent trustee,

(ii) the trustee has an interest that conflicts with his role as trustee, or

(iii) that for some other reason he should be removed as trustee.

(2) An application to the Court to remove a trustee from office may be made by

(a) the creditors' committee, if any;

(b) a creditor of the bankrupt; or

(c) the Official Receiver.

(3) Where the Court removes a trustee from office under this section,

(a) if, following his removal, there is at least one trustee remaining in office, the Court may appoint another trustee in his place; or

(b) if the trustee removed was the sole trustee of the company, the Court shall appoint another trustee in his place.

(4) On the hearing of an application under this section, the Court may make any interim or other order it considers fit.

Resignation of trustee.

329. (1) A trustee

(a) shall resign if he is no longer eligible to act as an insolvency practitioner in relation to the bankrupt; but

(b) otherwise may only resign in accordance with this section.

(2) Where a trustee resigns under subsection (1)(a), he shall send a notice of his resignation to the Court, to the creditors of the bankrupt and to the Official Receiver.

(3) A trustee may resign in accordance with subsection (5)

(a) if he intends to cease to be in practice as an insolvency practitioner;

(b) if there is some conflict of interest or change of personal circumstances that precludes or makes impracticable the further discharge by him of his duties; or

(c) on the grounds of ill health.

(4) Notwithstanding subsection (3), where joint trustees are appointed, one or more of the joint liquidators may resign in accordance with subsection (5) if

(a) all the joint trustees are of the opinion that it is no longer necessary or expedient for the resigning trustee or trustees to continue in office; and

(b) at least one of them will remain in office.

(5) Where a trustee intends to resign on one of the grounds referred to in subsection (3) or under subsection (4), he shall call a meeting of creditors for the purpose of accepting his resignation as trustee.

(6) If, at the meeting called under subsection (5), the creditors resolve to accept the resignation of the trustee, he ceases to hold office as trustee with effect from the date of the meeting.

(7) This section does not apply to the Official Receiver when acting as the trustee of a bankrupt.

Vacancy in office of trustee.

330. (1) Where a trustee

(a) dies;

(b) is removed under section 328; or

(c) resigns under section 329;

the Court may, on the application of a person specified in subsection (2) or on its own motion, fill the vacancy.

(2) An application under subsection (1) may be made

(a) by any continuing trustee;

(b) by the creditors' committee, if any; or

(c) by the Official Receiver.

(3) Where there is a vacancy in the office of trustee, for whatever reason, the Official Receiver is trustee until the vacancy is filled.

Remuneration of trustee.

331. The remuneration payable to a trustee shall be fixed in accordance with Part **XVI**, Division 2.

General control of trustee by the Court.

332. (1) A person aggrieved by an act, omission or decision of a trustee may apply to the Court and the Court may confirm, reverse or modify the act, omission or decision of the trustee.

(2) A trustee may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

ADMINISTRATION BY TRUSTEE

Meetings of creditors.

333. (1) A trustee may at any time call a meeting of the creditors of the bankrupt

(a) by sending a notice of the meeting by post to every creditor not less than seven days before the date upon which the meeting is to be held; and

(b) by advertising the meeting.

(2) Notwithstanding subsection (1), the trustee shall call a meeting of creditors if

(a) a meeting is requisitioned by the creditors of the bankrupt in accordance with subsection (3); or

(b) he is directed to do so by the Court.

(3) A creditors' meeting may be requisitioned in accordance with the Rules by 25 per cent in value of the creditors of the bankrupt.

CLAIMS AND DISTRIBUTION OF ESTATE

Distribution of bankrupt's estate.

334. (1) The bankrupt's estate shall be applied

(a) in paying, in priority to all other claims, the costs and expenses properly incurred in the bankruptcy in accordance with the prescribed priority;

(b) after payment of the costs and expenses of the bankruptcy, in paying the preferential claims admitted by the trustee in accordance with the provisions for the payment of preferential claims prescribed;

(c) after payment of the preferential claims, in paying all other claims admitted by the trustee; and

(d) after paying all admitted claims, in paying any interest payable under section 342.

(2) The claims referred to in subsection (1)(c) rank equally and, if the bankrupt's estate is insufficient to meet them all in full, they shall be paid rateably.

Debts to spouse.

335. Any claims in respect of credit provided by a person who was the bankrupt's spouse at the time of the bankruptcy order, whether or not he or she was the bankrupt's spouse at the time the credit was provided,

(a) rank in priority after the debts and interest specified in section 334(1); and

(b) are payable with interest at the rate specified in section 334(1)(d) in respect of the period during which they have been outstanding since the date of the bankruptcy order;

and the interest payable under paragraph (b) has the same priority as the debts on which it is payable.

Claims by unsecured creditors.

336. (1) An unsecured creditor may make a claim in the bankruptcy of an individual by submitting to the trustee a written claim, signed by him or on his behalf.

(2) The trustee may require an unsecured creditor who intends to submit, or who has submitted, a claim under subsection (1)

(a) to verify his claim by affidavit;

(b) to provide further particulars of his claim; or

(c) to provide him with documentary or other evidence to substantiate the claim.

(3) As soon as reasonably practicable after receiving a claim under subsection (1) from a creditor who has complied with any requirements that the trustee may have imposed under subsection (2), the trustee shall either admit or reject the claim in whole or in part.

(4) If the trustee rejects the claim, whether in whole or in part, he shall as soon as practicable provide the creditor with a notice of rejection in which the reasons for the rejection of the claim shall be specified.

(5) Unless the Court otherwise orders, a creditor shall bear the costs of making a claim under this section, including the costs of complying with any requirements imposed by the trustee under subsection (2).

(6) The trustee shall not admit a claim in the bankruptcy unless it has been made in accordance with this section.

(7) A person who makes or authorizes the making of a claim under this section knowing that

(a) the claim is false or misleading in a material matter; or

(b) a material fact or matter has been omitted from the claim;

commits an offence.

Variation, withdrawal and expunging of claims.

337. (1) A claim made under section 336 may

(a) be amended or withdrawn by the creditor at any time before the trustee has admitted it; and

(b) be amended or withdrawn by agreement between the creditor and the trustee at any time after the trustee has admitted it.

(2) The Court, on the application of the trustee or, where the trustee declines to make application under this subsection, a creditor, may expunge or amend an admitted claim if it is satisfied that the claim should not have been admitted or should be reduced.

Claims by secured creditors.

338. (1) A secured creditor may

(a) value the assets subject to the security interest and claim in the bankruptcy as an unsecured creditor for the balance of his debt; or

(b) surrender his security interest to the trustee for the general benefit of creditors and claim in the bankruptcy as an unsecured creditor for the whole of his debt;

but he is not obliged to do either.

(2) A secured creditor may, at any time apply to the trustee to amend the value that he placed on the security interest in his claim.

(3) If, on receiving an application under subsection (2), the trustee is satisfied that

(a) the value placed on the security interest was an estimate made in good faith on a mistaken basis; or

(b) the value of the security interest has subsequently changed;

he may permit the secured creditor to amend the value that he places on the security interest.

(4) If the trustee is dissatisfied with the value placed on a security interest by a secured creditor, whether under subsection (1)(a) or on an amendment under subsection (3), he may require the assets comprised in the security interest to be offered for sale.

(5) A sale under subsection (4) is to be on such terms and conditions as are agreed by the secured creditor and the trustee or, in default, as the Court determines.

(6) If assets are offered for sale by public auction, both the secured creditor and the trustee are entitled to bid for and purchase them.

Redemption of security interest by trustee.

339. (1) Where a secured creditor has claimed in a bankruptcy under section 338(1)(a), the trustee may at any time give notice to the creditor that he proposes at the expiration of 28 days from the date of the notice to redeem the security interest at the value placed on it by the creditor.

(2) A secured creditor who receives a notice under subsection (1) may, within 21 days of the date of the notice, apply to the trustee to revise the value that he places on the security interest in accordance with section 338(2).

(3) At the expiration of 28 days from the date of the notice under subsection (1), the trustee may redeem the security interest at the value placed on it by the creditor unless

(a) the secured creditor has applied to the trustee to amend the value that he places on the security interest and that application has not been determined; or

(b) the secured creditor has appealed to the Court against the refusal of the trustee to permit him to amend the value that he places on his security interest, and that appeal has not been determined.

(4) Where, subsequent to a notice to redeem issued under subsection (1), the value placed by the secured creditor on his security interest is amended, whether with the consent of the trustee or on appeal to the Court, the trustee may only redeem the security interest at the new value.

(5) A secured creditor may, by serving a notice to elect on the trustee, require him to elect whether or not to exercise his power to redeem under this section.

(6) Where a notice to elect is served on a trustee under subsection (5), he is not entitled to redeem the security interest unless he does so within six months of the date of service of the notice on him or within such extended period as the Court may allow.

Realization of security interest by secured creditor.

340. (1) Where a secured creditor realises his security interest and there is a surplus remaining from the net amount realised after satisfaction of the debt secured, he shall account to the trustee for the surplus, after making any proper payments to the holder of any other security interest over the assets subject to that charge.

(2) Where a secured creditor realises his security interest and the net amount realised is not sufficient to satisfy the debt secured

(a) if the creditor has previously valued his security interest and claimed in the bankruptcy for the balance under subsection (1)(a), the net amount realised is substituted for the value previously placed by the creditor on the security interest; or

(b) in any other case, the creditor may claim in the bankruptcy as an unsecured creditor for the balance of his debt.

(3) For the purposes of this section, the secured debt (liability) includes contractual interest payable to the secured creditor on the debt up to the time of its satisfaction.

Surrender for non-disclosure.

341. (1) Subject to subsection (2), if a secured creditor omits to disclose his security interest when submitting a claim in a bankruptcy, he shall surrender his security interest for the general benefit of the creditors.

(2) The Court may, on application by a secured creditor who is required to surrender his security interest under subsection (1), if it is satisfied that the omission was inadvertent or the result of an honest mistake by order direct

(a) that he is not required to surrender his security interest; and

(b) that he values his security interest and amends his claim accordingly.

Interest after commencement of bankruptcy.

342. (1) Interest is payable on any claim in a bankruptcy in respect of the period after the commencement of the bankruptcy in accordance with this section.

(2) Any surplus remaining after the payment of all claims in the bankruptcy shall, before being applied for any other purpose, be applied in paying interest on those claims in respect of the periods during which they have been unpaid since the commencement of the bankruptcy.

(3) All interest payable under this section ranks equally, whether or not the claims on which it is payable rank equally.

(4) The rate of interest payable under this section is the greater of

(a) the court rate; and

(b) the rate that would be applicable to the claim if a bankruptcy order had not been made.

Distribution by means of dividend.

343. (1) Whenever the trustee has sufficient funds in hand for the purpose, he shall, subject to the retention of such sums as may be necessary for his remuneration, declare and distribute dividends among the creditors in respect of the claims that he has admitted.

(2) The trustee shall give notice of his intention to declare and distribute a dividend.

(3) Where the trustee has declared a dividend, he shall give notice of the dividend and of how it is proposed to distribute it.

(4) A notice given under subsection (3) shall contain the prescribed particulars of the bankrupt's estate.

(5) In the calculation and distribution of a dividend, the trustee shall make provision

(a) for any admissible 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 submit their claims;

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

(c) for disputed claims.

Claims by unsatisfied creditors.

344. (1) A creditor who has not submitted his claim 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 claim was submitted, but

(a) when that claim has been admitted, 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 paragraph (a) shall be paid before that money is applied to the payment of any such further dividend.

Distribution of assets in specie.

345. (1) Without prejudice to the provisions in this Act concerning disclaimer, the trustee may, with the permission of the creditors' committee or the Court, divide in their existing form amongst the bankrupt's creditors, according to their estimated value, any assets which from their peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) A permission given for the purposes of subsection (1) shall not be a general permission but shall relate to a particular proposed exercise of the power in question and a person dealing with the trustee in good faith and for value is not to be concerned to enquire whether any permission required by subsection (1) has been given.

(3) Subject to subsection (4), where the trustee has done anything without the permission required by subsection (1), the Court or the creditors' committee may, for the purpose of enabling him to meet his expenses out of the bankrupt's estate, ratify what the trustee has done.

(4) The committee may only ratify the trustee's actions under subsection (3) if it is satisfied that the trustee acted in a case of urgency and that he has sought its ratification without undue delay.

Final distribution.

346. (1) When the trustee has realised all the bankrupt's estate or so much of it as can, in the trustee's opinion, be realised without needlessly protracting the bankruptcy, he shall give notice in the prescribed manner either

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

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

(2) A notice given under subsection (1) shall require claims against the bankrupt's estate to be established by a date specified in the notice (referred to in this section as "the final date").

(3) The Court may, on the application of any person, postpone the final date.

(4) After the final date, the trustee shall

(a) defray any outstanding expenses of the bankruptcy out of the bankrupt's estate; 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 claim not already admitted in the bankruptcy.

No action for dividend.

347. No action lies against the trustee for a dividend, but if the trustee refuses to pay a dividend 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 court rate from the time it was withheld; and

(b) the costs of the application.

Right of bankrupt to surplus.

348. (1) Subject to subsection (2), the bankrupt is entitled to any surplus remaining after payment in full of the costs, expenses and claims referred to in section 334(1).

(2) The Court may make an order directing the trustee not to distribute the surplus or any part of it to the bankrupt if, on the application of the Attorney General, it is satisfied that

(a) proceedings under any enactment dealing with the confiscation of the proceeds of crime are pending; and

(b) the assets of the bankrupt may become subject to a confiscation order or to be required to meet some other order made in those proceedings.

(3) The Court may, on the application of the Attorney General or the bankrupt vary or revoke an order made under subsection (2).

Final Meeting.

349. (1) Where it appears to the trustee that the administration of the bankrupt's estate in accordance with this Act is for practical purposes complete and the trustee is not the Official Receiver, he shall call a final general meeting of the bankrupt's creditors to receive the trustee's report of his administration of the bankrupt's estate.

(2) The trustee may, if he thinks fit, call the final general meeting at the same time as giving notice under section 346 but, if called for an earlier date, the meeting shall be adjourned (and, if necessary, further adjourned) until a date on which the trustee is able to report to the meeting that the administration of the bankrupt's estate is for practical purposes complete.

(3) In the administration of the estate it is the trustee's duty to retain sufficient sums from the estate to cover the expenses of summoning and holding the meeting required by this section.

PRIOR TRANSACTIONS

Contracts to which bankrupt is a party.

350. (1) Where a contract has been made with a person who subsequently becomes bankrupt, the Court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the Court to be equitable.

(2) Any damages payable by the bankrupt by virtue of an order of the Court under this section are provable as a bankruptcy debt.

(3) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

Enforcements procedures.

351. (1) Subject to section 312 and to this section, where the creditor of a bankrupt has, before the commencement of that bankruptcy

(a) issued execution against the goods or land of the bankrupt; or

(b) attached a debt due to the bankrupt from another person;

the creditor is not entitled, as against the bankruptcy trustee, to retain the benefit of the execution or attachment, or any sums paid to avoid it, unless the execution or attachment was completed, or the sums were paid, before the commencement of the bankruptcy.

(2) Where any goods of a person have been taken in execution, then, if before the completion of the execution notice is given to the officer charged with the execution that that person has been adjudged bankrupt,

(a) that officer shall on request deliver the goods and any money seized or recovered in part satisfaction of the execution to the trustee; but

(b) the costs of the execution are a first charge on the goods or money so delivered and the trustee may sell the goods or a sufficient part of them for the purpose of satisfying the charge.

(3) Subject to subsection (6) below, where

(a) under an execution in respect of a judgment for a sum exceeding such sum as may be prescribed for the purposes of this subsection, the goods of any person are sold or money is paid in order to avoid a sale; and

(b) before the end of the period of 14 days beginning with the day of the sale or payment the officer charged with the execution is given notice that a bankruptcy application has been filed in relation to that person; and

(c) a bankruptcy order is or has been made on that application;

the balance of the proceeds of sale or money paid, after deducting the costs of execution, shall (in priority to the claim of the execution creditor) be comprised in the bankrupt's estate.

(4) Accordingly, in the case of an execution in respect of a judgment for a sum exceeding the sum prescribed for the purposes of subsection (3), the officer charged with the execution shall

(a) not dispose of the balance mentioned in subsection (3) at any time within the period of 14 days so mentioned or while there is pending a bankruptcy application of which he has been given notice under that subsection; and

(b) pay that balance, where by virtue of that subsection it is comprised in the bankrupt's estate, to the trustee.

(5) For the purposes of this section

(a) an execution against goods is completed by seizure and sale;

(b) an execution against land is completed by seizure or by the appointment of a receiver;

(c) an attachment of a debt is completed by the receipt of the debt.

(6) The rights conferred by subsections (1) to (3) on the trustee may, to such extent and on such terms as it thinks fit, be set aside by the court in favour of the creditor who has issued the execution or attached the debt.

(7) Nothing in this section entitles the trustee to claim goods from a person who has acquired them in good faith under a sale by an officer charged with an execution.

(8) Neither subsection (2) nor subsection (3) applies in relation to any execution against assets which have been acquired by or have devolved upon the bankrupt since the commencement of the bankruptcy unless, at the time the execution is issued or before it is completed,

(a) the assets have been or are claimed for the bankrupt's estate under section 318 (after-acquired assets); and

(b) a copy of the notice given under that section has been or is served on the officer charged with the execution.

Distress, etc.

352. (1) The right of any landlord or other person to whom rent is payable to distrain upon the goods and effects of an undischarged bankrupt for rent due to him from the bankrupt is available (subject to subsection (5) below) against goods and effects comprised in the bankrupt's estate, but only for 6 months' rent accrued due before the commencement of the bankruptcy.

(2) Where a landlord or other person to whom rent is payable has distrained for rent upon the goods and effects of an individual to whom a bankruptcy application relates and a bankruptcy order is subsequently made on that application, any amount recovered by way of that distress which

(a) is in excess of the amount which by virtue of subsection (1) would have been recoverable after the commencement of the bankruptcy; or

(b) is in respect of rent for a period or part of a period after the distress was levied,

shall be held for the bankrupt as part of his estate.

(3) Where any person (whether or not a landlord or person entitled to rent) has distrained upon the goods or effects of an individual who is adjudged bankrupt before the end of the period of three months beginning with the distraint, so much of those goods or effects, or the proceeds of their sale, as is not held for the bankrupt under subsection (2) shall be charged for the benefit of the bankrupt's estate with the preferential debts of the bankrupt to the extent that the bankrupt's estate is for the time being insufficient for meeting those debts.

(4) Where by virtue of any charge under subsection (3) any person surrenders any goods or effects to the trustee of a bankrupt's estate or makes a payment to such a trustee, that person ranks, in respect of the amount of the proceeds of the sale of those goods or effects by the trustee or, as the case may be, the amount of payment, as a preferential creditor of the bankrupt, except as against so much of the bankrupt's estate as is available for the payment of preferential creditors by virtue of the surrender of payment.

(5) A landlord or other person to whom rent is payable is not at any time after the discharge of a bankrupt entitled to distrain upon any goods or effects comprised in the bankrupt's estate.

(6) Nothing in this Part affects any right to distrain otherwise than for rent, and any such right is at any time exercisable without restriction against assets comprised in a bankrupt's estate, even if that right is expressed by any enactment to be exercisable in like manner as a right to distrain for rent.

(7) Any right to distrain against assets comprised in a bankrupt's estate is exercisable notwithstanding that the assets have vested in the trustee.

(8) The provisions of this section are without prejudice to a landlord's right in a bankruptcy to prove for any bankruptcy debt in respect of rent.

Unenforceability of liens on books, etc.

353. (1) A lien or other right to retain possession of any of the books, papers or other records of a bankrupt is unenforceable to the extent that such enforcement would deny possession of any books, papers or other records to the official receiver or the trustee of the bankrupt's estate.

(2) Subsection (1) does not apply to a lien on documents which give a title to assets and are held as such.

GENERAL POWERS OF COURT

General control of Court.

354. (1) Every bankruptcy is under the general control of the Court and, subject to anything to the contrary in this Act, the Court has full power to decide all questions of priorities and all other questions, whether of law or fact, arising in any bankruptcy.

(2) Without limiting this Part, an undischarged bankrupt or a discharged bankrupt whose estate is still being administered shall do all such things as he may be directed to do by the Court for the purposes of his bankruptcy or, as the case may be, the administration of that estate.

(3) The Official Receiver or the trustee of a bankrupt's estate may at any time apply to the court for a direction under subsection (2).

(4) A person who without reasonable excuse fails to comply with any obligation imposed on him by subsection (2) commits an offence.

Power of arrest.

355. (1) In the cases specified in subsection (2) the Court may cause a warrant to be issued to a police officer or a prescribed officer of the Court

(a) for the arrest of a debtor to whom a bankruptcy application relates or of an undischarged bankrupt, or of a discharged bankrupt whose estate is still being administered; and

(b) for the seizure of any documents, money or goods in possession of a person arrested under the warrant;

and may authorise a person arrested under such a warrant to be kept in custody, and anything seized under such a warrant to be held, in accordance with the rules, until such time as the court may order.

(2) The powers conferred by subsection (1) are exercisable in relation to a debtor or undischarged or discharged bankrupt if, at any time after the filing of the bankruptcy application or the making of the bankruptcy order against him, it appears to the Court

(a) that there are reasonable grounds for believing that he has absconded, or is about to abscond, with a view to avoiding or delaying the payment of any of his debts or his appearance to a bankruptcy application or to avoiding, delaying or disrupting any proceedings in bankruptcy against him or any examination of his affairs; or

(b) that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the trustee; or

(c) that there are reasonable grounds for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his assets or any documents which might be of use to his creditors in the course of his bankruptcy or in connection with the administration of his estate; or

(d) that he has, without the leave of his trustee, removed any assets in his possession which exceed in value such sum as may be prescribed for the purpose of this paragraph; or

(e) that he has failed, without reasonable excuse, to attend any examination ordered by the Court.

Seizure of bankrupt's assets.

356. (1) At any time after a bankruptcy order has been made, the Court may, on the application of the official receiver or the trustee of the bankrupt's estate, issue a warrant authorising the person to whom it is directed to seize any assets comprised in the bankrupt's estate which is, or any documents or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the assets, books, papers or records to the Official Receiver or trustee.

(2) Any person executing a warrant under this section may, for the purpose of seizing any assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs, break open any premises where the bankrupt or anything that may be seized under the warrant is or is believed to be and any receptacle of the bankrupt which contains or is believed to contain anything that may be so seized.

(3) If, after a bankruptcy order has been made, the Court is satisfied that any assets comprised in the bankrupt's estate or any documents relating to the bankrupt's estate or affairs are concealed in any premises not belonging to him, it may issue a warrant authorising any police officer or prescribed officer of the Court to search those premises for the assets or documents.

(4) A warrant under subsection (3) shall not be executed except in the prescribed manner and in accordance with its terms.

Re-direction of bankrupt's letters, etc.

357. (1) Where a bankruptcy order has been made, the Court may from time to time, on the application of the trustee of the bankrupt's estate, order the Post Office to re-direct and send or deliver to the trustee or otherwise any mail which would otherwise be sent or delivered to the bankrupt at such place or places as may be specified by the order.

(2) An order under this section has effect for such period, not exceeding three months, as may be specified in the order.

DISCLAIMER

Trustee may disclaim onerous property.

358. (1) For the purposes of this section, "onerous property" means

(a) an unprofitable contract; or

(b) an asset comprised in the bankrupt's estate which is unsaleable or not readily saleable, or which may give rise to a liability to pay money or perform an onerous act.

(2) Subject to sections 360 and 361(2), a trustee may, by filing a notice of disclaimer with the Court, disclaim any onerous property comprised in the bankrupt's estate even though he has taken possession of it, tried to sell or assign it or otherwise exercised rights of ownership in relation to it.

(3) A trustee who disclaims onerous property shall, within 14 days of the date on which the disclaimer notice is filed, give notice to every person whose rights are, to his knowledge, affected by the disclaimer.

(4) A trustee who contravenes subsection (3) commits an offence.

When disclaimer takes effect.

359. (1) Subject to subsections (2) and (4), a disclaimer takes effect on the date when the notice of disclaimer is filed at Court.

(2) The disclaimer of property of a leasehold nature does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every person claiming under the bankrupt as underlessee or mortgagee and either

(a) no application for a vesting order is made under section 362 with respect to that property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer is to take effect.

(3) Where the Court gives a direction under subsection (2)(b), it may also, instead of or in addition to any order it makes under section 362, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it considers fit.

(4) Without prejudice to subsections (1) to (3), the disclaimer of any property in a dwelling house does not take effect unless a copy of the disclaimer notice has been given, so far as the trustee is aware of their addresses, to every

person in occupation of or claiming a right to occupy the dwelling house and either

(a) no application under section 362 is made with respect to the property before the end of a period of 14 days beginning with the day on which the last notice under this subsection was given; or

(b) where such an application is made, the Court directs that the disclaimer is to take effect.

Notice to trustee to elect whether to disclaim.

360. (1) A person interested in property or whose rights would be effected by the disclaimer of property may, by serving a notice to elect on the trustee, require him to elect whether or not to disclaim the property.

(2) Where a notice to elect is served on a trustee, he is not entitled to disclaim the property under section 358 unless he does so within 28 days of the date of service of the notice on him or within such extended period as the Court may allow.

(3) The trustee is deemed to have adopted any contract which by virtue of this section he is not entitled to disclaim.

Effect of disclaimer.

361. (1) Subject to subsection (2), a disclaimer of onerous property under section 358

(a) operates so as to determine, with effect from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed; and

(b) discharges the trustee from all personal liability in respect of that property as from the date of his appointment;

but, except so far as is necessary to release the bankrupt, the bankrupt's estate and the trustee from liability, does not affect the rights or liabilities of any other person.

(2) A notice of disclaimer shall not be given under section 358 in respect of any property that has been claimed for the estate under section 318 (after-acquired property) or 319 (personal property of bankrupt exceeding reasonable replacement value), except with the leave of the court.

(3) A person suffering loss or damage as a result of a disclaimer of onerous property under section 358 may claim in the bankruptcy of the bankrupt as a creditor for the amount of the loss or damage.

Vesting orders and orders for delivery.

362. (1) Subject to section 363, if a trustee disclaims onerous property under section 358, the Court may make an order under subsection (2) on the application of

(a) a person who claims an interest in the disclaimed property;

(b) a person who is under a liability in respect of the disclaimed property, that has not been discharged by the disclaimer; or

(c) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling house.

(2) On an application under subsection (1), the Court may, on such terms as it considers fit, order that the disclaimed property be vested in or delivered to

(a) a person entitled to the property;

(b) a person under a liability in respect of the property that has not been discharged by the disclaimer;

(c) a trustee for a person referred to in paragraph (a) or (b); or

(d) where the disclaimed property is property in a dwelling house, any person who at the time when the bankruptcy order was made was in occupation of or entitled to occupy the dwelling house.

(3) The Court shall not make an order in respect of a person specified in subsection (2)(b), or in respect of a trustee of such a person, unless it appears to the Court that it would be fair to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(4) The effect of any order under this section shall be taken into account in assessing the extent of the loss or damage suffered by a person for the purposes of section 361(3).

(5) Subject to subsection (5), where a vesting order is made under this section vesting property in a person, the property vests immediately without any conveyance, transfer or assignment.

(6) Where another Virgin Islands enactment

(a) requires the transfer of property vested by an order under this section to be registered; and

(b) that enactment enables the order to be registered;

on the making of a vesting order, the property vests in equity but does not vest at law until the registration requirements of the enactment have been complied with.

Vesting orders in respect of leases.

363. (1) Where the Court makes an order under section 362 vesting property of a leasehold nature in a person, the vesting order shall be made on terms that make that person subject

(a) to the same liabilities and obligations as the bankrupt was subject to under the lease on the date that the bankruptcy order was made; or

(b) to the same liabilities and obligations as that person would have been subject to if the lease had been assigned to him on that date.

(2) Where the property vested by an order under section 362 relates to only part of the property comprised in a lease, subsection (1) applies as if the lease comprised the property subject to the vesting order.

(3) Where no person is willing to accept a vesting order made subject to subsection (1), the Court, by order,

(a) may vest the property in any person who is liable, whether personally or in a representative capacity and whether alone or jointly with the bankrupt, to perform the lessee's covenants in the lease; and

(b) where a vesting order is made under paragraph (a), may vest the property free from all estates, encumbrances and interests created by the bankrupt.

(4) Where a person declines to accept a vesting order made subject to subsection (1), he is excluded from all interest in the property.

Land subject to rentcharge.

364. Where land subject to a rentcharge is disclaimed and that land vests by operation of law in any person, including the Crown, that person and his successors in title are not subject to any personal liability in respect of any sums becoming due under the rentcharge except sums becoming due after he, or some person claiming title under or through him, has taken possession or control of the land or has entered into occupation of it.

Disclaimer presumed valid.

365. Unless it is proved that a trustee has breached his duty to give notice under section 358(3) or that he has otherwise breached his duties under this Act or the

Rules with regard to disclaimer, a disclaimer of property by the trustee is presumed to be valid and effective.

INVESTIGATION OF BANKRUPT'S AFFAIRS

Statement of assets and liabilities.

366. (1) Where a bankruptcy order has been made against an individual otherwise than on his own application, the bankrupt shall submit a statement of his assets and liabilities to his trustee within 21 days of the date of the bankruptcy order.

(2) A statement of assets and liabilities shall contain

(a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed; and

(b) such other information as may be prescribed.

(3) A trustee or the Court may

(a) release the bankrupt from his duty under subsection (1); or

(b) extend the period of time specified in that subsection.

(4) A bankrupt who

(a) fails to submit a statement of his assets and liabilities in accordance with subsection (1); or

(b) submits a statement of his assets and liabilities that does not comply with the prescribed requirements

commits an offence.

Preliminary report.

367. (1) The trustee of a bankrupt shall, within 60 days of the date of the bankruptcy order, prepare a preliminary report stating whether, in his opinion, further enquiry is desirable with respect to

(a) whether the bankrupt has committed a bankruptcy offence;

(b) whether there are any claims under Part **XIV**;

(c) any matter relating to the conduct by the bankrupt of his business or affairs.

(2) The trustee shall send a copy of the report prepared under subsection (1) to the Official Receiver.

(3) Subsection (2) does not apply to the Official Receiver when he is acting as trustee.

(4) The Court may, on the application of the trustee, extend the period specified in subsection (1) on such terms and conditions as it considers fit.

Duty of Official Receiver concerning report under section 367.

368. Where the Official Receiver receives a report under section 226, he shall carry out such investigation, if any, as he considers appropriate.

Application for examination of bankrupt and others.

369. (1) Where a bankruptcy order is made, an application may be made to the Court, ex parte, by the trustee or by the Official Receiver at any time before the discharge of the bankrupt for an order that a person specified in subsection (2) appear before the Court to be examined concerning the affairs, dealings and assets of the bankrupt.

(2) An application under subsection (1) may be made in respect of one or more of the following:

(a) the bankrupt;

(b) the bankrupt's spouse or former spouse;

(c) any person known or believed to be indebted to the bankrupt or to have in his possession any asset comprised in the bankrupt's estate; and

(d) any person appearing to the Court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs, assets or liabilities.

(3) The examination of a bankrupt may be held in public or in private but the examination of any other person shall be held in private.

(4) Unless the Court otherwise orders, the trustee shall make an application under subsection (1) in respect of the bankrupt if notice requiring him to do so is given to him, in accordance with the Rules, by not less than 50 per cent, in value, of the creditors of the bankrupt.

Order for examination.

370. (1) In this section, “examinee” means the person to be examined before the Court.

(2) On hearing an application made under subsection 369, the Court may order the examinee to appear before the Court to be examined.

(3) An order under subsection (2)

(a) shall direct the examinee to appear before the Court to be examined at a venue specified in the order;

(b) where the examinee is the bankrupt, shall state whether the examination is to be a public or a private examination;

(c) may require the person concerned to produce at the examination any books, records or other documents in his possession or control that relate to the bankrupt or his dealings, affairs, liabilities or assets;

(d) may provide for an alternative method of service of the order on the examinee;

(e) shall state the action that may be taken against a person if he does not appear before the Court as required by the order; and

(f) where the examination is to be a public examination, may require the examination to be advertised, specifying the method of such advertisement.

(4) Where the Court makes an order under subsection (2), the applicant shall, forthwith serve a sealed copy of the order on the examinee and, where the trustee is not the Official Receiver,

(a) if the applicant is the trustee, send a sealed copy of the notice to the Official Receiver; or

(b) if the applicant is the Official Receiver, send a sealed copy of the notice to the trustee.

(5) Where an order under subsection (2) is for the public examination of the bankrupt, the applicant shall give not less than 14 days notice of the examination to each creditor of the bankrupt.

(6) The Court may as part of an order made under this section, or at any subsequent time, make one or more of the following directions:

(a) a direction specifying the matters upon which the examinee may be examined;

(b) a direction specifying the procedures to be followed at the examination; and

(c) in the case of an examinee referred to in section 369(2)(b), (c) or (d) a direction that the examinee

(i) file with the Court an affidavit containing such matters as are specified by the Court, or

(ii) produce at his examination any documents in his possession or under his control relating to the bankrupt's dealings, affairs, assets or liabilities.

Conduct of examination.

371. (1) This section applies to an examination held pursuant to an order made under section 370.

(2) An examinee shall be examined on oath, either orally or by interrogatories, and he shall answer such questions as the Court may put, or allow to be put to him.

(3) Subject to subsections (4) and (5), an examination is conducted by the applicant, or by his legal practitioner, and the person examined is entitled to be represented by a legal practitioner who may put such questions to the examinee as the Court may allow for the purpose of explaining or qualifying answers given by him.

(4) The examinee may also be examined

(a) if the applicant is the Official Receiver, by the trustee; or

(b) if the applicant is the trustee, by the Official Receiver.

(5) At a public examination of the bankrupt, questions may, with the leave of the Court, be put to the examinee by any creditor present at the examination or by the legal practitioner representing such a creditor.

(6) An examination shall be recorded in writing and the examinee shall sign the record.

(7) Subject to section 372, the written record of an examination is admissible in evidence in any proceedings under this Act.

Examinee shall answer questions put to him.

372. (1) An examinee is not excused from answering a question put to him at an examination held pursuant to an order made under section 370 on the ground that the answer may incriminate him or tend to incriminate him.

(2) Notwithstanding subsection (1), the record of an examination held pursuant to an order made under section 370 is not admissible as evidence in any criminal proceedings against the examinee except where he is charged with the offence of perjury.

Examinee failing to appear for his examination.

373. (1) Where a person without reasonable excuse fails to attend an examination ordered to be held under section 370, or there are reasonable grounds for believing that the examinee has absconded, or is about to abscond, with a view to avoiding or delaying his examination, the Court may issue a warrant to a police officer or a prescribed officer of the Court

(a) for the arrest of that person; and

(b) for the seizure of any books, papers, records, money or goods in that person's possession.

(2) The Court may authorise a person arrested under a warrant issued under subsection (1) to be kept in custody, and anything seized under such a warrant to be held, in accordance with the Rules, until that person is brought before the Court under the warrant or until such other time as the Court may order.

(3) A person who fails to attend an examination ordered to be held under section 370 commits an offence.

Court's enforcement powers.

374. (1) If it appears to the Court, on consideration of any evidence obtained under section 371, 373 or this section, that any person has in his possession any assets comprised in the bankrupt's estate, the Court may, on the application of the trustee, order that person to deliver the assets or any of them to the trustee at such time, in such manner and on such terms as the Court considers fit.

(2) If it appears to the Court, on consideration of any evidence obtained under section 371, 373 or this section, that any person is indebted to the bankrupt, the court may, on the application of the trustee, order that person to pay the trustee, at such time and in such manner as the Court may direct, the whole or part of the amount due, whether in full discharge of the debt or otherwise as the Court thinks fit.

(3) The Court may order that any person who, if within the jurisdiction of the Court, would be liable to be examined pursuant to an order made under section 370 shall be examined in the Virgin Islands or any place outside the Virgin Islands.

DISCHARGE AND ANNULMENT OF BANKRUPTCY

Bankrupt ineligible for automatic discharge.

375. (1) For the purposes of section 376, a bankrupt is ineligible for automatic discharge if

(a) he has been an undischarged bankrupt at any time in the ten years prior to the date of the bankruptcy order; or

(b) he has been convicted of a bankruptcy offence.

(2) Where a previous bankruptcy order made against a person has been annulled under section 382, the period during which that person was an undischarged bankrupt by virtue of that bankruptcy order shall be ignored for the purposes of subsection (1)(a).

Automatic discharge.

376. (1) Subject to subsection (2), a bankrupt is discharged from bankruptcy at the end of the period of three years commencing on the date of the bankruptcy order unless

(a) he is ineligible for automatic discharge by virtue of section 375; or

(b) he has previously been discharged under section 379(1)(b) or (c).

(2) On the application of a person specified in subsection (3), the Court may, on the grounds specified in subsection (4),

(a) extend the period referred to in subsection (1);

(b) order that the period will cease to run until the fulfilment of such conditions as it may specify; or

(c) order that the bankrupt is not entitled to automatic discharge.

(3) An application under subsection (2) may be made on the application of the Official Receiver or the trustee of the bankrupt.

(4) The Court may

(a) make an order under subsection (2)(a) or (b) if it is satisfied that the bankrupt has failed or is failing to comply with any of his obligations under this Act or the Rules; or

(b) make an order under subsection (2)(c) on any of the grounds upon which it could refuse to discharge the bankrupt under section 379.

(5) An application under subsection (2)

(a) shall be made before the bankrupt has been discharged under subsection (1); and

(b) when made, operates to suspend the period referred to in subsection (1) until after the determination of the application by the Court.

(6) The Court may not, by an order made under section 496(1), permit an application to be made under subsection (2) after the discharge of a bankrupt under subsection (1).

Application by bankrupt concerning order for suspension of discharge.

377. (1) Where the Court has made an order under section 376(2)(b) that the period for automatic discharge will cease to run, the bankrupt may apply to the Court for the order to be varied or discharged.

(2) On an application made under subsection (1), the Court may vary or discharge its order.

Application for discharge by Court order.

378. (1) A bankrupt may apply to the Court for his discharge,

(a) where he is ineligible for automatic discharge or where the Court has made an order under section 376(2)(c) that he is not entitled to automatic discharge, at any time after three years from the date of the bankruptcy order; or

(b) in any other case, at any time after six months from the date of the bankruptcy order.

(2) An application under subsection (1) shall be served on

(a) the Official Receiver; and

(b) his trustee, if not the Official Receiver;

not less than 42 days before the date fixed for the hearing.

Court order on application for discharge.

379. (1) Subject to subsections (3), (4) and (5), on an application under section 378, the Court may

(a) refuse the application;

(b) make an order discharging the bankrupt absolutely; or

(c) make an order discharging the bankrupt subject to such conditions as it considers fit, including conditions with respect to

(i) any income which may subsequently become due to him, or

(ii) any assets that may devolve on him or be acquired by him after his discharge.

(2) An order under subsection (1)(c) may be made with immediate effect or may be made effective after such period or until the fulfilment of such conditions as may be specified in the order.

(3) Where an application is made under subsection (1) more than eight years after the date of the bankruptcy order, the Court shall not refuse the application unless it is satisfied that there are exceptional reasons for not granting the bankrupt his discharge.

(4) Subject to subsection (4), the Court may refuse to grant a bankrupt his discharge if

(a) the bankrupt has failed or is failing to comply with his obligations under this Act or the Rules;

(b) the bankrupt has, after the date of the bankruptcy order, engaged in a prohibited activity within the meaning of section 260(3);

(c) the bankrupt has been convicted of a bankruptcy offence;

(d) the bankrupt has failed, whether intentionally or not, to disclose to his trustee particulars of

(i) any of his assets,

(ii) any liability existing at the date of the bankruptcy order, or

(iii) any income or expected income;

(e) where the bankrupt has been engaged in any business for any of the period of three years prior to the date of the bankruptcy order, he has

(i) failed to keep such books and accounts as would sufficiently disclose his business transactions and financial position whilst engaged in his business; or

(ii) having kept the books and accounts referred to in subparagraph (i), he has failed to preserve them;

(f) the bankrupt continued to trade after knowing, or having reason to believe himself to be insolvent;

(g) the bankrupt contracted any liability that is claimable in his bankruptcy without having at the time of contracting it any reasonable expectation that he would be able to discharge it;

(h) that the bankrupt, either before or after the bankruptcy order, has committed any fraud or breach of trust;

(i) that the bankrupt has entered into a voidable transaction within the meaning of section 400; or

(j) for any other reason it considers it appropriate to do so.

Effect of discharge.

380. (1) Subject to this section, where a bankrupt is discharged, the discharge releases him from all debts claimable in the bankruptcy, but has no effect

(a) on the functions, so far as they remain to be carried out, of the trustee; or

(b) on the operation, for the purposes of the carrying out of those functions, of the provisions of this Act;

(2) The discharge of a bankrupt does not affect the right

(a) of any creditor of the bankrupt to prove in the bankruptcy for any debt from which the bankrupt is released; or

(b) of any secured creditor of the bankrupt to enforce his security interest for the payment of a debt from which the bankrupt is released.

(3) The discharge of a bankrupt does not release the bankrupt from

(a) a liability incurred by means of a fraud or fraudulent breach of trust to which the bankrupt was a party or a liability of which he has obtained forbearance by fraud;

(b) a liability under a recognizance; or

(c) a liability in respect of a fine imposed for an offence.

(4) Except to such extent and subject to such conditions as the Court may otherwise order, the discharge of a bankrupt does not release the bankrupt from

(a) a liability under a maintenance agreement or maintenance order or arrears payable under such an agreement or order;

(b) a liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other duty, being damages in respect of personal injuries to any person; or

(c) such other liabilities, not being liabilities that may be claimed in the bankruptcy, as may be prescribed.

(5) The discharge of a bankrupt does not release any person other than the bankrupt from any liability, whether as partner or co-trustee of the bankrupt or otherwise, from which the bankrupt is released by the discharge, or from any liability as surety for the bankrupt or as a person in the nature of such a surety.

(6) In subsection (4), “personal injuries” includes death and any disease or other impairment of a person's physical or mental condition.

Discharged bankrupt to give assistance.

381. (1) A discharged bankrupt shall, even though discharged, give such assistance as his trustee reasonably requires in the realization and distribution of such of his assets as are vested in his trustee.

(2) A discharged bankrupt who contravenes subsection (1) commits an offence.

Annulment of bankruptcy order.

382. (1) The Court may annul a bankruptcy order if at any time it appears to the court

(a) that, on any grounds existing at the time the order was made, the order ought not to have been made; or

(b) that, to the extent required by this Act and the Rules, the claims made in the bankruptcy and the expenses of the bankruptcy have all, since the making of the order, been either paid or secured for to the satisfaction of the Court.

(2) The Court may annul a bankruptcy order whether or not the bankrupt has been discharged.

(3) Where the court annuls a bankruptcy order,

(a) any sale or other disposition of assets, payment made or other thing done, under any provision in this Part, by or under the authority of the trustee or by the Court is valid; but

(b) if any of the bankrupt's estate is then vested, under any such provision, in such a trustee, it shall vest in such person as the Court may appoint or, in default of any such appointment, revert to the bankrupt on such terms, if any, as the court may direct.

(4) The Court may, in an order made under subsection (2), include such supplemental provisions as may be authorised by the Rules.

(5) The trustee shall vacate office if the bankruptcy order is annulled.

Release of trustee.

383. (1) Where the Official Receiver ceases to be the trustee of a bankrupt's estate and another person is appointed trustee in his place, the Official Receiver obtains his release

(a) from the appointment of the new trustee; or

(b) such later date as the Court may determine.

(2) If the Official Receiver, while he is the trustee, gives notice to the Court that the administration of the bankrupt's estate in accordance with this Part is for practical purposes complete, he obtains his release with effect from such time as the Court may determine.

(3) A person other than the Official Receiver who ceases to be trustee may apply to the Court for his release and the Court may grant the release unconditionally or subject to such conditions as it considers fit, or withhold it.

(4) If the Court withholds the release it may make an order against the former trustee under section 384.

(5) Where a bankruptcy order is annulled, the trustee at the time of the annulment has his release with effect from such time as the Court may determine.

(6) Subject to subsection (7), where a former trustee is released under this section, he is discharged from all liability in respect of any act or default of his in relation to the administration of the estate and otherwise in relation to his conduct as trustee.

(7) Subsection (6) does not prevent the Court from making an order under section 384 against a trustee who has been released under this section.

(8) A trustee, other than the Official Receiver, who obtains his release under this section shall file a notice in the prescribed form with the Official Receiver.

Liability of trustee.

384. (1) Where on an application under this section the Court is satisfied

(a) that the trustee of a bankrupt's estate has misapplied or retained, or become accountable for, any money or other assets comprised in the bankrupt's estate; or

(b) that a bankrupt's estate has suffered any loss in consequence of any misfeasance or breach of fiduciary or other duty by a trustee of the estate in the carrying out of his functions;

the Court may order the trustee, for the benefit of the estate, to repay, restore or account for money or other assets, together with interest at such rate as the Court considers just, or, as the case may require, to pay such sum by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court considers just.

(2) Subject to subsection (3), an application under this section may be made by the Official Receiver, a creditor of the bankrupt or, whether or not there is, or is likely to be, a surplus for the purposes of section 348, the bankrupt himself.

(3) The leave of the Court is required for the making of an application under this section if it is to be made by the bankrupt or if it is to be made after the trustee has had his release under section 383.

(4) Where

(a) the trustee seizes or disposes of any asset which is not comprised in the bankrupt's estate; and

(b) at the time of the seizure or disposal the trustee believes, and has reasonable grounds for believing, that he is entitled, whether pursuant to an order of the court or otherwise, to seize or dispose of that asset;

the trustee is not liable to any person, whether under this section or otherwise, in respect of any loss or damage resulting from the seizure or disposal except in so far as that loss or damage is caused by negligence of the trustee and the trustee has a lien on the asset, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(5) Subsection (1) does not prevent any person from instituting any other proceedings in relation to matters in respect of which an application can be made under that subsection.

SECOND OR SUBSEQUENT BANKRUPTCY

Stay of distribution in case of second bankruptcy.

385. (1) This section and section 386 apply where a bankruptcy order is made against an undischarged bankrupt and in both sections

"earlier bankruptcy" means the bankruptcy, or the most recent bankruptcy, from which the bankrupt has not been discharged at the time when the later bankruptcy commences;

"later bankruptcy" means the bankruptcy arising from the bankruptcy order made against an undischarged bankrupt; and

"existing trustee" means the trustee, if any, of the bankrupt's estate for the purposes of the earlier bankruptcy.

(2) Where the existing trustee has been given notice of the application for the later bankruptcy, any distribution or other disposition by him of any asset to which subsection (3) applies made after the giving of the notice is void except to the extent that it was made with the consent of the Court or is or was subsequently ratified by the Court.

(3) Subsection (2) applies to

(a) any asset which is vested in the existing trustee under section 318;

(b) any money paid to the existing trustee pursuant to an income payments order under section 322; and

(c) any asset or money which is, or in the hands of the existing trustee represents, the proceeds of sale or application of an asset or money falling within paragraphs (a) or (b).

Adjustment between earlier and later bankruptcy estates.

386. (1) With effect from the commencement of the later bankruptcy any asset to which section 385(3) applies which, immediately before the commencement of that bankruptcy, is comprised in the bankrupt's estate for the purposes of the earlier bankruptcy is to be treated as comprised in the bankrupt's estate for the purposes of the later bankruptcy.

(2) Any sum which in pursuance of an income payments order made under section 322 is payable after the commencement of the later bankruptcy to

the existing trustee shall form part of the bankrupt's estate for the purposes of the later bankruptcy and the court may give such consequential directions for the modification of the order as it considers fit.

(3) Anything comprised in a bankrupt's estate by virtue of subsections (1) or (2) is so comprised subject to a first charge in favour of the existing trustee for his remuneration or any bankruptcy expenses incurred by him in relation thereto.

(4) Except as provided in this section and in section 385, any asset which is, or by virtue of section 319 is capable of being, comprised in the bankrupt's estate for the purposes of the earlier bankruptcy, or of any bankruptcy prior to it, is not comprised in his estate for the purposes of the later bankruptcy.

(5) The creditors of the bankrupt in the earlier bankruptcy and the creditors of the bankrupt in any bankruptcy prior to the earlier bankruptcy, are not to be creditors of his in the later bankruptcy in respect of the same liabilities but the existing trustee may claim in the later bankruptcy for

(a) the unsatisfied balance of the liabilities, including any liability under this subsection, claimable against the bankrupt's estate in the earlier bankruptcy;

(b) any interest payable on that balance; and

(c) any unpaid expenses of the earlier bankruptcy.

(6) Any amount claimable under subsection (5) ranks in priority after all the other claims admitted in the later bankruptcy and after interest on those claims and, accordingly, shall not be paid unless those claims and that interest have first been paid in full.

PART XIII

BANKRUPTCY OFFENCES

Definitions.

387. In this Part,

(a) references to assets comprised in the bankrupt's estate or to assets possession of which is required to be delivered up to the trustee include any assets specified in section 313;

(b) "initial period" means the period between the filing of the application for the bankruptcy order and the commencement of the bankruptcy; and

(c) a reference to a number of months or years before the application is to that period ending with the filing of the application for the bankruptcy order.

Defence of innocent intention.

388. (1) Subject to subsection (2), the bankrupt does not commit a bankruptcy offence if he proves that, at the time of the conduct constituting the offence, he had no intent to defraud or to conceal the state of his affairs.

(2) Subsection (1) does not apply to sections 390(1)(e), 392(b), 392(c), 392(d), 392(e), 396(1), 397 and 398.

Non-disclosure.

389. (1) The bankrupt commits an offence if

(a) he does not to the best of his knowledge and belief disclose all the assets comprised in his estate to the trustee; or

(b) he does not inform the trustee of any disposal of any assets which, but for the disposal, would be so comprised, stating how, when, to whom and for what consideration the asset was disposed of.

(2) Subsection (1)(b) does not apply to any disposal in the ordinary course of a business carried on by the bankrupt or to any payment of the ordinary expenses of the bankrupt or his family.

Concealment of assets.

390. The bankrupt commits an offence if

(a) he does not deliver up possession to the trustee, or as the trustee may direct, those assets comprised in his estate as are in his possession or under his control of which he is required by law so to deliver up;

(b) he conceals any debt due to or from him or conceals any asset, the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the trustee; or

(c) in the 12 months before the application, or in the initial period, he did anything which would have been an offence under paragraph (b) if the bankruptcy order had been made immediately before he did it.

(d) he removes, or in the initial period removed, any asset the value of which was not less than the prescribed amount and possession of which he is or would have been required to deliver up to the trustee.

(e) he without reasonable excuse fails, on being required to do so by the Official Receiver or the Court,

(i) to account for the loss of any substantial part of his assets incurred in the 12 months before the application or in the initial period, or

(ii) to give a satisfactory explanation of the manner in which such a loss was incurred.

Concealment of books and papers; falsification.

391. The bankrupt commits an offence if

(a) he does not deliver up possession to the trustee, or as the trustee may direct, of all documents in his possession or control which relate to his estate or his affairs.

(b) he prevents, or in the initial period prevented, the production of any documents relating to his estate or affairs;

(c) he conceals, destroys, mutilates or falsifies, or causes or permits the concealment, destruction, mutilation or falsification of, any documents relating to his estate or affairs;

(d) he makes, or causes or permits the making of, any false entries in any documents relating to his estate or affairs;

(e) he disposes of, or alters or makes any omission in or causes or permits the disposal, altering or making of any omission in , any document relating to his estate or affairs; or

(f) in the 12 months before the application, or in the initial period, he did anything which would have been an offence under paragraph (c), (d) or (e) if the bankruptcy order had been made before he did it.

False statements.

392. The bankrupt commits an offence if

(a) he makes any false statement or any material omission in any statement made under this Act relating to his affairs;

(b) knowing or believing that a false claim has been made by any person under the bankruptcy, he fails to inform the trustee as soon as practicable; or

(c) he attempts to account for any part of his assets by fictitious losses or expenses; or

(d) at any meeting of his creditors in the 12 months before the application or, whether or not at such a meeting, at any time in the initial period, he did anything which would have been an offence under paragraph (c) if the bankruptcy order had been made before he did it; or

(e) he is, or at any time has been, guilty of any false representation or other fraud for the purposes of obtaining the consent of his creditors, or any of them, to an agreement with reference to his affairs or to his bankruptcy.

Fraudulent disposal of assets.

393. (1) The bankrupt commits an offence if

(a) he makes or causes to be made, or has during the period of 5 years prior to the date of the bankruptcy order made or caused to be made, any gift or transfer of, or any charge on, his assets; or

(b) he conceals or removes, or has at any time before the commencement of the bankruptcy, concealed or removed, any of his assets after, or within sixty days before, the date on which a judgement or order for the payment of money has been obtained against him, being a judgement or order which was not satisfied before the commencement of the bankruptcy.

(2) The reference in subsection (1) to making a transfer of or a charge on any asset includes causing or conniving at the levying of any execution against that asset.

Absconding.

394. The bankrupt commits an offence if

(a) he leaves, or attempts or makes preparations to leave the Virgin Islands with any assets the value of which is not less than the prescribed amount and possession of which he is required to deliver up to the Official Receiver or the trustee; or

(b) in the 6 months before the application, or in the initial period, he did anything which would have been an offence under paragraph(a)if the bankruptcy order had been made immediately before he did it.

Fraudulent dealing with asset obtained on credit.

395. (1) The bankrupt commits an offence if, in the 12 months before the application, or in the initial period, he disposed of any asset which he had obtained on credit and, at the time he disposed of it, had not paid for.

(2) A person commits an offence if, in the 12 months before the application, or in the initial period, he acquired or received an asset from the bankrupt knowing or believing

(a) that the bankrupt owed money in respect of the asset; and

(b) that the bankrupt did not intend, or was unlikely to be able, to pay the money so owed.

(3) A person does not commit an offence under subsection (1) or (2) if the disposal, acquisition or receipt of the asset was in the ordinary course of a business carried on by the bankrupt at the time of the disposal, acquisition or receipt.

(4) In determining for the purposes of this section whether any asset is disposed of, acquired or received in the ordinary course of a business carried on by the bankrupt, regard may be had, in particular, to the price paid for the asset.

(5) In this section, references to disposing of an asset include pawning or pledging it and references to acquiring or receiving an asset shall be read accordingly.

Obtaining credit; engaging in business.

396. (1) The bankrupt commits an offence if

(a) either alone or jointly with any other person, he obtained credit to the extent of the prescribed amount or more without informing that person that he is an undischarged bankrupt;

(b) he engages, whether directly or indirectly, in any business under a name other than that in which he was made bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was made bankrupt.

(2) The reference to the bankrupt obtaining credit includes the following cases,

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

(b) where he is paid in advance, whether in money or otherwise, for the supply of goods and services.

Failure to keep proper accounts of business.

397. (1) Where the bankrupt has been engaged in any business for any of the period of two years before the application, he commits an offence if he

(a) has not kept proper accounting records throughout that period and throughout any part of the initial period in which he was so engaged; or

(b) has not preserved all the accounting records which he has kept.

(2) The bankrupt does not commit an offence under subsection (1)

(a) if his unsecured liabilities at the commencement of the bankruptcy did not exceed the prescribed amount; or

(b) if he proves that in the circumstances in which he carried on business the omission was honest and excusable.

(3) For the purpose of this section, a person is deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including

(a) records containing entries from day to day, in sufficient detail, of all cash paid and received;

(b) where the business involves dealing in goods, statements of annual stock-takings; and

(c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

Gambling.

398. (1) The bankrupt commits an offence if he has

(a) in the two years before the application, materially contributed to, or increased the extent of, his insolvency by gambling or by rash and hazardous speculations; or

(b) in the initial period, lost any of his assets by gambling or by rash and hazardous speculations.

(2) In determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the bankrupt at the time when he entered into them shall be taken into consideration.

Supplementary provisions.

399. (1) Proceedings for a bankruptcy offence may not be instituted after the annulment of the bankruptcy.

(2) Without limiting the liability of a bankrupt in respect of a subsequent bankruptcy, the bankrupt does not commit an offence under this Part in respect of anything done after his discharge but nothing in this Act prevents the institution of proceedings against a discharged bankrupt for an offence committed before his discharge.

(3) It is not a defence in proceedings for an offence under this Part that anything relied on, in whole or in part, as constituting that offence was done outside the Virgin Islands.

PART XIV

VOIDABLE TRANSACTIONS

Interpretation for this Part.

400. (1) In this Part,

"debtor" means the individual against whom a bankruptcy order is made;

"insolvent bankruptcy" means a bankruptcy where the assets comprised in the bankrupt's estate are insufficient to pay his liabilities and the expenses of the bankruptcy;

"insolvency transaction" has the meaning specified in subsection (2);

"onset of insolvency" means the date on which the application for a

bankruptcy order was filed;

"voidable transaction" means

(a) an unfair preference;

(b) an undervalue transaction;

(c) a voidable general assignment of book debts; or

(d) an extortionate credit transaction;

"vulnerability period" means,

(a) for the purposes of sections 401, 402 and 403,

(i) in the case of a transaction entered into with, or a preference given to, a connected person, the period commencing 2 years prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(ii) in the case of a transaction entered into with, or a preference given to, any other person, the period commencing six months prior to the onset of insolvency and ending on the date of the bankruptcy order; and

(b) for the purposes of section 404, the period commencing 5 years prior to the onset of insolvency and ending on the date of the bankruptcy order;

(2) A transaction is an insolvency transaction if

(a) it is entered into at a time when the debtor is insolvent; or

(b) it causes the debtor to become insolvent;

(3) For the purposes of subsection (2)(b), an individual is insolvent if he is unable to pay his debts as they fall due for payment.

(4) This Part applies in respect of an individual only if a bankruptcy order is made against him.

401. (1) Subject to subsection (2), a transaction entered into by an individual is an unfair preference given by the individual to a creditor if the transaction

Unfair preferences.

(a) is an insolvency transaction;

(b) is entered into within the vulnerability period; and

(c) has the effect of putting the creditor into a position which, in the event of the individual becoming a bankrupt, will be better than the position he would have been in if the transaction had not been entered into.

(2) A transaction is not an unfair preference if the transaction took place in the ordinary course of business.

(3) A transaction may be an unfair preference notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where a transaction entered into by an individual within the vulnerability period has the effect specified in subsection (1)(c) in respect of a creditor who is a connected person, unless the contrary is proved, it is presumed that the transaction was an insolvency transaction and that it did not take place in the ordinary course of business.

Undervalue transactions.

402. (1) Subject to subsection (2), an individual enters into an undervalue transaction with a person if

(a) he makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for him to receive no consideration; or

(b) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by him; and

(c) in either case, the transaction concerned

(i) is an insolvency transaction; and

(ii) is entered into within the vulnerability period.

(2) An individual does not enter into an undervalue transaction with a person if

(a) the individual enters into the transaction in good faith and for the purposes of his business; and

(b) at the time when he enters into the transaction, there were

reasonable grounds for believing that the transaction would benefit him.

(3) A transaction may be an undervalue transaction notwithstanding that it is entered into pursuant to the order of a court or tribunal in or outside the Virgin Islands.

(4) Where an individual enters into a transaction with a connected person within the vulnerability period and the transaction falls within subsection (1)(a) or subsection (1)(b), unless the contrary is proved, it is presumed that

(a) the transaction was an insolvency transaction; and

(b) subsection (2) did not apply to the transaction.

Voidable general assignment of book debts.

403. (1) This section applies where an individual engaged in any business makes a general assignment to another of his existing or future book debts, or any class of them, and a bankruptcy order is subsequently made against him.

(2) The assignment is voidable as regards book debts which were not paid before the filing of the application for the bankruptcy order, unless the assignment has been registered under the Bills of Sale Act. Cap. 284

(3) For the purposes of subsections (1) and (2),

(a) "assignment" includes an assignment by way of security or charge on book debts; and

(b) "general assignment" does not include

(i) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts, or

(ii) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

(4) For the purposes of registration under the Bills of Sale Act, an assignment of book debts is to be treated as if it were a bill of sale given otherwise by way of security for the payment of a sum of money; and the provisions of that Act with respect to the registration of bills of sale apply accordingly with such necessary modifications as may be made by rules under that Act.

Extortionate credit transactions.

404. A transaction entered into by an individual within the vulnerability period for, or involving the provision of, credit to him is an extortionate credit transaction if, having regard to the risk accepted by the person providing the credit,

(a) the terms of the transaction are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of credit; or

(b) the transaction otherwise grossly contravenes ordinary principles of fair trading.

Orders in respect of voidable transactions.

405. (1) Subject to section 406, where it is satisfied that a transaction entered into by an individual is a voidable transaction the Court, on the application of the bankruptcy trustee of the individual,

(a) may make an order setting aside the transaction in whole or in part;

(b) in respect of an unfair preference or an undervalue transaction, may make such order as it considers fit for restoring the position to what it would have been if the bankrupt had not entered into that transaction; and

(c) in respect of an extortionate credit transaction, may by order provide for any one or more of the following:

(i) the variation of the terms of the transaction or the terms on which any security interest for the purposes of the transaction is held;

(ii) the payment by any person who is or was a party to the transaction to the trustee of any sums paid by the bankrupt to that person by virtue of the transaction;

(iii) the surrender by any person to the trustee of any asset held by him as security for the purposes of the transaction; and

(iv) the taking of accounts between any persons.

(2) Without prejudice to the generality of subsection (1)(b), an order under that paragraph may

(a) require any asset transferred as part of the transaction to be vested in the trustee;

(b) require any asset to be vested in the trustee if it represents in any person's hands the application either of the proceeds of sale of an asset transferred or of money transferred, in either case as part of the transaction;

(c) release or discharge, in whole or in part, any security interest given by the bankrupt or the liability of the bankrupt under any contract;

(d) require any person to pay, in respect of benefits received by him from the bankrupt, such sums to the trustee as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged, in whole or in part, under the transaction, to be under such new or revived obligations to that person as the Court considers appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any asset and for the security interest or charge to have the same priority as a security interest or charge released or discharged, in whole or in part, under the transaction;

(g) provide for a person effected by an order made under subsection (1) to prove in the bankruptcy of the bankrupt in such amount as the Court considers fit; and

(h) require the company to make a payment or transfer an asset to any person affected by an order made under subsection (1).

(3) Subject to section 250, in respect of an unfair preference or an undervalue transaction, an order under subsection (1) may affect the assets of, or impose any obligation on, any person whether or not he is the person with whom the bankrupt entered into the transaction.

Limitations on orders under section 405.

406. (1) This section applies to an order made under section 405(1) in respect of an unfair preference or an undervalue transaction.

(2) An order to which subsection (1) applies shall not

(a) prejudice any interest in an asset that was acquired in good faith and for value from a person other than the bankrupt, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction in

good faith and for value to pay a sum to the trustee, except where that person was a party to the transaction or, in respect of an unfair preference, the preference was given to that person when he was a creditor of the bankrupt.

(3) For the purposes of subsection (2), where a person would, apart from the requirement for good faith, fall within the circumstances specified in paragraph (a) or (b), it is presumed, unless the contrary is proved, that he acquired the interest or received the benefit in good faith.

(4) Subsection (3) does not apply to a person

(a) who, at the time of the transaction, had notice of

(i) the fact that the transaction was an unfair preference or an undervalue transaction, as the case may be; or

(ii) the relevant proceedings as defined in subsection (5); or

(b) who was, at the time of the transaction, a connected person.

(5) For the purposes of subsection (4), a person has notice of the relevant proceedings if he had notice that an application had been made for the bankruptcy of the individual.

Recoveries.

407. Any money paid to, asset recovered or other benefit received by the trustee as a result of an order made under section 405 is deemed to be an asset comprised in the bankrupt's estate that is available to pay his unsecured creditors.

Remedies not exclusive.

408. The provisions of this Part apply without prejudice to the availability of any other remedy.

PART XV

BANKRUPTCY RESTRICTIONS ORDERS AND UNDERTAKINGS

Interpretation for this Part.

409. In this Part,

"restricted person" means a person

(a) against whom a bankruptcy restrictions order or an interim order has effect; or

(b) in respect of whom a bankruptcy restrictions undertaking is in place;

"voluntary liquidator" means a liquidator appointed by the directors or members of an international business company under Part IX of the International Business Companies Act. Cap. 291

Bankruptcy restrictions orders and undertakings.

410. (1) A bankruptcy restrictions order is an order that an individual shall not, for the period specified in the order, engage in a prohibited activity without the leave of the Court.

(2) A bankruptcy restrictions undertaking is an undertaking in writing given by an individual to the Official Receiver that he will not, for the period specified in the undertaking, engage in a prohibited activity without the leave of the Court.

(3) For the purpose of this Part, an individual engages in a prohibited activity if

(a) he is a director of a company;

(b) he acts as the voluntary liquidator of a company;

(c) he acts as the receiver of the assets of a company;

(d) he acts as an insolvency practitioner;

(e) in any way, whether directly or indirectly, he is concerned with or takes part in the promotion, formation or management of a company; or

(f) he undertakes any activity prescribed as a prohibited activity.

Application for and hearing of application for bankruptcy restrictions order.

411. (1) The Official Receiver may apply to the Court for a bankruptcy restrictions order against a bankrupt.

(2) On an application under subsection (1), the Court may, make a bankruptcy restrictions order against a bankrupt where it considers it appropriate having regard to the conduct of the bankrupt, whether before or after the making of the bankruptcy order against him.

(3) Without limiting subsection (3), the Court shall in particular take into account

(a) any behaviour of the bankrupt that constitutes a bankruptcy offence, whether or not the bankrupt has been convicted of the offence; and

(b) whether the bankrupt was an undischarged bankrupt at some time during the six years prior to the making of the bankruptcy order in respect of which the application is made.

Duration of bankruptcy restrictions order.

412 (1) The Court shall, on making a disqualification order, specify the period for which the order has effect.

(2) The period referred to in subsection (1) shall commence on a date no earlier than the date of the order and no later than 28 days after the date of the order and shall not exceed ten years.

Interim bankruptcy restrictions order.

413. (1) In this section, “interim order” means an interim bankruptcy restrictions order.

(2) The Official Receiver may apply to the Court for an interim order at any time between

(a) the filing by him of an application for a bankruptcy restrictions order; and

(b) the determination of that application.

(3) The Court may, on an application made under subsection (1), make an interim order against a bankrupt if it considers

(a) that there are *prima facie* grounds to suggest that the application for the bankruptcy restrictions order will be successful; and

(b) it is in the public interest to make an interim order.

(3) An interim order shall

(a) take effect on the date that it is made; and

(b) have the same effect as a bankruptcy restrictions order.

(4) An interim order shall cease to have effect

(a) on the determination of the application for the bankruptcy restrictions order;

(b) on the acceptance of a bankruptcy restrictions undertaking made by a bankrupt; or

(c) on the discharge of the interim order by the Court on the application of the Official Receiver or the bankrupt.

Bankruptcy restrictions undertaking.

414. (1) A bankrupt may offer the Official Receiver a bankruptcy restrictions undertaking, whether or not the Official Receiver has made an application against him for a bankruptcy restrictions order.

(2) The Official Receiver may accept an offer made to him under subsection (1) if he considers that

(a) there is a reasonable prospect that, on the hearing of an application under section 411, the Court would make a bankruptcy restrictions order against the bankrupt offering the undertaking; and

(b) it is expedient and in the public interest to accept the offer.

(3) A bankruptcy restrictions undertaking shall specify a period, commencing on the date of the undertaking, for which the undertaking has effect.

(4) The period referred to in subsection (3) shall not exceed ten years.

Variation of disqualification order or undertaking.

415. (1) The Court may, on the application of the Official Receiver or a restricted person, vary a bankruptcy restrictions order or a bankruptcy restrictions undertaking.

(2) Without limiting subsection (1), an order under that subsection may

(a) reduce the period for which the order, or undertaking, is in force; or

(b) provide for the order or undertaking to cease to be in force.

(3) An application made by a restricted person for an order under subsection (1) shall be served on the Official Receiver no less than 14 days prior to the date of the hearing and the Official Receiver shall appear or be represented and is entitled to call or give evidence at the hearing.

Offence provisions.

416. A restricted person who engages in a prohibited activity commits an offence.

Official Receiver to appear on certain applications.

417. The Official Receiver shall appear and call the attention of the Court to any matters which seem to him to be relevant, and may himself give evidence or call witnesses on the hearing of

(a) an application by the Official Receiver for a bankruptcy restrictions order; or

(b) any other application made under this Part.

Register of disqualification orders.

418. (1) The Official Receiver shall register in a Register of Bankruptcy Restrictions Orders and Undertakings to be maintained by him for the purpose

(a) each bankruptcy restrictions order and interim bankruptcy restrictions order made or bankruptcy restrictions undertaking accepted under this Part; and

(b) each variation of a bankruptcy restrictions order, an interim bankruptcy restrictions order or bankruptcy restrictions undertaking under this Part.

(2) When a bankruptcy restrictions order or undertaking ceases to be in force, the Official Receiver shall delete the entry from the Register.

(3) The Register of Bankruptcy Restrictions Orders and Undertakings shall be open to inspection on payment of such fee as may be prescribed.

(4) No person shall be construed as having knowledge that another person is a restricted person by virtue of an entry in the Register of Bankruptcy Restrictions Orders and Undertakings.

Annulment of bankruptcy order.

419. (1) Where a bankruptcy order is annulled under section 382(1)(a),

(a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled;

(b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt; and

(c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.

(2) Where a bankruptcy order is annulled under section 382(1)(b)

(a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt;

(b) the Court may make a bankruptcy restrictions order or an interim order in respect of the bankrupt on an application instituted before the annulment;

(c) the Official Receiver may accept a bankruptcy restrictions undertaking offered by the bankrupt before the annulment; and

(d) an application for a bankruptcy restrictions order may not be instituted after the annulment.

PART XVI

GENERAL PROVISIONS WITH REGARD TO INSOLVENCY PROCEEDINGS UNDER THIS ACT

Division 1 - The Creditors' Committee

Interpretation for and scope of this Division.

420. (1) In this Division, "office holder" means,

(a) in respect of a company, its administrator, its liquidator or its administrative receiver, and

(b) in respect of an individual, his bankruptcy trustee;

and a reference to an officer holder is to the office holder appointed in the insolvency proceeding in respect of which the creditors' committee is appointed.

(2) This Division applies to the establishment and operation of a creditors' committee under this Act where

(a) a company is in administration or in liquidation;

(b) an administrative receiver has been appointed in respect of a company; or

(c) a bankruptcy order has been made against an individual.

Establishment of creditors' committee.

421. (1) The creditors of a company in liquidation, administration or administrative receivership or of a bankrupt may, by resolution passed at a meeting, establish a creditors' committee,

(a) in the case of a company in administration, at any time after the approval of the administrator's proposals;

(b) in the case of a company in administrative receivership, at any time after the appointment of the administrative receiver;

(c) in the case of a company in liquidation, at any time after the appointment of the liquidator; and

(d) in the case of an individual, at any time after the bankruptcy order.

(2) A resolution to establish a creditors' committee shall also appoint the first members of the committee, each of whom shall be eligible to serve on the committee in accordance with section 423.

(3) A resolution to establish a creditors' committee in the administration, administrative receivership or liquidation of a company may only be passed

(a) at a meeting called under section 100, 147 or 179; or

(b) at a meeting requisitioned for the purpose by at least 10 per cent in value of the creditors of the company.

(4) A resolution to establish a creditors' committee in the bankruptcy of an individual may be passed at a meeting of the creditors called under section 333.

(5) Where an office holder is satisfied that a creditors' committee has been validly established he shall, within five business days of the passing of the resolution, file a notice to that effect

(a) in the case of an administrator, a liquidator appointed by the Court or a bankruptcy trustee, with the Court; or

(b) in the case of an administrative receiver or a liquidator not appointed by the Court, with the Registrar.

(6) The notice required to be filed under subsection (5) shall specify the names and addresses of the persons appointed to the creditors' committee.

(7) The creditors' committee cannot act until the relevant notice is filed by the office holder under subsection (5).

(8) The appointment of a member of a creditors' committee may be in the form of the appointment of a designated representative of the member.

Functions and powers of creditors' committee.

422. (1) The functions of a creditors' committee are

(a) to consult with the office holder about matters relating to the insolvency proceeding;

(b) to receive and consider reports of the insolvency holder;

(c) to assist the officer holder in discharging his functions; and

(d) to discharge any other functions assigned to it under this Act or the Rules.

(2) A creditors' committee may

(a) call a meeting of creditors;

(b) on giving the office holder reasonable notice, require him to provide the committee with such reports and information concerning the insolvency proceeding as the Committee reasonably requires; and

(c) on giving the office holder not less than five business days notice, require him to attend before the committee at any reasonable time to provide it with such information and explanations concerning the insolvency proceeding as it reasonably requires.

(3) Where the creditors' committee requires the attendance of the office holder at a meeting under subsection (2)(c),

(a) the notice shall be signed in writing by a majority of the members of the committee; and

(b) the meeting shall be fixed for a business day and shall be held at such time and place as the committee may agree with the office holder.

(4) The designated representative of a committee member may sign a notice under subsection (3)(a) on the member's behalf.

(5) Unless expressly permitted to do so by the Act or the Rules, a creditors' committee cannot give directions to the officer holder.

Composition of creditors' committee.

423. (1) Subject to subsection (2), a person is eligible to be a member, or the designated representative of a member, of a creditors' committee if he is an individual who has consented in writing to serve on the committee, and

(a) in the case of a member

(i) he is a creditor of the company or the bankrupt, as the case may be, or

(ii) he holds a general power of attorney granted by such a creditor; or

(b) in the case of a designated representative, he is authorized in writing by a person eligible to be a member to be his representative on the committee.

(2) A person is not eligible to be a member of the creditors' committee if his claim has been rejected for the purposes of his entitlement to vote or if he is the legal practitioner or representative of such a creditor.

(3) A creditors committee shall consist of not less than three individuals who are eligible to be members of the committee.

Resignation and termination of committee member.

424. (1) A member of a creditors' committee may resign by giving notice in writing to the office holder.

(2) The membership of a committee member is terminated if

(a) he becomes bankrupt or compounds or arranges with his creditors;

(b) he is absent from three consecutive meetings of the committee without the leave of the other members; or

(c) in the case of the designated representative of a member, his designation as a designated representative is terminated by the member he represents.

(3) A member of the committee may be removed by a resolution of creditors of which he has been given at least five business days notice, stating the object of that meeting.

Vacancies and appointment of new members.

425. (1) Where there is a vacancy in the membership of the committee, the continuing members of the committee, if not less than two in number, may continue to act.

(2) The continuing members of the committee, or where their number has fallen below two, the office holder, may appoint a person eligible under section 423 as a member of the committee to fill a vacancy.

(3) Where there is any change in the membership of the committee, the office holder shall, within five business days, file a notice specifying the members of the committee following the change,

(a) in the case of an administrator, a liquidator appointed by the Court or a bankruptcy trustee, with the Court; or

(b) in the case of an administrative receiver or a liquidator appointed by the company, with the Registrar.

(4) The notice required to be filed under subsection (3) shall specify the names and addresses of the members of the creditors' committee.

Proceedings of creditors' committee.

426. The Rules shall provide for the proceedings of a creditors' committee.

Expenses of members.

427. (1) Subject to subsection (2), the reasonable travelling expenses of members directly incurred in attending a meeting of the creditors' committee shall be paid by the office holder out of the assets of the company, or the bankrupt's estate, as an expense of the insolvency proceeding.

(2) Where the office holder is of the opinion that a meeting of the creditors' committee called by a member was unreasonably called he may refuse to pay expenses under subsection (1).

(3) Where the office holder refuses to pay reasonable travelling expenses under subsection (2), the creditors may resolve that they should be paid and upon the creditors passing such a resolution, they shall be paid by the office holder out of the assets of the company, or the bankrupt's estate, as an expense of the insolvency proceeding.

Members dealing with company.

428. (1) In the case of the administration or administrative receivership, membership of the creditors' committee does not prevent a person from dealing with the company while the officer holder is acting, provided that any transactions in the course of such dealings are entered into in good faith and for value.

(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 section, and may give such consequential directions as it considers fit for compensating the company for any loss which it may have incurred in consequence of the transaction.

Formal defects.

429. The acts of a creditors' committee are valid notwithstanding any defect in the appointment, election or qualifications of any member of the committee or in the formalities of its establishment.

Division 2 - Remuneration

Remuneration of administrator, liquidator or bankruptcy trustee.

430. (1) The remuneration of an administrator, liquidator or bankruptcy trustee is fixed

(a) by the creditors' committee, if any; or

(b) by the Court on an application made under subsection (2).

(2) An administrator, liquidator or bankruptcy trustee may apply to the Court to fix his remuneration, or to fix an interim payment under section 433, if

(a) no creditors' committee is appointed;

(b) the creditors' committee fails, for whatever reason, to fix his remuneration, or an interim payment; or

(c) he considers that the remuneration, or an interim payment, fixed by the creditors' committee

(i) is insufficient,

(ii) is not in an appropriate currency, or

(iii) is on unacceptable terms.

(3) Not less than 14 days notice of an application under subsection (2) shall be given

(a) in the case of an administrator, to the company in administration;

(b) in the case of a bankruptcy trustee, to the bankrupt; and

(c) in any other case

(i) to each member of the creditors' committee, or

(ii) if there is no creditors' committee, to such creditors as the Court may direct.

(4) The members of the creditors' committee or, if there is no creditors' committee, the creditors given notice of the hearing may appear and be heard at the hearing of an application made under subsection (2).

(5) On the hearing of an application under subsection (2), the Court shall fix the remuneration of the administrator, liquidator or bankruptcy trustee at such amount as it considers appropriate.

(6) In this section, "liquidator" does not include a provisional liquidator.

Application by creditors for reduction of remuneration.

431. (1) Where the creditors' committee has fixed the remuneration of an administrator, liquidator or bankruptcy trustee, a creditor may, with the concurrence of at least 25 per cent in value of the creditors, including himself, apply to the Court for an order reducing the remuneration fixed on the grounds that it is excessive.

(2) On an application made under subsection (1), the Court may

(a) if it considers that the applicant has not shown sufficient cause for a reduction, dismiss the application; or

(b) set a venue for the application to be heard.

(3) An application shall not be dismissed under subsection (2)(a) unless the Court has given the applicant the opportunity to attend the Court for an ex parte hearing, of which he has been given at least seven days notice.

(4) An applicant for an order under subsection (1) shall give the administrator, liquidator or bankruptcy trustee not less than 14 days notice of the date, time and place set by the Court under subsection (2).

(5) If it considers that the remuneration of the administrator, liquidator or bankruptcy trustee fixed by the creditors' committee is excessive, the Court shall fix the remuneration to such amount as it considers appropriate.

General principles to be applied in fixing remuneration.

432. (1) This section applies

(a) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by a creditors committee under section 430;

(b) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by the Court under section 430(5);

(c) to the fixing of the remuneration of a provisional liquidator by the Court under section 172;

(d) to the fixing of the remuneration of a receiver by the Court under section 134(2) or section 134(3);

(e) to the fixing of the remuneration of a supervisor or interim supervisor by the Court under section 323; and

(f) to the fixing of the remuneration of an administrator, liquidator or bankruptcy trustee by the Court under 431.

(2) In this section and section 28,

"fixing remuneration" includes fixing the currency of payment;

"insolvency proceeding" means the insolvency proceeding in respect of which an insolvency practitioner is appointed; and

"insolvency practitioner" means administrator, liquidator, bankruptcy trustee, receiver, supervisor or interim supervisor, as the case may be.

(3) Subject to subsection (4), the remuneration of an insolvency practitioner shall be fixed by reference to the time properly given by him and his staff in carrying out his duties in the insolvency proceeding.

(4) Where the insolvency practitioner so requests and the creditors' committee or the Court considers that the circumstances justify it, the remuneration of an insolvency practitioner may be fixed in whole or in part as a percentage of the value of the assets realised and the value of the assets distributed, or as a percentage of either.

(5) When fixing the remuneration of an insolvency practitioner in the circumstances specified in subsection (1) or sanctioning an interim payment under section 433(3), the creditors' committee or the Court

(a) shall take into account

(i) the need for the remuneration to be fair and reasonable,

(ii) the time properly spent by the insolvency practitioner and his staff in carrying out his duties,

(iii) the complexity of the insolvency proceeding and whether the insolvency practitioner has been required to take any responsibility of an exceptional kind or degree,

(iv) the effectiveness with which the insolvency practitioner is carrying out, or has carried out, his duties,

(v) the value and nature of the assets with which the insolvency practitioner has had to deal,

(vi) the hourly rates charged by other insolvency practitioners, both within and outside the Virgin Islands, in undertaking similar work, and

(vii) whether any expenses which he incurred were properly incurred; and

(b) may take into account

(i) the commercial and personal risks accepted by the office holder,

(ii) the time spent by the insolvency practitioner and his staff outside the Virgin Islands and the amount of travelling required,

(iii) the standards and practice used for assessing remuneration in jurisdictions other than the Virgin Islands.

Time for fixing remuneration and interim payments.

433. (1) The remuneration of an office holder shall be fixed by the creditors' committee or the Court after the conclusion of the insolvency proceeding.

(2) In fixing the remuneration of an office holder, the creditors' committee or the Court shall take account of any interim payment made under subsection (3).

(3) Notwithstanding subsection (1), a creditors' committee or the Court may at any time set an interim payment to be made to the insolvency practitioner on account of his remuneration.

(4) An interim payment may be made under subsection (2) subject to such conditions as the creditors' committee or the Court considers appropriate.

PART XVII

NETTING AND MARKET CONTRACTS

Interpretation for sections 434 and 435.

434. (1) In this section and section 435,

"financial contract" means a contract of a type specified in the Rules as a financial contract;

"master netting agreement" has the meaning specified in subsection (4);

"multibranch netting agreement" has the meaning specified in subsection (5);

"netting" means the termination of financial contracts, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due, if any, by one party to the other where each such determination and set off is effected in accordance with the terms of a netting agreement between those parties;

"netting agreement" has the meaning specified in subsection (2);

"party" means a person constituting one of the parties to an agreement.

(2) A netting agreement is an agreement between two parties only, in relation to present or future financial contracts between them the provisions of which include, the termination of those contracts for the time being in existence, the determination of the termination values of those contracts and the set off of the termination values so determined so as to arrive at a net amount due.

(3) A netting agreement may provide for

(a) a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the financial contracts concerned; and

(b) the set off against the net amount due under subsection (2) and that amount only of

(i) any money provided solely to secure the obligation of either party in respect of the financial contracts concerned,

(ii) the proceeds of the enforcement and realisation of any collateral in the form of

(I) security interests or other assets provided, or

(II) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (a),

solely to secure the obligation of either party in respect of the financial contracts concerned;

(4) A master netting agreement is an agreement between two parties only, in relation to netting agreements between them

(a) the provisions of which include the set off of the net amounts due under two or more netting agreements between them; and

(b) which may provide for a guarantee to be given to one party on behalf of the other party solely to secure the obligation of either party in respect of the netting agreements concerned; and

(c) which may provide for the set off against the net amount due under paragraph (a) and that amount only of

(i) any money provided solely to secure the obligation of either party in respect of the netting agreements concerned,

(ii) the proceeds of the enforcement and realisation of any collateral in the form of

(I) security interests or other assets provided, or

(II) money, security interests or other assets provided solely to secure the obligation of the guarantor under paragraph (b),

solely to secure the obligation of either party in respect of the netting agreements concerned.

Enforcement of netting agreements etc.

435. (1) Notwithstanding anything contained in this Act or the Rules or in any rule of law relating to insolvency,

(a) the provisions relating to netting, the set off of money provided by way of security, the enforcement of a guarantee and the

enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security, and

(b) the provisions relating to set off of the net amounts due under netting agreements, the set off of money provided by way of security, the enforcement of a guarantee and the enforcement and realisation of collateral and the set off of the proceeds thereof, as contained within a master netting agreement or a guarantee provided for in such an agreement shall be legally enforceable against a party to the agreement and, where applicable, against a guarantor or other person providing security.

(2) Nothing in subsection (1)

(a) prevents the application of this Act, any other enactment or rule of law which would prevent the legal enforceability of netting, set off, enforcement and realisation in any particular case, on the grounds of fraud or misrepresentation or on any similar ground; or

(b) permits the enforceability of netting, set off, enforcement and realisation if any provision of an agreement between the two parties concerned would make netting, set off, enforcement and realisation void whether because of fraud or misrepresentation or any similar ground.

PART XVIII

CROSS-BORDER INSOLVENCY

GENERAL PROVISIONS

Purpose and scope of this Part.

436. (1) The purpose of this Part is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of

(a) cooperation between

(i) the Court and insolvency administrators of the Virgin Islands; and

(ii) the courts and other competent authorities of foreign countries involved in cases of cross-border insolvency;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) protection and maximisation of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(2) This Part applies where

(a) assistance is sought in the Virgin Islands by a foreign court or a foreign representative in connection with a foreign proceeding;

(b) assistance is sought in a foreign country in connection with a Virgin Islands insolvency proceeding;

(c) a foreign proceeding and a Virgin Islands insolvency proceeding in respect of the same debtor are taking place concurrently; or

(d) creditors or other interested persons in a designated foreign country have an interest in requesting the commencement of, or participating in, a Virgin Islands insolvency proceeding .

(3) This Part does not apply to a regulated person who holds, or at any time has held, a prescribed financial services licence of a type designated by the Governor for the purposes of this section by notice published in the *Gazette*.

Interpretation for this Part.

437. (1) In this Part,

"designated foreign country" means a country or territory designated by the Governor for the purposes of this Part by notice published in the *Gazette*;

"establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

"foreign ancillary proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment within the meaning of subparagraph (f) of this article;

"foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding;

"foreign main proceeding" means a foreign proceeding taking place in the country where the debtor has the centre of his main interests;

"foreign proceeding" means a collective judicial or administrative proceeding in a designated foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy;

"foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

"insolvency officer" means the Official Receiver, a liquidator, provisional liquidator, bankruptcy trustee, administrator, receiver, supervisor or interim supervisor;

"Virgin Islands insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to this Act, or to any other enactment in the Virgin Islands, relating

(a) to the bankruptcy, liquidation, administration or receivership of a debtor; or

(b) to the reorganisation of a debtor's affairs;

where, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors.

(2) In the interpretation of this Part, the Court shall have regard to its international origin and to the need to promote an application of this Part that is consistent with the application of similar laws adopted by foreign jurisdictions.

International obligations of the Virgin Islands.

438. To the extent that this Part conflicts with an obligation of the Virgin Islands arising out of any treaty or other form of agreement to which the Virgin Islands is a party with one or more other countries, the requirements of the treaty or agreement prevail.

Public policy exception.

439. Nothing in this Part prevents the Court from refusing to take an action governed by this Part if the action would be contrary to the public policy of the Virgin Islands.

Additional assistance.

440. Subject to section 443, nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative where permitted under any other Part of this Act or under any other enactment or rule of law of the Virgin Islands.

Application under this Part.

441. An application under this Part shall be made to the Court in accordance with the Rules.

Authorization of insolvency officer to act in a foreign country.

442. The Court may, on the application of an insolvency officer, authorize him to act in a foreign country on behalf of a Virgin Islands insolvency proceeding as permitted by the applicable foreign law.

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THE VIRGIN ISLANDS

Right of direct access.

443. (1) A foreign representative is entitled to apply to the Court under section 448 for recognition of the foreign proceeding in respect of which he is appointed.

(2) Subject to section 453, a foreign representative may not be granted comity or cooperation by the Court unless the foreign proceeding in respect of which he is appointed has been granted recognition by the Court.

(3) Upon recognition being granted to the foreign proceeding in respect of which a foreign representative is appointed, he may apply directly to the Court for comity or cooperation or for any other relief under this Part.

Limited jurisdiction.

444. The sole fact that a foreign representative makes an application under section 448 does not subject the foreign representative to the jurisdiction of the Court for any other purpose.

Commencement of and participation in a Virgin Islands insolvency proceeding by foreign representative.

445. A foreign representative, upon the recognition of the foreign proceeding in respect of which he is appointed, may

(a) apply to commence a Virgin Islands insolvency proceeding if the conditions for commencing such a proceeding are otherwise met; and

(b) participate in a Virgin Islands insolvency proceeding regarding the debtor.

Access of foreign creditors to a Virgin Islands proceeding.

446. (1) Subject to subsection (2), foreign creditors have the same rights regarding the commencement of, and participation in, a Virgin Islands insolvency proceeding as creditors in the Virgin Islands.

(2) Subsection (1) does not affect the priority of claims in a Virgin Islands insolvency proceeding or the exclusion of foreign penal, revenue and social security claims from such a proceeding.

Notification to foreign creditors of a Virgin Islands insolvency proceeding.

447. (1) Whenever under a Virgin Islands insolvency proceeding notification is to be given to creditors in the Virgin Islands, such notification shall also be given to the known creditors that do not have addresses in the Virgin Islands.

(2) Where the address of any creditor is not known, the Court may order that appropriate steps be taken with a view to notifying that creditor.

(3) Notification to creditors under subsection (1) shall be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

(4) When notification of the commencement of a Virgin Islands insolvency proceeding is to be given to foreign creditors, the notification shall

(a) indicate the time period for submitting claims and specify the place for their submission;

(b) indicate whether secured creditors need to submit their secured claims; and

(c) contain any other information required to be included in such a notification to creditors pursuant to the law of the Virgin Islands and any order of the Court.

(5) The Rules and any order of the Court as to notice or the submission of a claim time shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

RECOGNITION OF FOREIGN PROCEEDING AND RELIEF

Application for recognition of foreign proceeding.

448. (1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by

(a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) If the documents referred to in subsection (2)(a) and (b) are not in English, a certified translation they shall be accompanied by a certified translation of the documents into English.

(5) The Court may require a certified translation of any other documents supplied in support of the application for recognition into English.

Presumptions concerning recognition.

449. (1) If the decision or certificate referred to in section 448(2) indicates that the proceeding is a foreign proceeding as defined in section 437(1)and that the person or body is a foreign representative as defined in section 437(1), the Court is entitled to so presume.

(2) The Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Recognition of foreign proceedings.

450. (1) Subject to section 439, a foreign proceeding shall be recognised if

(a) the proceeding is a foreign proceeding within the meaning of section 437(1);

(b) the person or body applying for recognition is a foreign representative within the meaning of section 437(1);

(c) the application meets the requirements of section 448(2); and

(d) the application has been made in accordance with this Part and the Rules.

(2) The foreign proceeding shall be recognised

(a) as a foreign main proceeding if it is taking place in the country where the debtor has the centre of his main interests; or

(b) as a foreign ancillary proceeding if the debtor has an establishment in the foreign country.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) The provisions of this Part do not prevent the modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Subsequent information.

451. After the filing of an application for recognition of a foreign proceeding, the foreign representative shall inform the Court promptly of

(a) any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and

(b) any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Interim relief.

452. (1) Where an application for recognition of a foreign proceeding has been filed but not yet determined or withdrawn, the Court may, on the application of the foreign representative concerned, if it is satisfied that relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant such relief of a provisional nature as it considers appropriate, including

(a) staying execution against the debtor's assets;

(b) entrusting the administration or realisation of all or part of the debtor's assets located in the Virgin Islands to the foreign representative or to another person designated by the Court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;

(c) any relief mentioned in section 454(1)(c), (d) and (f).

(2) The foreign representative in whose favour an order is made under subsection (1) shall notify the debtor of the order as soon as practicable or within such time as the Court may order.

(3) Unless extended under section 454(1)(f), the relief granted under this article terminates when the Court determines the application for recognition.

(4) The Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

Effects of recognition of foreign main proceeding.

453. (1) Upon recognition of a foreign proceeding that is a foreign main proceeding,

(a) commencement or continuation of individual actions or individual proceedings concerning the property of the debtor within the Virgin Islands, rights, obligations or liabilities is stayed;

(b) execution against the debtor's property within the Virgin Islands is stayed; and

(c) the right to transfer, encumber or otherwise dispose of any property of the debtor within the Virgin Islands is suspended.

(2) Notwithstanding subsection (1), the Court may, on the application of any creditor or interested person, order that the stay or suspension does not apply in respect of any particular action or proceeding or in respect of any particular property, rights, obligation or liability.

(3) An order under subsection (2) may be made subject to such terms as it considers fit.

(4) Subsection (1)(a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(5) Subsection (1) does not affect the right to request the commencement of a Virgin Islands insolvency proceeding or the right to file claims in such a proceeding.

Relief that may be granted upon recognition of foreign proceeding.

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

(a) staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations or liabilities, to the extent they have not been stayed under section 453(1)(a);

(b) staying execution against the debtor's property to the extent it has not been stayed under section 453(1)(b);

(c) suspending the right to transfer, encumber or otherwise dispose of any property of the debtor to the extent this right has not been suspended under section 453(1)(c);

(d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) entrusting the administration or realisation of all or part of the debtor's assets located in Virgin Islands to the foreign representative or another person designated by the Court;

(f) extending relief granted under section 452(1);

(2) Upon recognition of a foreign proceeding, whether main or ancillary, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in the Virgin Islands to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in the Virgin Islands are adequately protected.

(3) In granting relief under this section to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the law of the Virgin Islands, should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

Protection of creditors and other interested persons.

455. (1) In granting or denying relief under section 452 or 454, or in modifying or terminating relief under subsection (3), the Court shall be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under section 452 or 454 to such conditions as it considers appropriate, including the giving of any security interest or the filing of any bond.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under section 452 or 454, or at its own motion, modify or terminate the relief.

Actions to avoid acts detrimental to creditors.

456. (1) Subject to subsection (2), upon recognition of a foreign proceeding, the foreign representative shall have power to apply to the Court for an order under section 249 or 405, as the case may be.

(2) The Court shall not make an order under section 249 or 405 on the application of the foreign representative of a recognised foreign proceeding unless it is satisfied that,

(a) in the case of an application under section 249, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a liquidator appointed under this Act; and

(b) in the case of an application under section 405, the foreign representative has roles and functions that are equivalent or broadly similar to the roles and functions of a bankruptcy trustee appointed under this Act.

(3) When the foreign proceeding is a foreign ancillary proceeding, the Court shall be satisfied that the action relates to property that, under the law of the Virgin Islands, should be administered in the foreign ancillary proceeding.

Intervention by foreign representative in proceedings in the Virgin Islands.

457. Upon recognition of a foreign proceeding, the foreign representative may, if the requirements of the law of the Virgin Islands are met, intervene in any proceedings in which the debtor is a party.

COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

Cooperation and direct communication between court of the Virgin Islands and foreign courts or foreign representatives.

458. (1) In matters referred to in section 436, the Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency administrator.

(2) The Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties to notice and participation at hearings.

Cooperation and direct communication between the insolvency administrator and foreign courts or foreign representatives.

459. (1) In matters referred to in section 436, an insolvency administrator shall, in the exercise of his functions and subject to the supervision of the Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) Subject to section 442, the insolvency administrator is entitled, in the exercise of his functions and subject to the supervision of the Court, to communicate directly with foreign courts or foreign representatives.

Forms of cooperation.

460. Cooperation referred to in sections 458 and 459 may be implemented by any appropriate means, including

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

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

(c) coordination of the administration and supervision of the debtor's property and affairs;

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

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

CONCURRENT PROCEEDINGS

Commencement of a Virgin Islands insolvency proceeding after recognition of foreign main proceeding.

461. After recognition of a foreign main proceeding, a Virgin Islands insolvency proceeding may be commenced only if the debtor has assets in the Virgin Islands and the effects of the Virgin Islands proceeding shall be restricted to the assets of the debtor that are located in the Virgin Islands and, to the extent necessary to implement cooperation and coordination under sections 458, 459 and 460, to other property of the debtor that, under the law of the Virgin Islands, should be administered in the recognised proceeding.

Coordination of a Virgin Islands insolvency proceeding and foreign proceeding.

462. Where a foreign proceeding and a Virgin Islands insolvency proceeding are taking place concurrently regarding the same debtor, the Court shall seek cooperation and coordination under sections 458, 459 and 460, and the following shall apply:

(a) when the Virgin Islands insolvency proceeding is taking place at the time the application for recognition of the foreign proceeding is filed,

(i) any relief granted under section 452 or 454 shall be consistent with the Virgin Islands insolvency proceeding ; and

(ii) if the foreign proceeding is recognized in the Virgin Islands as a foreign main proceeding, section 453 does not apply;

(b) when the Virgin Islands insolvency proceeding commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,

(i) any relief in effect under section 452 or 454 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the Virgin Islands insolvency proceeding; and

(ii) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 453(1) shall be modified or terminated pursuant to section 453(2) if inconsistent with the Virgin Islands insolvency proceeding;

(c) in granting, extending or modifying relief granted to a representative of a foreign ancillary proceeding, the Court shall be satisfied that the relief relates to property that, under the law of the Virgin Islands , should be administered in the foreign ancillary proceeding or concerns information required in that proceeding.

Coordination of more than one foreign proceeding.

463. In matters referred to in section 436, in respect of more than one foreign proceeding regarding the same debtor, the Court shall seek cooperation and coordination under sections 458, 459 and 460 and the following shall apply:

(a) any relief granted under section 452 or 454 to a representative of a foreign ancillary proceeding after recognition of a foreign main proceeding shall be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign ancillary proceeding, any relief in effect under section 452 or 454 shall be reviewed by the Court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) if, after recognition of a foreign ancillary proceeding, another foreign ancillary proceeding is recognised, the Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Presumption of insolvency based on recognition of foreign main proceeding.

464. In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a Virgin Islands insolvency proceeding proof that the debtor is insolvent.

Rule of payment in concurrent proceedings.

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

PART XIX

ORDERS IN AID OF FOREIGN PROCEEDINGS

Interpretation for this Part.

466. (1) In this Part,

"foreign proceeding" means a collective judicial or administrative proceeding in a relevant foreign country, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation, liquidation or bankruptcy and "debtor" shall be construed accordingly;

"foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding;

"insolvency officer" means the Official Receiver, a liquidator, provisional liquidator, bankruptcy trustee, administrator, receiver, supervisor, or interim supervisor;

"relevant foreign country" means a country, territory or jurisdiction designated by the Commission as a relevant foreign country for the purposes of this Part; and

"Virgin Islands insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to this Act, or to any other enactment in the Virgin Islands, relating

(i) to the bankruptcy, liquidation, administration or receivership of a debtor; or

(ii) to the reorganisation of a debtor's affairs;

where, in all cases, the property of the debtor is or will be realised for the benefit of secured or unsecured creditors.

(2) Notwithstanding subsection (1), a country or territory that is designated as a designated country for the purposes of Part **XVIII** ceases to be a relevant foreign country from the date of its designation as a designated country.

(3) The designation of a country for the purposes of Part **XVIII** does not affect the validity of any order made under this Part.

Order in aid of foreign proceeding.

467. (1) For the purposes of this section "property" means property that is subject to or involved in the foreign proceeding in respect of which the foreign representative is authorized.

(2) A foreign representative may apply to the Court for an order under subsection (3) in aid of the foreign proceeding in respect of which he is authorized.

(3) Subject to section 468, upon an application under subsection (1), the Court may

(a) restrain the commencement or continuation of any proceedings, execution or other legal process or the levying of any distress against a debtor or in relation to any of the debtor's property;

(b) subject to subsection (4), restrain the creation, exercise or enforcement of any right or remedy over or against any of the debtor's property;

(c) require any person to deliver up to the foreign representative any property of the debtor or the proceeds of such property;

(d) make such order or grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of a Virgin Islands insolvency proceeding with a foreign proceeding;

(e) appoint an interim receiver of any property of the debtor for such term and subject to such conditions as it considers appropriate;

(f) authorize the examination by the foreign representative of the debtor or of any person who could be examined in a Virgin Islands insolvency proceeding in respect of a debtor;

(g) stay or terminate or make any other order it considers appropriate in relation to a Virgin Islands insolvency proceeding; or

(h) make such order or grant such other relief as it considers appropriate.

(4) An order under subsection (3) shall not affect the right of a secured creditor to take possession of and realise or otherwise deal with property of the debtor over which the creditor has a security interest.

(5) In making an order under subsection (3), the Court may apply the law of the Virgin Islands or the law applicable in respect of the foreign proceeding.

Matters to be considered by Court in determining application under section 467.

468. (1) In determining an application under section 467, the Court shall be guided by what will best ensure the economic and expeditious administration of the foreign proceeding to the extent consistent with

(a) the just treatment of all persons claiming in the foreign proceeding;

(b) the protection of persons in the Virgin Islands who have claims against the debtor against prejudice and inconvenience in the processing of claims in the foreign proceeding;

(c) the prevention of preferential or fraudulent dispositions of property subject to the foreign proceeding, or the proceeds of such property;

(d) the need for distributions to claimants in the foreign proceedings to be substantially in accordance with the order of distributions in a Virgin Islands insolvency; and

(e) comity.

(2) An order under section 467 shall not, without the consent of the person concerned,

(a) affect the right of any creditor of the debtor to benefit from set-off as provided for in section 150; or

(b) result in a person who is a preferential creditor of the debtor, or who in a Virgin Islands insolvency proceeding in respect of the debtor would be a preferential creditor, receiving less than he would receive in a Virgin Islands insolvency proceeding .

(3) The Court shall not make an order under 467 that is contrary to the public policy of the Virgin Islands.

Limitation on effect of application under this Part.

469. (1) Subject to subsection (2), an application to the Court by a foreign representative under section 467 does not submit the foreign representative to the jurisdiction of the Court for any other purpose except with regard to the costs of the proceedings.

(2) The Court may make an order under this Part conditional on the compliance by the foreign representative with any other order of the Court.

Additional assistance.

470. Subject to section 443, nothing in this Part limits the power of the Court or an insolvency officer to provide additional assistance to a foreign representative where permitted under any other Part of this Act or under any other enactment or rule of law of the Virgin Islands.

Application under this Part.

471. An application by a foreign representative under this Part shall be made to the Court in accordance with the Rules.

Authorization of insolvency officer to act in foreign country.

472. The Court may, on the application of an insolvency officer, authorize him to act in a foreign country on behalf of a Virgin Islands insolvency proceeding as permitted by the applicable foreign law.

PART XX

INSOLVENCY PRACTITIONERS

LICENSING

Interpretation for this Part.

473. In this Part

"Code of Practice" means the Code of Practice that the Commission is empowered to issue under section 487(1);

"Commission" means the Financial Services Commission established under the Financial Services Commission Act, 2001;

"licence" means a licence to act as an insolvency practitioner granted under section 476;

"licensee" means a licensed insolvency practitioner; and

"overseas insolvency practitioner" means an individual resident outside the Virgin Islands appointed to act as an insolvency practitioner under section 483; and

"Regulations" means the Insolvency Practitioners Regulations made under section 486.

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Prohibition on acting as insolvency practitioner without a licence.

474. (1) For the purposes of this Act, a person acts as an insolvency practitioner by acting as

(a) the administrator or administrative receiver of a company;

(b) the liquidator or provisional liquidator of a company or a foreign company;

(c) the interim supervisor under a proposal for an arrangement;

(d) the supervisor of an arrangement; or

(e) the bankruptcy trustee of an individual.

(2) Subject to subsection (3), no person shall act as an insolvency practitioner unless he holds a licence issued under section 476 that is not suspended under section 479.

(3) Subsection (2) does not apply

(a) to the Official Receiver; or

(b) to an overseas insolvency practitioner whilst he is acting jointly with a licensee or with the Official Receiver.

(4) A person who contravenes subsection (2) commits an offence.

Application for licence.

475. (1) An individual resident in the Virgin Islands may apply to the Commission for a licence to act as an insolvency practitioner.

(2) An application under subsection (1) shall

(a) contain the information and be in the form prescribed; and

(b) be accompanied by the documentation prescribed.

(3) The Commission may require an applicant for a licence to furnish it with such other documentation and information as it considers necessary to determine the application.

Issue of licence.

476. (1) The Commission may issue a licence to the applicant if it is satisfied

(a) that the applicant

(i) is an individual resident in the Virgin Islands who is fit and proper and qualified to act as an insolvency practitioner,

(ii) satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act and the Regulations, and

(iii) is not disqualified from holding a licence under section 477; and

(b) that issuing the licence is not against the public interest.

(2) A licence may be issued under subsection (1) subject to such terms and conditions as the Commission considers fit.

(3) The Commission shall not be required to disclose to an applicant the reasons for a decision under this section.

(4) The Commission may, upon giving reasonable notice to the licensee

(a) vary or cancel any terms or conditions imposed under subsection (1); or

(b) impose new terms or conditions.

(5) The Commission shall publish the issuance of a licence under this section in the *Gazette*.

Persons disqualified from holding a licence.

477. An individual is disqualified from holding a licence if

(a) he is a bankrupt; or

(b) he is a disqualified person within the meaning of section 260(4).

CONTROL OF LICENSEES AND ENFORCEMENT

Production of accounts and records.

478. (1) The Commission may, at any time during or after the completion of an insolvency proceeding, require a licensee appointed in respect of the proceeding to produce for inspection, at such place as he may specify

(a) his records and accounts in respect of the proceeding; and

(b) any reports that he has prepared in respect of the proceeding.

(2) The Commission may cause the accounts and records produced to him under subsection (1) to be audited.

(3) The licensee shall give the Commission such further information, explanations and assistance in relation to the records, accounts and reports as the Commission may require.

(4) A licensee who contravenes this section commits an offence.

Suspension and revocation of licence.

479. (1) The Commission shall suspend or revoke the licence of a licensee if

(a) in the opinion of the Commission, the licensee is no longer a fit and proper person to hold a licence; or

(b) the licensee is disqualified from holding a licence.

(2) The Commission may suspend or revoke the licence of a licensee if the licensee

(a) is in breach of any condition of his licence;

(b) has failed to comply with his obligations under section 478 or section 481(1);

(c) has provided the Commission with any false, inaccurate or misleading information, whether on making application for a licence or subsequent to the issue of the licence;

(d) has committed an offence under this Act; or

(e) has failed to pay the prescribed annual fee payable within six weeks of the date upon which it fell due for payment.

(3) The Commission may revoke the licence of a licensee if requested to do so by the licensee.

(4) Subject to subsection (5), the period of suspension of a licence under subsection (1) shall not exceed 30 days.

(5) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Commission, extend the period of suspension of a licence under this section for one or more further periods not exceeding 30 days each.

(6) Before suspending or revoking a licence under subsections (1) or (2), the Commission shall give written notice to the licensee stating

(a) the grounds upon which it intends to revoke or suspend the licence; and

(b) that unless the licensee, by written notice filed with the Commission, shows good reason why its licence should not be revoked or suspended, the licence will be revoked or suspended, as the case may be, on a date not less than 14 days after the date of the notice.

(7) Where the Commission revokes or suspends a licence under this section, it shall send a written notice to the licensee stating

(a) that the licence has been revoked or suspended, as the case may be; and

(b) the grounds upon which and the date from which the licence has been revoked or suspended.

(8) Where the Commission revokes or suspends a licence under this section, it shall cause notice of the revocation or suspension to be published in the *Gazette*.

Right to make representations.

480. (1) A licensee who receives a notice given under 479(6) may, within 14 days of the date of the notice, make written representations to the Commission.

(2) The Commission shall consider the representations made to it under subsection (1) in determining whether to suspend or revoke the licence.

OBLIGATIONS OF LICENSEES

Filing of returns and other documents.

481. A licensee shall file with the Commission such returns and other documents as may be specified in the Regulations or the Code of Practice.

ELIGIBLE INSOLVENCY PRACTITIONERS

Eligible insolvency practitioner.

482. (1) A person is eligible to act as an insolvency practitioner in relation to a company, a foreign company or an individual if

(a) he is a licensed insolvency practitioner;

(b) he has given his written consent to act in the prescribed form;

(c) he is not disqualified from holding a licence under section 477;

(d) he is not disqualified from acting

(i) in the case of a company or a foreign company, under subsection (2), or

(ii) in the case of an individual, under subsection (3); and

(e) there is in force such security for the proper performance of his functions as may be specified in the Regulations.

(2) A person is disqualified from acting as an insolvency practitioner in respect of a company and a foreign company if he is, or at any time in the previous three years has been

(a) the auditor of the company or an employee of such auditor; or

(b) a director of the company.

(3) An insolvency practitioner is disqualified from acting as an insolvency practitioner in respect of an individual if he is connected to the individual within the meaning of section 5(3).

Appointment of overseas insolvency practitioner.

483. Notwithstanding any other provision of this Act, an individual resident outside the Virgin Islands may be appointed to act as an insolvency practitioner jointly with a licensee or the Official Receiver if

(a) where he is appointed by the Court, the Court, or in any other case the person or persons appointing him, is or are satisfied that

(i) he has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made,

(ii) he has given his written consent to act in the prescribed form,

(iii) he is not disqualified from holding a licence under section 477,

(iv) he is not disqualified from acting in the case of a company or a foreign company, under subsection 482(2) or in the case of an individual, under subsection 482(3),

(v) there is in force such security for the proper performance of his functions as may be specified in the Regulations; and

(b) prior written notice of his appointment has been given to the Commission.

Commission's powers with regard to appointment of overseas insolvency practitioner.

484. (1) Where an application is made to the Court for the appointment of an overseas insolvency practitioner to act as insolvency practitioner, the Commission may appear and be heard at the hearing of the application for the purpose of objecting to the appointment.

(2) Where the Commission receives notice under section 483(b) that an overseas insolvency practitioner is to be appointed by a person to act as an insolvency practitioner, it may give the appointor notice that it intends to apply to the Court for an order that the overseas insolvency practitioner concerned should not be appointed.

(3) Where a person receives a notice from the Commission under subsection (2), it shall not appoint the overseas insolvency practitioner concerned to act as insolvency practitioner unless

(a) the Court approves the appointment at the hearing of the

Commission's application under subsection (2); or

(b) the Commission approves the appointment.

(4) A person who contravenes subsection (3) commits an offence.

Overseas practitioner sole appointee.

485. (1) This section applies where a licensee, for any reason, ceases to act in an insolvency proceeding and an overseas insolvency practitioner appointed jointly with him remains as the only insolvency practitioner appointed in the insolvency proceeding.

(2) Where this section applies, the overseas practitioner shall within three days after becoming aware that he is the only person acting as insolvency practitioner in an insolvency proceeding, give notice in the prescribed form

(a) to the Court, where the Court appointed him, or to such person or persons as appointed him; and

(b) to the Official Receiver.

(3) An overseas insolvency practitioner to whom subsection (1) applies is deemed not to be in contravention of section 474(2)

(a) where he gives notice in compliance with subsection (2), at any time during the period commencing with the date upon which he became the only person acting as insolvency practitioner in the insolvency proceeding and ending on the later of

(i) the 14th day after the date on which he became the only person acting as insolvency practitioner in the insolvency proceeding, or

(ii) the seventh day after the date upon which he became aware that was the only person acting as insolvency practitioner in the insolvency proceeding; or

(b) at any time when he does not know and could not be expected to have known that he is the only person acting in the insolvency proceeding.

Regulations.

486. (1) The Executive Council may make Regulations generally for giving effect to this Part and specifically in respect of

(a) the form and contents of, and the documents that shall accompany,

an application for a licence under this Part;

(b) the qualifications and experience required of and examinations to be taken and passed by applicants for a licence;

(c) the minimum security, including insurance cover, to be maintained by a licensee;

(d) the records to be kept by a licensee, and the length of time such records shall be kept;

(e) the inspection by the Commission of the records of a licensee;

(f) documents to be filed with and returns to be made to the Commission by licensees;

(g) fees payable on application for a licence and by licensees generally; and

(h) any other matter required or permitted by this Part to be specified in the Regulations.

(2) The Regulations

(a) may make different provision in relation to different persons, circumstances or cases;

(b) where a minimum standard, including a minimum level of security, is specified, may authorise the Commission to impose a higher standard or a greater level of security, according to the circumstances of a particular licensee or insolvency proceeding; and

(c) may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Regulations.

(3) The Regulations, and any amendment to the Regulations, shall be published in the *Gazette*.

Code of Practice.

487. (1) Subject to subsections (2) and (3), the Commission may issue a Code of Practice with respect to

(a) the criteria that will be used in assessing applications for a licence, including the criteria for determining whether or not an individual is to be regarded as being resident in the Virgin Islands; and

(b) the procedures to be followed by and the conduct expected of a licensee when acting as an insolvency practitioner.

(2) The Code of Practice shall not be inconsistent with the Act, the Rules or the Regulations.

(3) The Regulations may specify matters that shall or may be included in the Code of Conduct, including the matters specified in section 486(1), and may limit the scope of the Code of Practice.

(4) The Code of Practice may make different provision in relation to different persons, circumstances or cases.

(5) The Commission shall publish the Code of Practice and any amendments thereto in the *Gazette*.

PART XXI

OFFICIAL RECEIVER

Official Receiver.

488. (1) The Commission shall appoint a suitably qualified and experienced person to be Official Receiver on such terms and conditions as it considers appropriate.

(2) The Official Receiver is an employee of the Commission.

Deputy Official Receiver and staff.

489. The Commission shall appoint one of its officers as Deputy Official Receiver and shall provide the Official Receiver with such other staff and resources as he requires to perform his functions under this Act and the Rules.

Official Receiver as officer of the Court.

490. For the purposes of the performance of his functions under this Act and the Rules, the Official Receiver is an officer of the Court and he

(a) may apply to the Court for directions in connection with his functions; and

(b) shall comply with any directions given to him by the Court.

Functions of Official Receiver.

491. (1) The Official Receiver has the duties, powers and functions imposed or conferred on him by this and any other enactment.

(2) Any assets vested in the Official Receiver on his dying or otherwise ceasing to hold office, vest in his successor without any conveyance, assignment or transfer.

(3) Subject to any provision in this Act or the Rules to the contrary, a reference to the liquidator, supervisor, interim supervisor, receiver or bankruptcy trustee includes the Official Receiver when acting in that capacity.

Right of audience.

492. The Official Receiver and the Deputy Official Receiver have a right of audience in insolvency proceedings before the Court.

PART XXII

MISCELLANEOUS PROVISIONS

Appointment of two or more office holders.

493. (1) Where this Act provides for the appointment of a liquidator, provisional liquidator, administrator, bankruptcy trustee, supervisor or interim supervisor, two or more persons may be jointly appointed to the relevant office.

(2) Where two or more persons are jointly appointed to an office, a function or power of the office may be performed or exercised by any one of the office holders, or by any two or more of them together, except so far as the order, deed, instrument or resolution appointing them otherwise provides.

Use of prescribed forms.

494. (1) If a document required or permitted by this Act or the Rules to be prepared or filed is of a type the form of which is prescribed by the Rules, that form shall be used with such modifications as the circumstances require.

(2) Notwithstanding subsection (1), a prescribed form shall not be varied so as to omit any information or guidance which the form gives to the intended recipient of the form.

Notices.

495. (1) Subject to subsection (2), all notices required or authorized to be given by or under this Act or the Rules shall be in writing.

(2) Subsection (1) does not apply where

(a) this Act or the Rules provide otherwise; or

(b) the Court requires or permits a notice to be given in some other way.

Time.

496. (1) Unless this Act or the Rules expressly provide otherwise, where the Act or the Rules specify a time within which an action shall or may be done, the Court

(a) may extend the time either before or after it has expired; or

(b) abridge the time;

on such terms as it considers fit.

(2) Without limiting subsection (1), where it is satisfied that an application is urgent, the Court may

(a) hear the application immediately, either with or without notice to, or the attendance of, other parties; or

(b) authorize a shorter period of service than that provided for by the Act or the Rules.

(3) Notwithstanding subsection (2), the Court shall not extend the time limit under section79(3)

(b) for determining whether an administrative receiver is a qualifying administrative receiver.

Resolutions.

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

(2) The Rules may specify types or classes of resolution to which subsection (1) does not apply.

(3) Subject to subsection (2),

(a) a reference in this Act or the Rules to a resolution of a creditors' or members' meeting or to anything done at a creditors' or members' meeting includes a reference to anything done by a written resolution in accordance with this section; and

(b) a requirement to hold a creditors' or members' meeting is satisfied by the passing of a written resolution in accordance with this section.

Rules.

498. (1) The Executive Council may make Rules generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act

(2) The Rules may make different provision for different persons, circumstances or cases.

Insolvent partnerships.

499. (1) The Rules shall specify which provisions of this Act shall apply to insolvent partnerships and the modifications applicable to insolvent partnerships.

(2) The Rules may contain such incidental, supplemental and transitional provisions as the Executive Council considers necessary or expedient.

Insolvent estates.

500. (1) The Rules shall specify which provisions of this Act shall apply to the administration of insolvent estates of deceased persons and the modifications applicable to the administration of such estates.

(2) The Rules may contain such incidental, supplemental and transitional provisions as the Executive Council considers necessary or expedient.

Offences, general provisions.

501. (1) A person who commits an offence under this Act is liable on summary conviction,

(a) if an individual, to the penalty stated against the relevant offence in column 4 of Schedule **5**; or

Schedule 5

(b) if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule **5**;

and, in either case, to the daily default fine (if any) stated in column 5 of Schedule **5** for each day during which the default continues.

(2) Where an offence under this Act is committed by a body corporate, a director or officer who authorized, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction,

(a) if an individual, to the penalty stated against the relevant offence in column 4 of Schedule **5**; or

(b) if not an individual, to the penalty stated against the relevant offence in column 3 of Schedule **5**;

and, in either case, to the daily default fine (if any) stated in column 5 of Schedule **5** for each day during which the default continues.

Rules may provide for offences and penalties.

502. The Rules may provide for offences and penalties for any prohibition or contravention or failure to comply with a requirement prescribed in the Rules.

Provisions of International Business Companies Act not to apply.

503. Section 65 of the International Business Companies Act does not apply in respect of

(a) any document, including an application to the Court, that is required or permitted to be served or sent; or

Cap. 291

(b) any notice required or permitted to be given to any person;

under this Act or the Rules.

Transitional provisions.

504 The Executive Council may, by regulations, provide for transitional provisions.

Act binding on Crown.

505. This Act is binding on the Crown.

SCHEDULE 1

POWERS OF ADMINISTRATOR AND ADMINISTRATIVE RECEIVER

(Section 90 and 144)

1. Power to take possession of, collect and get in the assets of the company and, for that purpose, to take such proceedings as he considers expedient to recover possession of any assets of the company.

2. Power to sell, charge or otherwise dispose of assets of the company.

3. Power to borrow money, whether on the security of the assets of the company, or otherwise.

4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.

5. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

6. Power to refer to arbitration any question affecting the company.

7. Power to effect and maintain insurances in respect of the business and assets of the company.

8. Power to draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company.

9. Power to appoint any agent to do any business which he is unable to do himself or which can be more conveniently done by an agent and power to employ and dismiss employees.

10. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the assets of the company.

11. Power to make any payment which is necessary or incidental to the performance of his functions.

12. Power to carry on the business of the company.

13. Power to establish subsidiaries of the company.

14. Power to transfer to subsidiaries of the company the whole or any part of the business and assets of the company.

15. Power to grant or accept a surrender of a lease or tenancy of any of the assets of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

16. Power to make any arrangement or compromise on behalf of the company.

17. Power to call up any uncalled capital of the company.

18. Power to rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.

19. Power to make or defend an application for the winding up of the company.

20. Power to amend the Memorandum of Association or otherwise to change the situation of the company's registered office.

21. Power to do all things incidental to the exercise of the foregoing powers.

SCHEDULE 2

POWERS OF LIQUIDATOR

(Section 186)

1. Power to pay any class of creditors in full.

2. Power to make a compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging that they have any claim against the company, whether present or future, certain or contingent, ascertained or not.

3. Power to compromise, on such terms as may be agreed

(a) calls and liabilities to calls, debts and liabilities capable of resulting in debts, and claims, whether present or future, certain or contingent, ascertained or not, subsisting or supposed to subsist between the company and any person; and

(b) questions in any way relating to or affecting the assets or the liquidation of the company;

and take security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.

4. Power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of the company.

5. Power to carry on the business of the company so far as may be necessary for its beneficial liquidation.

6. Power to sell or otherwise dispose of property of the company.

7. Power to do all acts and execute, in the name and on behalf of the company, any deed~~s~~, receipt~~s~~ or other document.

8. Power to use the company's seal.

9. Power to prove, rank and claim in the bankruptcy, liquidation, insolvency or sequestration of any member or past member for any balance against his estate, and to receive dividends, in the bankruptcy, liquidation, insolvency, sequestration or in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company with the same effect with respect to the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.

11. Power to borrow money, whether on the security of the assets of the company or otherwise.

12. Power to take out in his official name letters of administration to any deceased member or past member or debtor, and to do any other act necessary for obtaining payment of any money due from a member or past member or debtor, or his estate, that cannot conveniently be done in the name of the company.

For the purpose of enabling the liquidator to take out letters of administration or do any other act under this paragraph, to be due to the liquidator himself.

13. Power to call meetings of creditors or members for

(a) the purpose of informing creditors or members concerning the progress of or matters arising in the liquidation;

(b) the purpose of ascertaining the views of creditors or members on any matter arising in the liquidation; or

(c) such other purpose connected with the liquidation as the liquidator considers fit.

14. Power to appoint a solicitor, accountant or other professionally qualified person to assist him in the performance of his duties.

15. Power to appoint an agent to do any business that the liquidator is unable to do himself, or which can be more conveniently done by an agent.

SCHEDULE 3

LIQUIDATION OF FOREIGN COMPANY

(Section 163)

1. Part **VI** applies to the liquidation of a foreign company with the modifications and exclusions specified in this Schedule.

2. A foreign company is deemed to be insolvent if, in addition to the circumstances specified in section 8(1), it fails to comply with the requirements of a notice issued in accordance with paragraph 4.

3. Where a person has instituted an action or other proceeding against any member of a foreign company for any debt or demand due, or claimed to be due, from the company or from him in his character as member, that person may issue a notice to the company in accordance with paragraph 4.

4. A notice under this Schedule shall

(a) be in writing and shall specify the action or proceeding that has been instituted;

(b) be signed by the person who instituted the action or proceeding or by a person authorized to issue the notice on his behalf;

(c) require the company to pay, secure or compound for the debt or demand, or to procure the action or proceeding to be stayed or to indemnify the defendant to his reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him because of it.

(d) state that if the notice is not complied with, application may be made to the Court for the appointment of a liquidator; and

(e) be served in accordance with the Rules.

5. References in Part **VI**

(a) to a company are to be taken as references to a foreign company, except in sections 159 and 161; and

(b) to assets are to be taken as references to assets situated in the Virgin Islands.

SCHEDULE 4

POWERS OF BANKRUPTCY TRUSTEE

(Section 325)

Part I - Powers Exercisable With Sanction

1. Power to carry on any business so far as may be necessary for winding it up beneficially and so far as the bankruptcy trustee is able to do so without contravening any requirement imposed by or under any enactment.

2. Power to bring, institute or defend any action or legal proceedings relating to the assets comprised in the bankrupt's estate.

3. Power to accept as the consideration for the sale of any asset comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditor's committee or the Court considers fit.

4. Power to mortgage or pledge any part of the assets comprised in the bankrupt's estate for the purpose of raising money for the payment of his liabilities.

5. Power, where any right, option or other power forms part of the bankrupt's estate, to make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any asset which is the subject of the right, option or power.

6. Power to refer to arbitration, or compromise on such terms as may be agreed on, any claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

7. Power to make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect to bankruptcy liabilities.

8. Power to make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the bankruptcy trustee by any person or by the trustee on any person.

Part 2 - General Powers

9. Power to sell any of the assets for the time being comprised in the bankrupt's estate, including the goodwill and book debts of any business.

10. Power to give receipts for any money received by him, being receipts which effectually discharge the person paying the money from all responsibility in respect of its application.

11. Power to prove, rank, claim and draw a dividend in respect of such debts due to the bankrupt as are comprised in his estate.

12. Power to exercise in relation to any asset comprised in the bankrupt's estate any powers the capacity to exercise which is vested in him under Part **XII** of this Act.

13. Power to deal with any asset comprised in the estate to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

14. Power to at any time summon a general meeting of the bankrupt's creditors.

Part 3 - Ancillary Powers

15. For the purposes of, or in connection with, the exercise of any of his powers under Part **XII** of this Act, the bankruptcy trustee may, by his official name

(a) hold assets of every description;

(b) make contracts;

(c) sue and be sued;

(d) enter into engagements binding on himself and, in respect of the bankrupt's estate, on his successors in office;

(e) employ an agent;

(f) execute any power of attorney, deed or other instrument;

and he may do any other act which is necessary or expedient for the purposes of or in connection with the exercise of those powers.

SCHEDULE 5

OFFENCES UNDER THIS ACT

(Section 501)

Column 1 Section of Act creating offence	Column 2 General nature of offence	Column 3 Penalty (corporate body)	Column 4 Penalty (individual)	Column 5 Daily default fine
20(2)	Director voting in favour of resolution to appoint interim supervisor without having reasonable grounds for believing that company is insolvent or is likely to become insolvent	$5,000	$4,000	
24(2)	Interim supervisor failing to file notice of appointment with Registrar		$1,000	$100
24(2)	Interim supervisor failing to file notice of appointment with Commission		$1,000	$100
25(4)	Officer of company failing to comply with Court order made under section 25(3)	$1,000	$1,000	$100
27(3)	Interim supervisor contravening section 27(1)		$2,000	
28(5)	Person failing to attend creditors' meeting	$1,000	$1,000	
32(5)	Person, as chairman of creditors' meeting,		$1,000	$100

	failing to prepare report of meeting			
32(5)	Person, as chairman of creditors' meeting, failing to send report of meeting to creditors		$1,000	$100
32(5)	Person, as chairman of creditors' meeting, failing to file report of meeting with Registrar		$1,000	$100
33(2)	Supervisor failing to file notice of appointment with Registrar		$1,000	$100
33(2)	Supervisor failing to file notice of appointment with Commission		$1,000	$100
36(3)	Supervisor failing to keep accounting records in accordance with section 36(1)		$7,500	
37(5)	Supervisor contravening section 37 [Supervisor to prepare and send out regular accounts and reports]		$7,500	
38(3)	Supervisor contravening section 38 [Completion of arrangement]		$2,000	$100
45	Officer of company making false representation or fraudulently doing or omitting to do anything for the purpose of obtaining the approval of the creditors of the company to an	$10,000,	$10,000, imprisonment for 2 years or both	

	arrangement			
48(2)	Interim supervisor failing to file notice of appointment with Commission		$1,000	$100
49(4)	Debtor failing to comply with order of Court made under section 49(3)		$7,500, imprisonment for one year or both	
58(2)	Interim supervisor failing to call meeting of creditors		$2,000	
58(2)	Interim supervisor failing to send to creditor documents required to be sent under section 58(1)(b)		$2,000	
61(5)	Person, as chairman of creditors' meeting, failing to file any document as required under section 61(1)		$1,000	
61(5)	Person, as chairman of creditors' meeting, failing to send notice of result of meeting to a creditor		$1,000	$100
64(3)	Supervisor contravening section 64 [Supervisor's duty to keep accounting records]		$7,500, imprisonment for one year or both	
65(4)	Supervisor contravening section 65 [Supervisor to prepare and send out regular accounts and reports]		$7,500, imprisonment for one year or both	
66(3)	Supervisor contravening section 66 [Completion of		$2,000	

	arrangement]			
74(2)	Debtor making any false representation or fraudulently doing, or omitting to do, anything for the purpose of obtaining the approval of his creditors to an arrangement		$10,000, imprisonment for two years or both	
82(2)	Administrator failing to give notice of his appointment in accordance with section 82(1)(a)		$2,000	
82(2)	Administrator failing to comply with section 82(1)(b)		$1,000	$100
82(2)	Administrator failing to send notice of appointment to company or a creditor		$1,000	$100
85(2)	Company contravening section 85(1) [Preservation of charged and other assets]	$7,500	$5,000	
86(8)	Company failing to file with Registrar notice of order made under section 86(2) or sealed copy of order	$500	$500	$100
86(8)	Company failing to comply with condition imposed under section 86	$5,000	$4,000	
92(6)	Administrator failing serve or file copy order in contravention of section 92(5)		$1,000	$100
92(6)	Administrator failing		$10,000	

	to comply with condition imposed under section 92			
100(6)	Administrator contravening section 100(1)		$2,000	
101(5)	Person failing to attend creditors' meeting	$1,000	$1,000	
102(6)	Administrator failing to report result of creditors' meeting to Court		$1,000	$100
102(6)	Administrator failing to file copy of report of creditors' meeting with Registrar		$1,000	$100
102(6)	Administrator failing to send notice of result of creditors' meeting to every creditor		$1,000	$100
104(6)	Administrator failing to report result of creditors' meeting to Court		$1,000	$100
104(6)	Administrator failing to file copy of report of creditors' meeting with Registrar		$1,000	$100
104(6)	Administrator failing to send notice of result of creditors' meeting to every creditor		$1,000	$100
106(3)	Administrator contravening section 106 [Administrator's duty to keep accounting records]		$7,500, imprisonment for one year or both	
107(4)	Administrator contravening section 107 [Administrator to		$7,500, imprisonment for one year or both	

	prepare and send out regular accounts and reports]			
108(3)	Company contravening section 108(1) [Notification]	$2,000	$1,000	
108(3)	Officer or administrator of company causing, permitting or acquiescing in contravention by company of section 108(1) [Notification]	$2,000	$1,000	
112(2)	Administrator or former administrator failing to file with the Registrar copy of order varying or discharging administration order		$1,000	$100
116(3)	Person accepting or purporting to accept appointment or acting or purporting to act as a receiver contrary to section 116(1)	$5,000	$4,000	
118(4)	Receiver failing to send notice of appointment to company		$1,000	
118(4)118(4)118(4)118(4)	Receiver failing to file notice of appointment in accordance with section 118(1)(b)		$2,000	
118(4)	Administrative receiver failing to advertise his appointment		$1,000	$100
118(4)	Administrative receiver failing to send notice of his appointment to all		$1,000	$100

	creditors			
119(4)	Person contravening or causing, permitting or acquiescing in a contravention of section 119(1)	$2,000	$1,000	
120(7)	Receiver failing to vacate his office forthwith if he ceases to be eligible to act as a receiver		$4,000	
120(7)	Receiver failing to give notice in accordance with section 120(3)		$2,000	
120(7)	Receiver failing to notify Court that he ceases to be eligible to act as a receiver		$2,000	
120(7)	Person failing to give notice to Registrar of vacancy in the office of receiver		$1,000	$100
121(3)	Person failing to comply with order made under section 121(2)	$7,500	$5,000, imprisonment for one year or both	
124(3)	Person failing to comply with order made under section 124(2)	$7,500	$5,000, imprisonment for one year or both	
136(7)	Receiver contravening section 136 [Receivership accounts to be filed with Registrar]		$4,000	$200
137(5)	Receiver failing to comply with order made under section 137		$5,000, imprisonment for one year or both	

145(10)	Administrative receiver failing to file copy of order made under section 145(2) or (7) with the Registrar		$1,000	$100
147(7)	Administrative receiver failing to comply with section 147 [Report by administrative receiver]		$2,000	
161(4)	Company failing to give liquidator notice of his appointment	$2,000	$1,000	
178(2)	Liquidator failing to advertise his appointment in accordance with section 178(1)(a)		$1,000	$100
178(2)	Liquidator failing to file notice of his appointment with Registrar		$1,000	$100
178(2)	Liquidator failing to serve notice of his appointment on company		$1,000	$100
178(2)	Liquidator failing to serve notice of his appointment on Commission		$1,000	$100
179(5)	Liquidator failing to call meeting of creditors in accordance with section 179(1)		$2,000	
179(5)	Liquidator failing to furnish documents or information to creditor as required by section 179(2)		$2,000	

179(5)	Liquidator failing to attend first creditors meeting or to report to the meeting on any exercise by him of his powers since his appointment		$2,000	
191(3)	Company contravening section 191(1) [Notification of liquidation]	$2,000	$1,000	
191(3)	Officer, receiver of liquidator of company causing, permitting or acquiescing in contravention by company of section 191(1) [Notification of liquidation]	$2,000	$1,000	
209(7)	Person making or authorizing the making of a claim under section 209 knowing that the claim is false or misleading in a material matter or that a material fact or matter has been omitted from the claim	$7,500	$7,500, imprisonment for two years or both	
217(4)	Liquidator failing to give notice of disclaimer		$5,000	
231(5)	Liquidator failing to comply with order made under section 231(3)		$7,500, imprisonment for one year or both	
233(7)	Person failing to file sealed copy of the order terminating liquidation with Registrar		$2,000	
239(5)	Liquidator failing to advertise his		$1,000	$100

	appointment in accordance with a direction of the Commission.			
267	Disqualified person engaging in prohibited activity	$10,000	$7,500, imprisonment for two years or both	
271(5)	Person failing to comply with order made under section 271(3)	$10,000	$7,500, imprisonment for one year or both	
277(4)	Relevant person failing, when required, to submit statement of affairs to office holder together with the verifying affidavit	$3,000	$2,000	$100
282(3)	Person failing to comply with notice received under section 282(1)	$5,000	$4,000	
288(1)	Person failing to attend examination ordered to be held under section 285	$7,500	$5,000, imprisonment for one year or both	
289(1)	Fraudulent conduct within the meaning of section 289(1)(a)	$10,000	$10,000, imprisonment for three years or both	
289(1)	Fraudulent conduct within the meaning of section 289(1)(b)	$10,000	$10,000, imprisonment for three years or both	
299(5)	Secured creditor failing to account or pay to the trustee the proceeds from any realisation of his security interest in accordance with section 299(3)(b)	$4,000	$3,000	

316(6)	Bankrupt failing to comply with an obligation under section 316 [Duties of bankrupt in relation to his assets and affairs]		$5,000, imprisonment for one year or both	
317(2)	Person failing to comply with an obligation imposed by section 317 [Delivery up by other person]	$7,5000	$5,000, imprisonment for one year or both	
326(3)	Trustee failing to advertise his appointment in accordance with section 326(1)(a)		$1,000	$100
326(3)	Trustee failing to serve notice of his appointment on bankrupt		$1,000	$100
326(3)	Trustee failing to serve notice of his appointment on Commission		$1,000	$100
326(3)	Trustee failing to send notice of his appointment to every creditor		$1,000	$100
326(3)	Trustee failing to file notice of his appointment with Commission		$1,000	$100
326(3)	Trustee issuing advertisement that does not comply with section 326(2)		$1,000	
336(7)	Person making or authorizing the making of a claim under section 336 knowing that the claim is false	$7,500	$7,500, imprisonment for two years or both	

	or misleading in a material matter; or a material fact or matter has been omitted from the claim			
354(4)	Undischarged bankrupt or discharged bankrupt whose estate is still being administered failing to do anything that he is directed to do by the Court in contravention of section 354(2)		$7,500, imprisonment for two years or both	
358(4)	Trustee failing to give notice of disclaimer to every person whose rights are, to his knowledge, affected by the disclaimer		$5,000	
366(4)	Bankrupt failing to submit a statement of his assets and liabilities in accordance with section 366(1)		$2,500, imprisonment for six months or both	
366(4)	Bankrupt submitting a statement of his assets and liabilities that does not comply with the prescribed requirements		$2,500, imprisonment for six months or both	
373(1)	Person failing to attend examination ordered to be held under section 370	$7,500	$5,000, imprisonment for one year or both	
381(2)	Discharged bankrupt failing to give trustee assistance in the realization and distribution of such of his assets as are vested in his trustee		$5,000, imprisonment for one year or both	

389(1)	Bankruptcy offence (non-disclosure)		$7,500, imprisonment for two years or both	
390	Bankruptcy offence (concealment of assets) contrary to paragraph (a), (b), (c), (d) or (e) of section 390		$10,000, imprisonment for three years or both	
391	Bankruptcy offence (concealment of books and papers or falsification) contrary to paragraph (a), (b), (c), (d), (e) or (f) of section 391		$10,000, imprisonment for three years or both	
392	Bankruptcy offence (false statements) contrary to paragraph (a), (b), (c), (d) or (e) of section 392		$10,000, imprisonment for three years or both	
393	Bankruptcy offence (fraudulent disposal of assets) contrary to paragraph (a) or (b) of section 393		$10,000, imprisonment for three years or both	
394	Bankruptcy offence (absconding) contrary to paragraph (a) or (b) of section 394		$10,000, imprisonment for three years or both	
395	Bankrupt committing bankruptcy offence of fraudulently dealing with assets obtained on credit contrary to section 395(1)		$10,000, imprisonment for three years or both	
395	Person committing bankruptcy offence of fraudulently dealing with assets obtained on credit contrary to section 395(2)		$10,000, imprisonment for three years or both	

396	Bankruptcy offence (obtaining credit; engaging in business) contrary to paragraph (a) or (b) of section 396(1)		$7,500, imprisonment for two years or both	
397(1)	Bankruptcy offence (failure to keep proper accounts of business) contrary to paragraph (a) or (b) of section 397(1)		$10,000, imprisonment for three years or both	
398	Bankruptcy offence (gambling) contrary to paragraph (a) or (b) of section 398		$7,500, imprisonment for two years or both	
416	Restricted person engaging in prohibited activity		$7,500, imprisonment for two years or both	
474(4)	Person acting as an insolvency practitioner without holding a licence that is not suspended	$10,000, imprisonment for two years or both	$10,000, imprisonment for two years or both	
478(4)	Licensee contravening section 478 (Production of accounts and records)		$7,500, imprisonment for two years or both	
484(4)	Person appointing an overseas insolvency practitioner to act as an insolvency practitioner contrary to section 484(3)		$5,000	

Passed by the Legislative Council this 17th day of April, 2003.

REUBEN VANTERPOOL,
Speaker.

OLEANVINE MAYNARD,
Ag. Clerk of the Legislative Council.

EXHIBIT D

Convening Order

Case Number :BVIHCOM2018/0211

FILED
HIGH COURT
TERRITORY OF
THE VIRGIN ISLANDS

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS

COMMERCIAL DIVISION

Claim No. BVIHC (COM) 2018/0211

Submitted Date:03/01/2020 13:28

Filed Date:03/01/2020 13:28

Fees Paid:72.59

IN THE MATTER OF OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION)

AND IN THE MATTER OF SECTION 179A OF T HE BVI BUSINESS COMPANIES ACT, 2004

OLINDA STAR LTD

(IN PROVISIONAL LIQUIDATION)

Applicant

CONVENING DIRECTIONS ORDER

BEFORE: **The Honourable Justice Gerard Wallbank (Ag.)**

DATED: **20 December 2019**

ENTERED: 3 January 2020

UPON THE APPLICATION OF OLINDA STAR LTD. (the "**Scheme Company**") by Ordinary Application dated 13 December 2019 (the "**Application**")

AND UPON considering the papers together with further written submissions by way of correspondence

AND UPON the Scheme Company having resolved to appoint Eleanor Fisher to act as the Scheme Company's foreign representative in respect of any proceedings under chapter 15 of the U.S. Bankruptcy Code and any other recognition proceedings

AND UPON the Court adopting in this Order (save where terms are otherwise expressly defined in this Order) the definitions, abbreviations, words and phrases contained in the Scheme Documents hereinafter mentioned

AND UPON the Court being satisfied that it has jurisdiction in relation to the Scheme (as defined below) on the basis that the Scheme Company is a "company" within section 179A of the BVI Business Companies Act 2004

IT IS ORDERED AND DIRECTED THAT:

1 The Scheme Company be at liberty to convene a meeting of its Scheme Creditors to be held at 13:00 (New York time) on 14 January 2020 at the offices of White & Case, 1221 6th Avenue, New York, 10020, United States of America, for the purpose of considering and, if thought fit, approving with or without modification, the scheme of arrangement (the "**Scheme**") to be made between the Scheme Company and the Scheme Creditors (the "**Scheme Meeting**").

2 At least 14 days before the day appointed for the Scheme Meeting, the Scheme Company shall arrange for copies of (i) the notice convening the Scheme Meeting; (ii) the Scheme; (iii) a Voting and Proxy Form, for use by the Scheme Creditors in connection with the Scheme Meeting, (together referred to as the "**Scheme Documents**") to be:

(a) made available by the Scheme Company or the Scheme Administrator through DTC's Legal Notice System (in respect of the Notes); and

(b) uploaded by the Scheme Company or Scheme Administrator to the website at https://theconstellation.com/enu/s-2005-enu.html (the "**Scheme Website**") (to be available to all Scheme Creditors).

3 Any supplemental information not included in the Scheme Documents which the Scheme Company wishes to provide to the Scheme Creditors in advance of the Scheme Meeting (or any adjourned Scheme Meeting) shall be provided in the manner described in paragraph 2 above (save that the Scheme Company has permission to abridge the 14 day stated time limit to a shorter time period, provided Scheme Creditors must have

sufficient time to consider such supplemental information before the Scheme Meeting or any adjourned Scheme Meeting).

4 Until the date of the Scheme Meeting, Scheme Creditors may request hard copies of the Scheme Documents from the reception desk at the offices of White & Case, 1221 6th Avenue, New York, 10020, United States of America.

5 Copies of the Scheme Documents shall be in the form or substantially in the form of the documents exhibited to the Fifth Affidavit of Michael Pearson filed in support of this Application subject to modifications as advised by Counsel to the Scheme Company.

6 Unless the Court orders otherwise, the accidental omission to notify any of the Scheme Creditors with the notice of the Scheme Meeting or the non-receipt of notice of the Scheme Meeting by any Scheme Creditor shall not invalidate the proceedings at the Scheme Meeting.

7 In order to vote on the Scheme (in person, by authorised representative and/or by proxy), Scheme Creditors shall return their duly completed and signed Voting and Proxy Form so that it is received no later than the Voting Instruction Deadline, being 13:00 (New York time) one business day before the Scheme Meeting (or, if the Scheme Meeting is adjourned, by 10:00 on the day which is one Business Day prior to the date of the adjourned meeting) by submitting it by email to the address listed in the Voting and Proxy Form.

8 The Scheme Creditors as at the Voting Instruction Deadline, being 13:00 (New York time) on one business day before the Scheme Meeting, or if the Scheme Meeting is adjourned then at 10:00 on the day which is by one Business Day prior to the date of the adjourned meeting, will be entitled to attend and vote at the Scheme Meeting (either in person, by authorised representative and/or by proxy).

9 Miss Eleanor Fisher be appointed as chairperson of the Scheme Meeting on behalf of the Scheme Company (the "**Chairperson**").

10 The Chairperson be responsible for determining in accordance with the relevant provisions in the Scheme Documents, the entitlement of, and value for which, any

Scheme Creditor be permitted to vote at the Scheme Meeting by reference to the information supplied by the Scheme Creditor and/or by reference to information contained in the Scheme Company's books and records.

11 The Chairperson be at liberty to accept, at her/his discretion, otherwise incomplete or late Voting and Proxy Forms (but, for the avoidance of doubt, provided that any such late Voting and Proxy Form is received before the Chairperson closes the Scheme Meeting; and, provided that in the case of an incomplete Voting and Proxy Form, sufficient information has been provided in such Voting and Proxy Form, or by some other means, to enable the Chairperson, in any such given case, to assess the value of the relevant Admitted Liability).

12 The Chairperson shall be entitled to rely on the signature on the Voting and Proxy Form, including one sent by e-mail or fax, as a warranty that the signatory has been duly authorised by the relevant Scheme Creditor to sign the Voting and Proxy Form on behalf of that Scheme Creditor.

13 The Chairperson be at liberty to adjourn the Scheme Meeting provided that if adjourned, the Scheme Meeting recommences as soon as reasonably practicable according to the Chairperson's discretion. In so far as practicable, notification of the time, date and place at which the adjourned Scheme Meeting will occur should be given to Scheme Creditors as follows:

(a) made available by the Scheme Company or the Scheme Administrator through DTC's Legal Notice System (in respect of the Notes); and

(b) uploaded by the Scheme Company or Scheme Administrator to the website at https://theconstellation.com/enu/s-2005-enu.html (the "**Scheme Website**") (to be available to all Scheme Creditors).

14 The Chairperson be at liberty to permit the attendance of persons who are not otherwise entitled to attend and vote at a Scheme Meeting, unless an objection is taken by (or by a person appointed to vote by proxy for) a Scheme Creditor entitled to attend and vote at the relevant Scheme Meeting, provided that such a person shall not be entitled to speak at the relevant Scheme Meeting without the permission of the Chairperson.

15 The Scheme Administrator shall be responsible for

(a) counting the votes submitted at the Scheme Meeting;

(b) providing the Chairperson with a certificate setting out the votes submitted at such Scheme Meeting.

16 For the purposes of voting at the Scheme Meeting on the resolutions to approve the Scheme, Admitted Liabilities of a Scheme Creditor shall be calculated as at the Record Time, being 10:00 (New York time) on the day of the Scheme Meeting, or if the Scheme Meeting is adjourned then by 10am on the day which is one Business Days prior to the date of the adjourned meeting, based on information confidentially provided to the Scheme Company by the Scheme Administrator

17 If the Scheme is approved at the Scheme Meeting by the required statutory majorities:

(a) The Chairperson is directed to file a report on the Scheme Meeting, and the voting, prior to the Court hearing to sanction the Scheme; and

(b) The Application is adjourned to a further hearing on or after 15 January 2020 to be listed urgently with a time estimate of 1 hour for the Court to consider the sanction of the Scheme.

18 The Chairperson and/or the Scheme Company shall have liberty to apply for such further or amended directions as may be considered necessary or appropriate.

19 Eleanor Fisher is hereby appointed foreign representative (the "**Foreign Representative**") of the Scheme Company, authorised in these proceedings to act as the Foreign Representative for the purposes of any proceedings commenced in the United States under chapter 15 of the U.S. Bankruptcy Code and elsewhere under the relevant local laws.

20 The Foreign Representative is authorised on behalf of the Scheme Company to take any and all actions to execute, deliver, certify, file and/or record and perform any and all documents, agreements, instruments, motions, affidavits, applications for approvals or rulings of governmental or regulatory authorities, or certificates, and to take any and all

steps deemed by the Foreign Representative to be necessary or desirable to carry out the purpose and intent of each of the Schemes including, for the avoidance of doubt, filing any petition or other request for relief intended to be filed under chapter 15 of the U.S. Bankruptcy Code and/or under other relevant local laws, to the extent required.

BY THE REGISTRAR

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM No. BVI HC (COM) 2018/0211

IN THE MATTER OF OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION)
AND IN THE MATTER OF SECTION 179A OF THE BVI BUSINESS COMPANIES ACT, 2004

BETWEEN:

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

CONVENING DIRECTIONS ORDER

Ogier
Ritter House
Wickham's Cay II
PO Box 3170
Road Town, Tortola
British Virgin Islands
Tel: +1 (284) 852 7300
Ref: BRL/CARGR 174287.00001
Legal Practitioners for the Applicant

EXHIBIT E

BVI Insolvency Protocol

Case Number :BVIHCOM2018/0211

FILED
HIGH COURT
TERRITORY OF
THE VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
CLAIM NO. BVI HC (COM) 2018/0211
IN THE MATTER OF THE INSOLVENCY ACT 2003

Submitted Date:09/08/2019 16:30

Filed Date:12/08/2019 08:30

Fees Paid:72.59

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

ORDER

Before: the Honourable Justice Adderley

Dated: 25 July 2019

Entered: 12 August 2019

UPON the application of Olinda Star Ltd (in Provisional Liquidation) ("**Olinda Star**") by its application dated 18 July 2019 (the "**Application**") requesting that Olinda Star and Paul Pretlove of Kalo (BVI) Limited and Eleanor Fisher of Kalo (Cayman) Limited as Joint Provisional Liquidators (the "**JPLs**") have permission of this Court to enter into a new protocol

AND UPON the Court noting that Olinda Star had been excluded from the Brazilian RJ proceedings

AND UPON the Court noting that each of Olinda Star, Constellation Overseas Ltd, Alpha Star Equities Ltd, Gold Star Equities Ltd, Lone Star Offshore Ltd, Snover International Inc were subject to the appointment of JPLs in the British Virgin Islands pursuant to the Court Order dated 19 December 2018 made by the Honorable Justice Adderley (the "**Order**")

AND UPON the Court noting that, on 21 December 2018, Olinda Star and the JPLs entered into a protocol with the Company, which was approved by this Honourable Court and accordingly formed part of the Order

AND UPON the Court approving an order, on 4 June 2019, to extend the validity of the Originating Application for Olinda Star for a period of three months, in accordance with s.168 of the Insolvency Act, 2003

AND UPON the court noting that the restructuring efforts are continuing and Olinda Star will seek to pursue a restructuring, for the benefit of all of the Olinda Star's stakeholders, under the laws of the British Virgin Islands for which the new protocol is required

AND UPON reading the Third Affidavit of Michael Pearson and exhibit thereto

IT IS ORDERED that:

1 the protocol entered into on 21 December 2018 between the Applicant, Olinda Star, and the JPLs be cancelled;

2 Olinda Star and JPLs have permission of this Court to enter into a new protocol, as attached, which forms part of this Order;

3 the first hearing in the restructuring of the Company as commenced in the British Virgin Islands ("BVI") be listed for the first available date after 15 September 2019; and

4 the costs be costs in the provisional liquidation.

By the Registrar (Dep)

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM No. BVI HC (COM) 2018/0211
BETWEEN:

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

ORDER

Ogier
Ritter House
Wickham's Cay II
PO Box 3170
Road Town, Tortola
British Virgin Islands
Tel: +1 (284) 852 7300
Ref: BRL/CARGR 174287.00001
Legal Practitioners for the Applicant

Insolvency Protocol in respect of Olinda Star Ltd

Olinda Star Ltd (the "**Company**") (acting through its director) and Eleanor Fisher of Kalo (Cayman) Limited and Paul Pretlove of Kalo (BVI) Limited, as joint provisional liquidators (the "**JPLs**" and together with the Company, the "**Parties**") of the Company enter into this Insolvency Protocol Agreement (the "**Protocol**") as follows:

Preliminary Statement

The purpose of this Protocol is to ensure the just, efficient, orderly and expeditious administration of the Company's provisional liquidation proceedings in the British Virgin Islands (the "**Proceedings**"), to avoid duplication of work and conflict between the JPLs and the director and management of the Company, and to facilitate the function of the Proceedings in support of the Company's restructuring, initially progressed in a centralised forum in Brazil through a judicially-supervised Brazilian *recuperacao judicial* ("**Brazilian RJ Proceeding"**) but now intended to be progressed in the BVI.

The Proceedings

A. On 6 December 2018 (the "**RJ Petition Date**"), the Company along with certain of its affiliates (the "**RJ Debtors**") filed a petition in Brazil commencing their procedurally joint Brazilian RJ Proceeding. The Company is part of a global oil and gas enterprise (the "**Constellation Group**" or the "**Group**"). The Group elected to commence its centralised restructuring in Brazil because Brazil has historically been and presently is the operational centre of the Group's business.

B. In order to achieve a globally coordinated, centralised and holistic restructuring, the Company commenced complementary restructuring proceedings in the BVI. Specifically, on 7 December 2018, the Company filed an Originating Application and Ordinary Application in the BVI Commercial Court (the "**BVI Court**") seeking the appointment of JPLs to the Company pursuant to s.170 of the BVI Insolvency Act, 2003.

C. By way of an Order dated 19 December 2018, the BVI Court appointed the JPLs to the Company (the "**BVI Appointment Order**").

D. On 4 June 2019, the BVI Court extended the validity of the BVI Appointment Order for a period of three months.

E. In support of the Company's Brazilian RJ Proceeding, the Company appointed a foreign representative and commenced a proceeding under chapter 15 of the U.S. Bankruptcy Code seeking U.S. court recognition of the Brazilian RJ Proceeding as its foreign main proceeding, or in the alternative, as a foreign non-main proceeding (the "**Chapter 15 Proceeding**").

F. On 4 June 2019, the Brazilian Court of Appeals issued its clarification (the "**Clarification**") with respect to their 22 April 2019 decision which affirmed the earlier decision of the Brazilian RJ Court holding that the Company should be excluded from the Brazilian RJ Proceeding for lack of jurisdiction.

G. The Company filed an appeal of the Brazilian Court of Appeal's decision to the Superior Court of Justice (the "**Brazilian Appeal**"). It is understood by the JPLs that the appeal process to the Senior Court of Justice in Brazil is a lengthy process.

H. In an effort to facilitate the Company's global restructuring, the Company will carry out its restructuring in the BVI utilising the laws and procedures of the BVI. It is currently envisaged that the Company's restructuring will be effected by either a Scheme of Arrangement or a Plan of Arrangement (the "**Intended BVI Restructuring**"). However, should the Company be re-instated to the Brazilian RJ Proceeding and allowed to proceed to restructure its debts in Brazil along with its fellow RJ Debtors before the Intended BVI Restructuring sanctioned in the BVI, then the Company may seek to terminate its Intended BVI Restructuring in order to proceed expeditiously and most efficiently with the Group's restructuring in Brazil.

I. The JPLs further intend to seek permission from this Court to serve as foreign representatives of the Proceedings and to obtain chapter 15 recognition of the same in the United States (the "**Intended Ch. 15 Proceeding**").

J. In order to ensure that the Proceedings are conducted efficiently and, as intended, provide needed support to the Intended BVI Restructuring, the JPLs and the Company wish to enter into the terms of this Protocol.

NOW THEREFORE, subject to the powers already afforded to the JPLs under the Appointment Order and for so long as the JPLs remain appointed as provisional liquidators, the JPLs and the Company (acting by its director(s)) hereby agree the following:

(1) The Company (acting by its director, or those granted powers-of-attorney by the director for the management of the Company, such persons "**Authorised Managers**") shall continue to provide such information as is reasonably requested by the JPLs, including without limitation, reasonable requests for explanations or information as to:

(a) The actions or decisions taken by the Company;

(b) The proposed terms of the incurrence of any new indebtedness or borrowing of money by the Company whether pursuant to loan arrangements with financing institutions, bank or otherwise, and the granting of the security in respect of the same, and the guaranteeing of any indebtedness or borrowings of affiliates, which in each case will be subject to the oversight of the BVI Court;

(c) The proposed sale or disposal of any assets of the Company; and

(d) Further actions by or on behalf of the Company in the Brazilian RJ Proceeding, including actions with respect to the Brazilian Appeal.

(2) The Company shall be permitted, subject to the JPLs' oversight and monitoring and unless otherwise ordered by the Court, to operate their businesses in the ordinary course, including the ordinary course operation of cash management systems and bank accounts.

(3) To facilitate communication between the Company and the JPLs, and to ensure the JPLs are adequately informed as to the ongoing activities and decisions of the Company, the officers and directors (or their authorised representatives, including Authorised Managers) of the Company shall include the JPLs in any board meetings of the Company and shall supply the JPLs with copies of any draft written resolutions and shall meet in person or by telephone or videoconference or by whatever means is most appropriate on a weekly

basis, or at such other intervals as the JPLs require, to address matters such as budgeting, cash expenditures, cash management, ordinary course transactions and all other matters reasonably necessary to keep the JPLs informed as their appointment and duties require.

(4) The directors and/or the Authorised Managers shall obtain the JPLs' prior approval of the exercise of the directors' powers outside of the ordinary course of business. In the event that the JPLs and the directors and/or the Authorised Managers cannot agree upon a proposed non-ordinary course action, the JPLs and the directors have liberty to apply to this Court for directions.

(5) The Parties acknowledge that the Company is engaged with its affiliates in a global restructuring that includes the Intended BVI Restructuring, that the Proceedings were commenced in support of that global restructuring, and that the Intended BVI Restructuring will function to further support that holistic global restructuring. To facilitate the role of the Proceedings and the Intended BVI Restructuring and to ensure that they provide needed support thereto, the JPLs will seek where possible (in accordance with their duties to Company creditors) to exercise their duties accordingly.

(6) The Company has previously granted to the Brazilian law firm of Galdino & Coelho Advogados ("**G&C**") a power-of-attorney to act on its behalf in the course of the Brazilian RJ Proceeding, and such power remains in place. So long as the Company remains a party to the Brazilian RJ Proceeding, G&C routinely enters filings with the Brazilian RJ Court including motions for relief on behalf of the Company. As many of these filings are routine and/or minor and some must be entered at short notice, it is not feasible for G&C on behalf of the Company to obtain permission from the JPLs, and in some case to give

advance notice to the JPLs, of any expected filing. Nevertheless, the Parties recognize the importance of keeping the Company and the JPLs equally apprised of and involved in important steps in the Brazilian Appeal and Brazilian RJ Proceeding, including filings made on behalf of the Company. The Parties expect that G&C will provide routine informational updates on the development of the Brazilian RJ Proceeding and the Brazilian Appeal to the Company and to the JPLs in tandem, and that any such updates or other information about progress in the Brazilian RJ Proceeding that is provided to the Company will also be readily provided to the JPLs. The Parties also understand that the JPLs may have questions about the Brazilian restructuring process, the Brazilian RJ Proceeding and the Brazilian Appeal, and the Company will direct its counsels, including G&C, to readily address any such queries.

(7) Because the Intended BVI Restructuring is inextricably bound to the restructuring in the Brazilian RJ Proceeding, the Parties expect that G&C will continue to provide, in a timely manner, to the Company and the JPLs English translations of drafts of the RJ Plan as it is being developed, as well as materials in support of the RJ Plan such as valuation reports, liquidation analyses, and other schedules and reports.

(8) The Parties expect that White & Case LLP, in its capacity as U.S. counsel to the JPLs, will timely provide to the Company and the JPLs regular updates as to the progress of the Chapter 15 Proceeding for as long as the Company remains in the current Chapter 15 Proceeding.

(9) The JPLs shall give notice to the Company of all proceedings in the BVI Court and shall not object to the Company attending and seeking to be heard at any hearings before the BVI Court.

(10) The Company shall give notice to the JPLs of all proceedings in the BVI Court and shall not object to the JPLs attending and seeking to be heard at any hearings before the BVI Court.

(11) The JPLs may communicate and/or consult with any of the Company's creditors, as and when and in the manner they believe it is appropriate to do so, following consultation with and consent of the directors of the Company, such consent not to be unreasonably withheld or delayed.

(12) The JPLs shall consult and obtain the consent of the Company (such consent not to be unreasonably withheld) prior to the appointment of any additional professional advisors.

(13) The JPLs may, as they deem necessary and subject to any ruling of the BVI Court apply for directions or sanction from the BVI Court in relation to any matter. For the avoidance of doubt, this right is without prejudice to the right of the Company to be put on notice of any such application and the right to be heard and, where necessary, object to the directions sought.

(14) The BVI Court shall have exclusive jurisdiction over the remuneration of the JPLs and the JPLs shall seek approval of their remuneration from the BVI Court as necessary. The JPLs shall open a bank account (the "**Olinda Restructuring Account**"), and shall deposit

an initial USD $300,000 from the funds currently in the Restructuring Account held for the benefit of the Company, Constellation Overseas Ltd, Lone Star Offshore Ltd, Gold Star Equities Ltd, Snover International Inc and Alpha Star Equities Ltd (the "**Funds**"). The Funds are intended to facilitate the payment of the BVI restructuring costs, fees, disbursements and such other expenses as the JPLs shall be required to settle from time to time during the course of the Proceedings. Additionally, (i) the Company shall make such further payments to the Olinda Restructuring Account as are necessary for the continued efficacy of the provisional liquidation, (ii) upon discharge of the provisional liquidations of Constellation Overseas Ltd, Lone Star Offshore Ltd, Gold Star Equities Ltd, Snover International Inc and Alpha Star Equities Ltd the JPLs shall transfer any remaining sums from the Restructuring Account to the Olinda Restructuring Account.

(15) The JPLs acknowledge that in the course of performance of their duties they will have access to and be provided with trade secrets and other confidential material ("**Confidential Information**"). The JPLs agree to keep such Confidential Information confidential and shall not, without the approval of the Court or agreement of the Company (or as otherwise required by law), reveal, divulge or in any other manner authorise the access to or publish Confidential Information, to any person, entity or company, nor use the Confidential Information for any other purpose that is not directly related to their role as JPLs of the Company. Notwithstanding the foregoing, the JPLs may disclose Confidential Information on a need-to-know basis to their Representatives ("**Representatives**" of the JPLs means their and Kalo's employees, directors, officers, agents, associates, colleagues, and advisors, including lawyers, accountants, auditors and consultants).

(16) This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, liquidators, trustees, and receivers, receiver managers, or custodians appointed.

(17) This Protocol may not be waived, amended or modified except in writing by all parties and subject to the approval and authorisation of the BVI Court.

(18) Each party represents and warrants to the other that its execution, delivery, and performance of this Protocol are within the power and authority of such party and have been duly authorised by such party (except that it is acknowledged that approval of the BVI Court is required).

(19) This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

(20) The parties hereto are hereby authorised to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate the terms of this Protocol.

(21) This Protocol shall be deemed effective upon its approval by the BVI Court. This Protocol shall have no binding or enforceable legal effect until approved by BVI Court.

IN WITNESS WHEREOF the parties hereto have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

JOINT PROVISIONAL LIQUIDATORS

By: _____

Eleanor Fisher as joint provisional liquidator and without personal liability

By: _____

Paul Pretlove as joint provisional liquidator and without personal liability

Mr. Michael Pearson, on behalf of Olinda Star Ltd in his capacity as a director

By:_____

Name: Michael Pearson

Title: Director

Date:

EXHIBIT F

Advertisement of JPL Appointment

In the matter of the BVI Insolvency Act, 2003 (the "Act")
Lone Star Offshore Ltd. (the "Company")
BC# 1039322

2014 NOTICE IS HEREBY GIVEN, pursuant to Section 170(1) of the Act, that on 19 December 2018, Paul Pretlove of Kalo (BVI) Limited, P.O. Box 4571, 4th Floor LM Business Centre, Fish Lock Road, Road Town, Tortola, British Virgin Islands, VG1110 and Eleanor Fisher of Kalo (Cayman) Limited, P.O. Box 776, 38 Market Street, Suite 4208 Canella Court, Camana Bay, Grand Cayman, were appointed as Joint Provisional Liquidators of the Company by Order of the Eastern Caribbean Supreme Court in the High Court of Justice British Virgin Islands.

NOTICE IS HEREBY GIVEN that creditors of the Company may contact the Joint Provisional Liquidators at the email address below.

Paul Pretlove
Joint Provisional Liquidator

Contact details:	Kalo (BVI) Limited
Contact:	Terri Mulgrew
Telephone:	+1 345 640 5884
Email:	tmulgrew@kaloadvisors.com

In the matter of the BVI Insolvency Act, 2003 (the "Act")
Olinda Star Limited (the "Company")
BC# 1049761

2015 NOTICE IS HEREBY GIVEN, pursuant to Section 170(1) of the Act, that on 19 December 2018, Paul Pretlove of Kalo (BVI) Limited, P.O. Box 4571, 4th Floor LM Business Centre, Fish Lock Road, Road Town, Tortola, British Virgin Islands, VG1110 and Eleanor Fisher of Kalo (Cayman) Limited, P.O. Box 776, 38 Market Street, Suite 4208 Canella Court, Camana Bay, Grand Cayman, were appointed as Joint Provisional Liquidators of the Company by Order of the Eastern Caribbean Supreme Court in the High Court of Justice British Virgin Islands.

NOTICE IS HEREBY GIVEN that creditors of the Company may contact the Joint Provisional Liquidators at the email address below.

Paul Pretlove
Joint Provisional Liquidator

Contact details:	Kalo (BVI) Limited
Contact:	Terri Mulgrew
Telephone:	+1 345 640 5884
Email:	tmulgrew@kaloadvisors.com

EXHIBIT G

Scheme Commencement Resolution

Olinda Star Ltd. (In Provisional Liquidation)

BC Number: 1049761

(the Company)

Written resolutions of the sole director (the **Director**) of the Company adopted pursuant to Regulation 96 of the Company's Articles of Association (the **Articles**) and pursuant to Section 129 of the BVI Business Companies Act, 2004 (the **Act**).

Scheme of arrangement commencement

1 It is noted that the Company is part of a worldwide group of companies, whose ultimate holding company is Constellation Oil Services Holding S.A.[1] (the **Parent** and, together with its subsidiaries, the **Constellation Group**).

2 It is noted that the Parent and several of its subsidiaries (the **RJ Debtors**) are currently undergoing a judicial reorganization (*recuperação judicial*) under Brazilian Federal Law Nº 11.101 of February 9, 2005 (the **RJ**) before the 1st Business Court of Rio de Janeiro (the **Brazilian RJ Court**). The comprehensive plan of reorganisation of the RJ Debtors (the **RJ Plan**) has been agreed, was approved at a creditors meeting on 28 June 2019 and was confirmed by the Brazilian RJ Court on 1 July 2019.

3 It is further noted that certain of the RJ Debtors (the **Chapter 15 Debtors**) are currently parties to ancillary proceedings (the **Chapter 15 Proceedings**) under chapter 15 (**Chapter 15**) of title 11 of the United States Code (the **U.S. Bankruptcy Code**). It was further noted that certain of the RJ Debtors, including the Company (the **Provisional Liquidation Debtors**), are currently undergoing a joint provisional liquidation proceeding in the BVI (the **BVI Provisional Liquidation** and, together with the RJ and Chapter 15 Proceedings, the **Restructuring Undertakings**).

4 It is noted that pursuant to an Order of the Eastern Caribbean Supreme Court of the Territory of the British Virgin Islands (the **BVI Court**) dated December 19, 2018 (the **JPL Appointment Order**), Ms. Eleanor Fisher and Mr. Paul Pretlove have been appointed to the Company as Joint Provisional Liquidators (the **JPLs**). The JPL Appointment Order authorised the JPLs to enter into an Insolvency Protocol dated 21 December 2018, which, to the extent permitted by law, governs the relationship between the JPLs and the Company (the **2018 Insolvency Protocol**). On 25 July 2019 BVI Court granted an Order to replace the 2018 Insolvency Protocol with a new insolvency protocol granting the JPLs the capacity to pursue a BVI restructuring by way, *inter alia*, of a scheme of arrangement (the **2019 Insolvency Protocol**).

5 It is noted that the Rio de Janeiro Court of Appeals has ruled that the Company should be removed from the RJ.

6 It is noted that the Director has determined, having spoken to advisors and considering the Constellation Group as a whole, that it is advisable and in the best interests of the Company to commence a scheme of arrangement (the **Scheme of Arrangement**) pursuant to section

[1] Formerly known as QGOG Constellation S.A.

179A of the Act, which Scheme of Arrangement shall be on substantially the same terms as the RJ Plan, in order to effect a court-sanctioned restructuring of the Company's debt in the British Virgin Islands.

7 It is necessary for the successful implementation of the Scheme of Arrangement for the Company to obtain recognition of the BVI Provisional Liquidation and enforcement of the Scheme of Arrangement by the US Courts as a part of a new Chapter 15 proceeding (the **BVI Chapter 15 Proceeding**).

8 It was noted that legal advisors and financial advisors, including Houlihan Lokey, Alvarez & Marsal Holdings, LLC, White & Case LLP, and Ogier, have been appointed by the Constellation Group to assist the Constellation Group in coordinating the Scheme of Arrangement. It is further noted that White & Case LLP and Ogier have been appointed by the JPLs to assist and advise the JPLs on the Scheme of Arrangement and the BVI Chapter 15 Proceeding.

9 Section 179A(1) states "*Where a compromise or arrangement is proposed between a company and its creditors, or any class of them,…the Court may, on application of a person specified in subsection (2)* [which includes the company], *order a meeting of creditors or class of creditors…to be summoned in such manner as the Court directs*".

10 It is intended that the Scheme of Arrangement will restructure the debt obligations of the Company so that it mirrors the process of the RJ Debtors that had the same creditors as the Company in the RJ Plan. The Company will apply to the BVI Court to ask it to convene a creditors' meeting to approve the Scheme of Arrangement. If the court convened meeting is successful the BVI Court will be applied to provide a sanctioning order for the Scheme (such process being the **Olinda BVI Proceeding**).

11 Currently, the Company is a guarantor in relation to certain loan notes issued pursuant to an indenture dated 27 July 2017 (the **Old Notes**). Olinda's only creditors are the holders of the Old Notes, as well as a limited number of trade creditors. Olinda's only funded debt obligation is the guarantee under the Old Notes (the **Existing 2024 Notes Guarantee**). Following the completion of the transactions required for the RJ Plan, all other guarantors under the Old Notes will be released from their obligations in relation to the Old Notes such that the Company will become the sole guarantor in respect of the Old Notes. On or substantially contemporaneously with the date that the Scheme of Arrangement is effective, (i) Wilmington Trust, National Association, as trustee for the noteholders under the Old Notes will release the Company from the Existing 2024 Notes Guarantee and the Old Notes will be terminated, (ii) the Company will accede to the Participating Notes Indenture in accordance with the terms set out therein and become a guarantor under the New Notes (the **New 2024 Notes Guarantee**, which will be secured with the same collateral as the Old Notes guarantee), and (iii) all of the security granted in or over the shares in the Company in relation to the Old Notes will be released and new security will be granted over the assets and shares of the Company in accordance with the New Notes. For the avoidance of doubt, the Existing 2024 Notes Guarantee will remain an obligation of the Company and remain in full force and effect for the duration of the Olinda BVI Proceeding, and it will only terminate upon the granting of the New 2024 Notes Guarantee (in accordance with the terms and timings set out in the Participating Notes Indenture). In addition the Company will at substantially the same time guarantee the obligations under the Working Capital

Facility and Bradesco L/C Agreements (each as defined in Participating Notes Indenture), which shall be secured by the same collateral as the New 2024 Notes Guarantee. The Scheme of Arrangement will terminate upon the completion of the above.

12 The Company intends to take the following actions (the **Actions**):

(a) apply to the BVI Court to convene a creditors' meeting to approve the Scheme of Arrangement;

(b) if the BVI Court convenes a creditors' meeting, provide notice (**Notice**) of the Scheme of Arrangement to all known creditors on such notice as the BVI Court determines;

(c) place an advert in suitable publications in the BVI, New York, Brazil, and India providing notice of the court convened meeting for the Scheme of Arrangement;

(d) if the Scheme of Arrangement is approved by the required majorities as set out in Section 179A of the Act at the court convened meeting, to apply to the BVI Court for an order to sanction the Scheme of Arrangement (the **Sanctioning Order**);

(e) to file the Sanctioning Order with the BVI Registry of Corporate Affairs; and

(f) apply for a BVI Chapter 15 Proceeding, appointing Eleanor Fisher as Foreign Representative as required.

13 The Director notes that the Scheme of Arrangement is a mirror of the RJ Plan and has been approved by the JPLs as being in the best interests of the creditors of the company as a whole.

14 With the above transaction in mind, the following documents have been examined by the Director (the **Documents**):

(a) the draft Olinda scheme of arrangement circular to creditors;

(b) the draft Notice; and

(c) the draft application to the BVI Court comprising:

(i) the application notice;

(ii) the draft affidavit in support;

(iii) the draft order; and

(iv) the draft certificate of urgency.

15 The Director confirms by his signature hereto that he has no interest for the purposes of Section 124 of the Act in the Documents or the plan of arrangement by reason of a financial interest or relationship with any other parties to the Documents or otherwise that has not already been disclosed.

16 The Director confirms by his signature that he has carefully considered the Documents and the transactions contemplated thereby. The Director does not wish to suggest any amendments to any of the Documents.

17 The Director of the Company does hereby adopt the following written resolutions:

(a) the contents of the Documents be and are hereby approved and that it is in the best interests of the Company and its creditors as a whole to commence a scheme of arrangement in the BVI in the terms set out in the Documents;

(b) the Director be and is hereby authorised to file the application for the Scheme of Arrangement in the BVI, with such amendments as the Director in his sole discretion thinks fit;

(c) the Director be and is hereby authorised to complete the Actions and sign, execute or seal any such ancillary documents as necessary in order to complete the Actions;

(d) if the BVI Court does order a court convened meeting of the creditors to vote on the scheme of arrangement, the Director and his professional advisors be and are hereby authorised to set a Record Time (as defined in the scheme circular) ahead of the court convened meeting and to circulate that date in the scheme circular and notice;

(e) the Director be and is hereby authorised to sign, execute or seal all such documents and to perform all such acts on behalf of the Company in connection with the Documents, the commencement of the Scheme of Arrangement and the transactions contemplated thereby as the Director shall in his absolute discretion think fit; and

(f) to the extent any of the actions set out above have already occurred, they are hereby confirmed and ratified.

[*signature page follows*]

.....
Michael Pearson

13 December 2019
Date signed

Location where signed: GEORGE TOWN, CAYMAN ISLANDS

These resolutions are confirmed as authorised by the JPLs and the JPLs confirm that Michael Pearson, as director of the Company, will have all authority to act on behalf of the Company as set out above in the Resolutions.

.....
Name: Eleanor Fisher
Title: Joint provisional liquidator acting without personal liability

..... 2019
Date signed

.... 2019

Michael Pearson Date signed

Location where signed:.....

These resolutions are confirmed as authorised by the JPLs and the JPLs confirm that Michael Pearson, as director of the Company, will have all authority to act on behalf of the Company as set out above in the Resolutions.

..... 13 December 2019

Name: Eleanor Fisher Date signed

Title: Joint provisional liquidator acting without personal liability

SCHEDULE

Companies of which Michael Pearson is a director

Alaskan Star Ltd
Amaralina Star Ltd.
Amaralina Star Holdco 1 Ltd
Amaralina Star Holdco 2 Ltd
Laguna Star Ltd.
Laguna Star Holdco 1 Ltd
Laguna Star Holdco 2 Ltd
Alpha Star Equities Ltd.
Brava Star Ltd.
Brava Star Holdco 1 Ltd
BravaStar Holdco 2 Ltd
Constellation Overseas Ltd.
Constellation Services Ltd.
Gold Star Equities Ltd.
Snover International Inc.
Lone Star Offshore Ltd.
Olinda Star Ltd.
Lancaster Projects Corp.
Star International Drilling Limited
Bonvie Investments Inc.
Constellation Africa Inc.
QGOG Atlantic/ Alaskan Rigs Ltd
QGOG Constellation BVI Ltd.

EXHIBIT H

Petitioner's Report as Scheme Administrator

Case Number :BVIHCOM2018/0211

FILED
HIGH COURT
TERRITORY OF
THE VIRGIN ISLANDS

Submitted Date:20/02/2020 08:05

Filed Date:20/02/2020 08:30

Fees Paid:274.20

Made on behalf of the Applicant

Affidavit: E Fisher

EF-1

Sworn: 19 February 2020

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 2018/0211
IN THE MATTER OF OLINDA STAR LTD (in Provisional Liquidation)

AND

IN THE MATTER OF THE INSOLVENCY ACT, 2003

AND

IN THE MATTER OF SECTION 179A OF THE BVI BUSINESS COMPANIES ACT, 2004

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

AFFIDAVIT OF ELEANOR FISHER

I, Eleanor Fisher, of EY Cayman Ltd. of 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman KY1-1106, Cayman Islands being duly sworn MAKE OATH and SAY as follows:

Executive Summary

1 I was appointed by the Court to act as chairperson of the meeting of the scheme creditors (the "**Scheme Creditors**") of Olinda Star Ltd ("**Olinda**" or the "**Company**") convened pursuant to the Convening Order (as defined below).

2 The meeting of Scheme Creditors with claims amounting in the aggregate to US$504,985,524[1] was attended by 34 proxyholders. No Scheme Creditors attended in person.

3 34 proxies representing claims amounting in the aggregate of US$504,985,524 constituting 100% of the number and 100% by value of all those voting, voted in favour of the Olinda Scheme (as defined below).

4 The Olinda Scheme was approved by 82.99% of all Scheme Creditors of Olinda and therefore it was approved and adopted at the meeting of the Scheme Creditors of Olinda.

Introduction

5 Together with Paul Pretlove of Kalo (BVI) Limited, I am one of the joint provisional liquidators ("**JPLs**") appointed in respect of Olinda.

6 I make this Affidavit in support of the Company's application filed on 13 December 2019 (the "**Application**") with relation to a scheme of arrangement (the "**Olinda Scheme**") in respect of Olinda pursuant to section 179A of the BVI Companies Act, 2004 (as amended) (the "**Act**") in order to effect a restructuring of Olinda's financial debt in the BVI.

7 Details of the Olinda Scheme and reasons behind it were outlined, in detail, in the Fifth Affidavit of Michael Pearson filed on 16 December 2019. As noted above I am, together with Paul Pretlove, one of the BVI Court appointed Joint Provisional Liquidators of Olinda. We were appointed in December 2018 in order to monitor, oversee and assist with the financial restructuring of six BVI companies (of which Olinda was one) (the "**BVI Companies**").

8 As stated in the Fifth Affidavit of Michael Pearson, the BVI Companies (other than Olinda) were restructured in Brazil, in the form of a Brazilian judicial reorganisation (*recuperação judicial*) under Brazilian Federal Law Nº 11.101 of 9 February 2005 (the "**RJ Proceedings**"), before the 1st Business Court of Rio de Janeiro. The RJ Proceedings have been recognised in the United States with respect to certain debtor entities

[1] The total principal amount of the Scheme Creditors of Olinda is US$608,455,375.

(including the BVI Companies but excluding Olinda) pursuant to Chapter 15 of the US Bankruptcy Code. The restructuring of Olinda in the BVI is materially identical, so far as Olinda is concerned, to the terms of the restructuring achieved in the RJ Proceedings.

9 I can confirm that the JPLs had input on the scheme documents on which creditors (as defined below) were invited to vote upon to ensure that they were fair and reasonable. It is for this reason that the JPLs supported the application to call a creditors' meeting so that creditors could vote on the proposed scheme of arrangement.

10 Save as otherwise indicated, the facts and matters deposed to in this Affidavit are derived from my own personal knowledge and from my review of relevant documents and information concerning the Company's operations and its industry as a whole, financial affairs and restructuring initiatives, information obtained from the Company's management team and other professionals and advisors, or my opinion based upon experience and knowledge. Such information is true to the best of my knowledge and belief. Where facts and matters are not within my own knowledge, the source of information is stated and the facts and matters are true to the best of my information and belief.

11 Exhibited to me at the time of swearing this Affidavit and marked "**EF-1**" is a bundle of true copy documents referred to in this Affidavit. Any reference to a page number in this Affidavit is a reference to the corresponding page number in the exhibit EF-1 (save where otherwise stated).

The Convening Order

12 On 20 December 2019, the Honourable Justice Gerard Wallbank [Ag] granted an order (the "**Convening Order**") to convene a meeting of the Scheme Creditors of Olinda for the purposes of considering and, if thought fit, approving with or without modification, the Olinda Scheme.

The Creditors' Meeting

13 Pursuant to the Convening Order, the meeting of the creditors was scheduled for 14 January 2020, at 13:00 (New York time) at the offices of Olinda's US counsel, White & Case of 1221 6th Avenue, New York, 10020, USA (the "**Scheme Meeting**")[2].

14 I was appointed as chairperson of the Scheme Meeting on behalf of the Company[3].

Advertisement of the Scheme Meeting

15 Pursuant to the Convening Order, the Scheme Documents (as defined in the Convening Order) were made available to the Scheme Creditors as follows:

15.1 on 31 December 2019, the Scheme Documents were uploaded by the Company to the Group's website at https://theconstellation.com/enu/s-2005-enu.html[4] and were made publicly available on 7 January 2020[5]; and

15.2 on 2 January 2020, the Scheme Documents were made available through DTC's Legal Notice System[6]. DTC, which stands for The Depository Trust Company is, through its nominee, Cede & Co., the record holder for the notes, meaning that they are named as holder on the physical note. For U.S. dollar denominated notes, DTC is the clearing system for such notes. Outside the United States, Euroclear and Clearstream are similar clearing systems for notes. DTC has an electronic platform where the ultimate beneficial holders of the notes hold a beneficial interest in the note through participant banks. Notices and payments under the indenture are sent to DTC, who then disseminates the notice and allocates the payment to the participants and ultimately to the beneficial holders.

16 I attach a copy of the upload confirmation which details the date that the Scheme of Arrangement documents were uploaded, and therefore made available on the Constellation Group's website. [**EF-1/1-3**]

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[2] Paragraph 1 of the Convening Order.
[3] Paragraph 9 of the Convening Order.
[4] **EF-1/2-3**
[5] **EF-1/47-48**
[6] To the three sets of CUSIPs for the three new secured notes issued on 18 December 2019.

17 Copies of the upload confirmations from DTC, which detail the date that the Scheme Documents were made available on DTC's Legal Notice System, on 2 January 2020, is at **EF-1/4-6**.

18 The notice of the Scheme Meeting and Scheme Documents were also forwarded separately to Milbank and Dechert on 27 December 2019 (who, together, represent approximately 75%[7] in value of the creditors of the Company)[8].

Voting procedure at the Scheme Meeting

19 The voting procedure in respect of the Olinda Scheme allowed for the Scheme Creditors to vote in person or by proxy at the Scheme Meeting. The submission deadline for the Voting and Proxy Forms was 13:00 (New York time) on 13 January 2020. However, in accordance with the Convening Order the Chairperson was provided with a discretion to accept voting and/or proxy forms after this deadline.

20 Any Scheme Creditor on whose behalf a duly completed Voting and Proxy Form was submitted before the deadline (as stated at paragraph 19 above) was still entitled to attend the Scheme Meeting in person.

21 Any Scheme Creditor who wished to be represented in person at the Scheme Meeting (or its proxy) was required to register its attendance at the Scheme Meeting prior to its commencement.

22 Registration commenced at 11am on 14 January 2020. A passport was required as proof of personal identity to attend the Scheme Meeting and, in the case of a corporation, evidence of corporate authority (for example, a valid power of attorney and/or board minutes). Each proxy was required to bring to the Scheme Meeting a copy of the Voting and Proxy Form of the Scheme Creditor having been duly completed authorising him or her to act as proxy on behalf of the Scheme Creditor and evidence of personal identity.

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[7] PIMCO: 23%, Capre: 18%, Moneda: 35%

[8] See emails to Milbank and Dechert [**EF-1/7-8**]

23 Before the Scheme Meeting commenced, I, in my capacity as the chairperson of the Scheme Meeting, received 30 of the Voting and Proxy Forms[9] and no Scheme Creditor attended in person.

Decision to Adjourn the Scheme Meeting

24 On or about 6 January 2020, I was made aware that, the Scheme Documents were not made available through DTC's Legal Notice System until after 5pm on 2 January 2020. This meant that the required 14 days' notice period, as specified at paragraph 2 of the Convening Order was not given to all Scheme Creditors. Given that the Scheme Meeting was convened for 14 January 2020, this did not give the Scheme Creditors the Court ordered notice of at least 14 days.

25 Also, on or about 6 January 2020, it was brought to my attention that Olinda wished to make some amendments to the Scheme Documents[10] to take into account the fact that, in the event that the Olinda Scheme is approved by the Scheme Creditors and later sanctioned by the BVI Court, the Company does not intend to file any order sanctioning the Olinda Scheme with the Registrar of Corporate Affairs in the BVI until such time as it receives a full force and effect order pursuant to Chapter 15 Proceeding in the US Bankruptcy Court. I understand that the reason that Chapter 15 recognition is desirable in the circumstances of this case is because the DTC will require a domestic order, i.e an order from US courts, before it will give effect to the terms of the restructuring approved by the creditors and ordered by the BVI Court.

26 Accordingly amendments were made to the Scheme Documents to reflect a timing clarification in the effective date for the Olinda Scheme and also to clarify the CUSIP numbers contained on the Voting and Proxy forms to provide certainty as to what positions were being voted. A CUSIP number is an identification number for a series of notes and enables the applicable trustee, DTC and holders to easily track such series of notes. To ensure broad distribution, the Scheme Documents were sent to all holders of the notes (i.e., the various series of new notes issued on 18 December 2019), meaning

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[9] Any Voting and Proxy Forms received after the Scheme Meeting finished could not be recorded for the purposes of the initial meeting but were accepted for the Adjourned Scheme Meeting (as defined below).

[10] Amended Scheme Documents were uploaded to the Company's website on 10 January 2020.

that the notices referenced, as addressees, the three sets of CUSIPs for the three new secured notes issued on 18 December 2019, each of which were the recipients of the new escrow position (and included a footnote referencing the CUSIPs of the escrow position for completeness). While holders of notes held both the escrow position and at least one other series of new notes, the Voting and Proxy forms were revised to include the CUSIP numbers only applicable to the escrow position to ensure all parties represented their holdings correctly. As also stated at paragraph 30 below, the revised Scheme Documents and a redline showing the changes were made available to Scheme Creditors on the designated web address and through the DTC on 10 January 2020 and also emailed to Milbank and Dechert on 9 January 2020. A copy of the upload confirmations from DTC, which detail the date on which such documents were made available on DTC's Legal Notice System on 10 January 2020 is at **EF-1/52-54**.

27 A comparison copy of the amended Scheme Documents is at **EF-1/9-46**. This comparison version of the Scheme Documents was also notified to the Scheme Creditors as explained below.

28 In order to comply with the Convening Order in respect of the notice period and also to ensure that the Scheme Creditors had sufficient time to consider the amendments to the Scheme Documents, I took a decision, in my capacity as the chairperson of the Scheme Meeting, to have the Scheme Meeting adjourned.

29 Consequently, on 14 January 2020, the Scheme Meeting was officially opened and adjourned to 6 February 2020 (the "**Adjourned Scheme Meeting**") to ensure that the Scheme Creditors received sufficient notice of the Scheme Meeting and could consider the amendments to the Scheme Documents.

The Notice of the Adjourned Scheme Meeting

30 A notice of the amended Scheme Documents and Adjourned Scheme Meeting was made available to the Scheme Creditors as follows:

30.1 the Scheme Documents (in an amended form) were uploaded by the Company to the Company's website at https://theconstellation.com/enu/s-2005-enu.html on 10 January 2020[11] so that they were available to all Scheme Creditors[12];

30.2 on 15 January 2020, a notice of the Adjourned Scheme Meeting was uploaded to the Company's website at https://theconstellation.com/enu/s-2005-enu.html[13]; and

30.3 on 16 January 2020, the Scheme Documents (in an amended form) were made available through DTC's Legal Notice System[14]. A copy of the upload confirmations from DTC, which detail the date on which such documents were made available on DTC's Legal Notice System is at **EF-1/55-57**.

Voting procedure at the Adjourned Scheme Meeting

31 The voting procedure at the Adjourned Scheme Meeting remained the same as that at the Scheme Meeting described at paragraphs 19 to 22 above. The difference, of course, was that the submission deadline for the Voting and Proxy Forms was 13:00 (New York time) on 5 February 2020 and the registration was due to commence at 11am on 6 February 2020.

32 Before the Adjourned Scheme Meeting commenced, I, in my capacity as the chairperson of the Adjourned Scheme Meeting, received 34 of the Voting and Proxy Forms.

33 Validly completed Voting and Proxy Forms already provided by the Scheme Creditors prior to the adjournment of the Scheme Meeting on 14 January 2020 were retained, and unless I was notified to the contrary, these forms were accepted at and considered valid for the purposes of the Adjourned Scheme Meeting.

34 No Scheme Creditors registered in person at the Adjourned Scheme Meeting.[15]

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[11] **EF-1/2**

[12] The amended Scheme Documents were also forwarded separately to Milbank and Dechert on 9 January 2020 [**EF-1/50-51**]

[13] **EF/1-2**

[14] **EF-1/52-54**

[15] A legal representative of 15 Scheme Creditors was in attendance to observe the Adjourned Scheme Meeting.

Voting at the Adjourned Scheme Meeting

35 The Adjourned Scheme Meeting commenced at 13:00 (New York time) on 6 February 2020.

36 The number[16] of Scheme Creditors present at the Adjourned Scheme Meeting and voting in person or by proxy at the Adjourned Scheme Meeting and the value of their claims were as stated in the first column of the following table, and the votes given by such creditors "for" or "against" the said resolution were as stated in the second and third columns of the following table (**Table A**).

Column 1			Column 2		Column 3	
Present and Voting			For		Against	
How present	Number	Value of Claims **[US$]**	Number	Value of Claims **[US$]**	Number	Value of Claims **[US$]**
In person	0	0	0	0	0	0
By proxy	34	504,985,524	34	504,985,524	0	0
Totals	34	504,985,524	34	504,985,524	0	0

37 As can be seen from Table A above, the Adjourned Scheme Meeting was attended either in person, or by proxy by 34 proxy holders, who represented claims amounting to an aggregate of US$504,985,524 (the "**Proxy Holders**"). The Proxy Holders constituted 100% of the of the number and 100% of all those voting at the Adjourned Scheme Meeting. Therefore, as the total aggregate escrow principal position was US$608,455,375, the level of participation and approval of the Olinda Scheme amounted to 82.99% of all Scheme Creditors.

[16] Authorised representatives of Scheme Creditors may have submitted aggregated Voting and Proxy forms.

38 To confirm, whilst there were 34 Voting and Proxy Forms filed, the authorised representative may have filed the proxies for multiple underlying beneficial owners.

39 The Adjourned Scheme Meeting was conducted in a fair manner allowing all Scheme Creditors to be properly consulted. Furthermore, nothing took place at the Adjourned Scheme Meeting to suggest to me that:

39.1 Scheme Creditors were not fairly represented at the Adjourned Scheme Meeting by those who were present in person or by proxy and voted at the Adjourned Scheme Meeting;

39.2 Scheme Creditors present in person or by proxy and voting at the Adjourned Scheme Meeting did not act in good faith; or

39.3 There was any form of coercion or irregularity in respect of the exercise by the Scheme Creditors (acting by their proxies) of their right to vote at the Adjourned Scheme Meeting.

SWORN on 19 February 2020)
at Road Town Tortola)
before me)

Eleanor Fisher

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM NO. BVIHC (COM) 2018/0211

IN THE MATTER OF OLINDA STAR LTD

AND

IN THE MATTER OF THE INSOLVENCY ACT, 2003

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

AFFIDAVIT OF ELEANOR FISHER

Ogier

Ritter House
Wickham's Cay II
Road Town, Tortola
British Virgin Islands
VG1110
Tel: +1 284 852 7300
Ref: BRL /CARGR 174287.00001
Legal Practitioners for the Applicant

EXHIBIT I

Notice to Creditors

ALL DEPOSITORIES, NOMINEES, BROKERS, AND OTHERS:
PLEASE FACILITATE THE TRANSMISSION OF THIS NOTICE
TO ALL BENEFICIAL OWNERS

NOTICE OF APPROVAL OF OLINDA SCHEME
to the holders of the below listed notes (the "Notes") Issued by
Constellation Oil Services Holding S.A. (the "Company")

SECURITIES*	144A CUSIP / ISIN**	REG S CUSIP / ISIN**
10.00% PIK / Cash Senior Secured Notes due 2024	21038M AA1 / US21038MAA18	L1965H AA8 / USL1965HAA88
10.00% PIK / Cash Senior Secured Third Lien Notes due 2024	21038M AC7 / US21038MAC73	L1965H AC4 / USL1965HAC45
10.00% PIK / Cash Senior Secured Fourth Lien Notes due 2024	21038M AD5 / US21038MAD56	L1965H AD2 / USL1965HAD28

February 6, 2020

Reference is made to those certain indentures, each dated as of December 18, 2019 (as amended, modified and supplemented from time to time, the "Indentures"), by and between the Company, as issuer, the guarantors from time to time party thereto, and Wilmington Trust, National Association, as Trustee. On December 13, 2019, Olinda Star Ltd. (In Provisional Liquidation) ("Olinda"), a subsidiary of the Company, filed an application in respect of a scheme of arrangement (the "Scheme") in the Eastern Caribbean Supreme Court in the High Court of Justice of the Virgin Islands, Commercial Division (the "BVI Court") under claim number BVIHC (COM) 211 of 2018.

As previously notified to scheme creditors, on December 20, 2019, the BVI Court entered an order (the "Convening Directions Order") ordering, *inter alia*, that Olinda may convene a meeting (the "Scheme Meeting") of its scheme creditors (which are holders of the escrow position identified by CUSIP Nos. 747ESCAA9 and L78ESCAA5). Following an adjournment of the Scheme Meeting which was previously notified to scheme creditors on January 15, 2020, the Scheme Meeting was held on February 6, 2020 at 1:00 p.m. (New York time) at the offices of White & Case LLP, 1221 6th Avenue, New York, New York 10020. At the Scheme Meeting, 100% of the scheme creditors present or voting by proxy voted to approve the Scheme. A hearing (the "Sanction Hearing") is scheduled to be held on February 25, 2020 before the BVI Court at which Olinda will request that the BVI Court "sanction" (i.e. approve) the Scheme. Any interested person may appear at the Sanction Hearing.

To the extent you have any questions please contact Eleanor Fisher, in her capacity as Scheme administrator, and Cassandra Ronaldson by email at eleanor.fisher@ky.ey.com and cronaldson@kaloadvisors.com (please reference "Olinda Scheme" in the subject line).

CONSTELLATION OIL SERVICES HOLDING S.A

* Including the Escrow Position relating to the Company's 9.00% Cash / 0.50% PIK Senior Secured Notes due 2024 (CUSIP Nos. 747ESCAA9 / L78ESCAA5).

** The CUSIP/ISIN numbers appearing herein are included solely for the convenience of the Holders. Neither the Trustee nor the Company are responsible for the selection or use of CUSIP/ISIN numbers, or for the accuracy or correctness of CUSIP/ISIN numbers printed on any Notes or as indicated in this notice.

EXHIBIT J

BVI Sanction Order

Case Number :BVIHCOM2018/0211

FILED
HIGH COURT
TERRITORY OF
THE VIRGIN ISLANDS

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS

COMMERCIAL DIVISION

Claim No. BVIHC (COM) 2018/0211

Submitted Date:25/02/2020 15:18

Filed Date:25/02/2020 15:18

Fees Paid:72.59

IN THE MATTER OF OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION)
AND IN THE MATTER OF SECTION 179A OF T HE BVI BUSINESS COMPANIES ACT, 2004

OLINDA STAR LTD

(IN PROVISIONAL LIQUIDATION)

Applicant

SANCTION ORDER

BEFORE: The Honourable Justice Gerhard Wallbank (Ag)

DATED: 25 February 2020

ENTERED: 26 February 2020

UPON THE APPLICATION OF OLINDA STAR LTD. (the "**Scheme Company**") by Ordinary Application dated 13 December 2019 (the "**Application**")

AND UPON reading the First Affidavit of Michael Pearson filed on 7 December 2018, the Sixth Affidavit of Michael Pearson dated 19 February 2020, the Affidavit of Eleanor Fisher dated 19 February 2020 and the Affidavit of Oliver Green filed on 25 February 2020

AND UPON hearing Grant Carroll and Rebecca Clark, the legal practitioners for the Applicant

AND UPON the Court having granted an order, dated 20 December 2019, convening the meeting of the creditors of the Scheme Company (the "**Scheme Creditors**") and appointing Eleanor Fisher to act as the Scheme Company's foreign representative in respect of any

proceedings under chapter 15 of the U.S. Bankruptcy Code and any other recognition proceedings

AND UPON noting that the meeting of the Scheme Creditors took place on 6 February 2020 at which the majority in number representing 75% in value of the Scheme Creditors voted in favour of a scheme of arrangement annexed hereto at Appendix 1 of this Order (the "**Olinda Scheme**") in respect of the Scheme Company

AND UPON the Court being satisfied that it has jurisdiction in relation to the Olinda Scheme on the basis that the Scheme Company is a "company" within section 179A of the BVI Business Companies Act 2004

IT IS ORDERED THAT:

1. The Olinda Scheme as attached and exhibited at Appendix 1 be sanctioned by the Court under section 179A of the BVI Business Companies Act, 2004.

BY THE REGISTRAR (Ag. Dep.)

APPENDIX 1

THE SCHEME

BVI SCHEME OF ARRANGEMENT

PURSUANT TO

SECTION 179A OF THE BVI BUSINESS COMPANIES ACT, 2004

- PROPOSED BY -

OLINDA STAR LTD (IN PROVISIONAL LIQUIDATION)

- TO THE -

SCHEME CREDITORS

BACKGROUND

Olinda Star Ltd (In Provisional Liquidation) (the "**Company**" or "**Olinda**") is a BVI business company incorporated and existing under the BVI Business Companies Act, 2004 (as amended) (the "**Act**").

The Company is an asset holding company whose assets include a drilling rig. It is part of a group of companies (the "**Group**") engaged in a global oil and gas enterprise and is a wholly-owned indirect subsidiary of Constellation Oil Services Holding S.A. (the "**Parent**").

The Parent and several of its subsidiaries (the "**RJ Debtors**") elected to commence a centralised restructuring in Brazil through a judicially supervised Brazilian *recuperação judicial*, which began on 6 December 2018 under Brazilian Federal Law No 11.101 of February 9, 2005 (the "**RJ**") before the 1st Business Court of Rio de Janerio (the "**Brazilian RJ Court**"). The comprehensive plan of reorganisation of the RJ Debtors (the "**RJ Plan**") has been agreed and was approved at a creditors meeting (which included the Scheme Creditors, as defined below) on 28 June 2019 and the Brazilian RJ Court confirmed the RJ Plan on 1 July 2019. The RJ Plan has also been recognised by the US Bankruptcy Court by way of a full force and effect order granted on 5 December 2019 in the Chapter 15 proceedings.

Although originally proposed as a party to the RJ Plan, Olinda was excluded by the RJ Court of Appeals in a decision that is currently being appealed by the RJ Debtors and can be reversed by the Superior Court of Justice in Brazil (the "**Special Appeal**"). The Special Appeal has been admitted to be ruled by the Superior Court of Justice.

As part of the RJ Plan, the Scheme Creditors have agreed to extinguish the Existing 2024 Notes (as defined below) and release certain RJ Debtors from their existing guarantees of the Existing 2024 Notes in exchange for the issuance of the New 2024 Notes (as defined below) and guarantees of the New 2024 Notes by the RJ Debtors.

On or about 18 December 2019, the date of the RJ Closing, whereby the relevant restructuring transactions were implemented pursuant to the proceedings confirmed by the Brazilian RJ Court and the RJ Plan became effective and consummated according to its terms (the "**RJ Closing Date**"), each holder of the Existing 2024 Notes received (i) an escrow position in its DTC account corresponding to the principal amount of Existing 2024 Notes held by such holder immediately prior to the RJ Closing Date (the "**Escrow Position**") or (ii) such other proof memorializing its claim to the Company's accelerated guarantee of the Existing 2024 Notes as was mutually agreed by the Company and the Scheme Creditors. In either case, any such escrow position or claim shall be permitted to be transferred via DTC on and after the RJ Closing Date and such escrow position or claim shall, to the extent possible after taking commercially reasonable efforts, have a separate CUSIP.

By Order of the BVI Court dated 19 December 2018 (the "**JPL Appointment Order**"), Ms. Eleanor Fisher and Mr. Paul Pretlove were appointed to the Company as Joint Provisional Liquidators (the "**JPLs**"). The JPL Appointment Order authorised the JPLs to enter into an Insolvency Protocol dated 21 December 2018, which, to the extent permitted by law, governs the relationship between the JPLs and Olinda (the "**2018 Insolvency Protocol**").

On 25 July 2019, the BVI Court granted an Order to replace the 2018 Insolvency Protocol with a new insolvency protocol granting the JPLs the capacity to pursue a BVI restructuring by way of inter alia a scheme of arrangement (the "**2019 Insolvency Protocol**", which is annexed hereto as Schedule 6). This was because, as noted in the 2019 Insolvency Protocol, the Rio de Janeiro Court of Appeals had determined that Company should be excluded from the Brazilian RJ Proceeding for lack of jurisdiction.

Although the Company was originally proposed as an RJ Debtor, as noted above, it was ultimately removed as an RJ Debtor on appeal on grounds that the Brazilian RJ Court lacked jurisdiction to restructure the Company's debt obligations. However, it is now proposed that the Company restructure its debt obligations by way of a scheme of arrangement pursuant to Section 179A of the Act on terms that mirror those approved for the RJ Debtors in relation to the Existing 2024 Notes in the RJ Plan. The basis and the terms of the restructuring of the debt obligations of the Company to be made pursuant to this Scheme (as defined below) have been set out in a term sheet (the "**Olinda Term Sheet**") previously approved by certain of the Scheme Creditors, a copy of which is attached at Schedule 5. Whilst the Olinda Term Sheet was originally approved for a plan of arrangement, the commercial terms remain the same for a scheme of arrangement.

The filing of the Scheme in the BVI is not in any way intended to prejudice, curtail, impair or otherwise affect the RJ Debtors' rights, claims, defences, objections, appeals and remedies, present or future, in relation to the RJ Plan or and to pursue the re-entry of Olinda in the RJ Plan. For the avoidance of doubt, the Scheme is filed without prejudice to the Special Appeal, as defined below, filed by the RJ Debtors in the relation to proceedings in relation to the RJ Plan.

IMPORTANT NOTICE TO SCHEME CREDITORS

This document (the "**Scheme**") sets out the terms of the proposed scheme of arrangement for the Scheme Creditors (as defined below). It is being sent to persons whom the Company believes to be a Scheme Creditor as at the Record Time. If you have assigned, sold, or otherwise transferred, or assign, sell or otherwise transfer, your interests as a Scheme Creditor before the Record Time, you must immediately forward this Scheme and the accompanying documents to the person or persons to whom you have assigned, sold or otherwise transferred, or assign, sell or otherwise transfer, your interests as a Scheme Creditor.

This Scheme is provided in order to and is intended to mirror the terms of the RJ Plan as set out in the Olinda Term Sheet. A copy of the RJ Plan is attached to this Scheme at Schedule 4. The RJ Plan sets out the further background and information on the Group and may contain forward looking-statements. These forward looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward looking statements often use words such as "anticipate", "target", "expect", "estimate", "intend", "plan", "goal", "believe", based on numerous assumptions and assessments at the time of the RJ Plan by the Issuer, in consultation with professional advisors, on historical trends, current conditions, expected future developments and other factors which such advisors believe appropriate. By their nature, forward looking statements involve risk and uncertainty, and the factors described in the context of such forward looking statements in the Scheme and the RJ Plan could cause actual results and developments to differ materially from those expressed in or otherwise implied by such forward looking statements.

Should one or more of these risks or uncertainties materialise or should underlying assumptions prove incorrect, actual results may vary materially from those described herein. None of the Issuer or the Company assumes any obligation to update or correct or revise any forward looking statements contained in this Scheme or the RJ Plan to reflect any change of expectations with respect thereto or any change in event, situation or circumstances on which any such forward looking statement was based on actual results, and each such person expressly disclaims any intention or obligation to take any such action.

WARNING: While this Scheme will be considered by the BVI Court in the British Virgin Islands and the Scheme will not become effective unless sanctioned by the BVI Court, the contents of this Scheme have not been reviewed by any regulatory authority in the British Virgin Islands, in the United States or in any

other jurisdiction. Neither the SEC nor any other governmental body has approved or disapproved of the Scheme or determined if this Scheme is truthful or complete. Any representation to the contrary is a criminal offence.

Please note, this Scheme is not intended to be and should not be construed as investment, accounting, financial, legal or tax advice by or on behalf of the Company, or its directors, officers, agents, attorneys or employees. You are recommended to seek your own independent financial, credit, accounting, legal and/or tax advice immediately from your financial, legal and/or tax advisers regarding the Scheme, the contents of this Scheme, and what action you should take (or refrain from taking).

This Scheme is accompanied by a number of documents, including voting instructions and a proxy form (as set out in the "Voting and Proxy Form" further defined below). It is important that you read this Scheme carefully for information about the Scheme and the overall restructuring of the Group envisioned by the RJ Plan and Olinda Term Sheet and that you complete and return the proxy form in accordance with the instructions therein.

Scheme Content

Nothing in the Scheme or any other document issued with or appended to it should be relied on for any purpose other than to make a decision with respect to the Scheme of Arrangement. In particular and without limitation, nothing in this Scheme or any other document issued with or appended to it should be relied on in connection with the purchase of any bonds, notes or assets of the Issuer. This Scheme has been prepared in connection with the proposal in relation to a scheme of arrangement under Section 179A of the Act by the Company to the Scheme Creditors.

The information contained in this Scheme has been prepared based upon information available to the Company as at the date of this Scheme. The Company has taken all reasonable steps to ensure that this Scheme contains the information reasonably necessary to enable the Scheme Creditors to make an informed decision about the effect of the Scheme on them.

Nothing contained in this Scheme shall be deemed to be a forecast, projection or estimate of the Issuer's future financial performance except where otherwise specifically stated.

Any summary of the principal provisions of the Scheme of Arrangement contained in the Scheme is qualified in its entirety by reference to the RJ Plan itself and the Olinda Term Sheet. Each Scheme Creditor is advised to read and consider carefully the text of the Scheme, the Olinda Term Sheet and the RJ Plan and in the event of a conflict between the information and terms described in the Scheme and the RJ Plan or Olinda Term Sheet, the terms of the Olinda Term Sheet shall prevail.

Further copies of this Scheme can be obtained by contacting:

Eleanor Fisher, in her capacity as joint provisional liquidator of the Company at EY Cayman Ltd., 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman, KY1-1106, Cayman Islands or by telephone to +1 345 949 8444 or by email to eleanor.fisher@ky.ey.com (please reference "Olinda Scheme" in the subject line).

1. **DEFINITIONS**

1.1 In this Scheme, unless inconsistent with the subject or context, the following words shall have the following meanings:

2018 Insolvency Protocol	has the meaning set out in the Background;
2019 Insolvency Protocol	has the meaning set out in the Background;
Act	has the meaning set out in the Background;
Admitted Liability	means the amount of any debt (including judgment debt) or any other contractual liability (including any interest and principal amounts) agreed between the Company and each Scheme Creditor as being due beneficially to that Scheme Creditor from the Company at the RJ Closing Date, whereas: (i) "debt" or "liability" does not include a debt or liability which would be statute barred on the RJ Closing Date under BVI law or the laws of any other jurisdiction which applies to it; and (ii) for the avoidance of doubt the expression Admitted Liability does not include a Scheme Expense;
Banco Bradesco	means Banco Bradesco S.A., Grand Cayman Branch
Book Entry Interest	means a beneficial interest in a Global Note (as defined in the Existing 2024 Notes Indenture) by or through a Participant (as defined in the Existing 2024 Notes Indenture);
Bradesco L/C Agreements	means the amended and restated reimbursement agreement to be dated the RJ Closing Date (as amended, supplemented or otherwise modified from time to time) between Constellation Overseas Ltd and Banco Bradesco relating to a letter of credit by Banco Bradesco by order and for the account of Constellation Overseas Ltd on behalf of Laguna Star Ltd., in the amount of U.S.$24,000,000.00 and the amended and restated reimbursement agreement to be dated the RJ Closing Date (as amended, supplemented or otherwise modified from time to time) between Constellation Overseas Ltd and Banco Bradesco relating to a letter of credit by Banco Bradesco by order and for the account of Constellation Overseas Ltd on behalf of Brava Star Ltd., in the amount of U.S.$6,200,000.00.

Brazilian RJ Court	has the meaning set out in the Background;
Business Day	means any day other than Saturday, Sunday or a public holiday on which banks are open in the BVI, New York and Brazil for general banking business or such other place where the payments pursuant to the terms of this Scheme are to be received by the Scheme Creditors;
BVI	has the meaning set out in the Background;
BVI Court	means the Eastern Caribbean Supreme Court in the BVI;
Company or **Olinda**	has the meaning set out in the Background;
Court Convened Meeting	means a meeting of the Scheme Creditors of the Company or any other meeting of the Company convened with the leave of the BVI Court in exercise of its powers pursuant to Section 179A of the Act including to consider and, if thought fit, to approve this Scheme;
Director	means Michael Pearson;
Dispute Resolution Procedure	means the procedure for the resolution of disputes set out in Clause 20 of this Scheme;
Effective Date	means the date on which an office copy of the Sanctioning Order shall be filed with the Registrar of Corporate Affairs in the BVI pursuant to section 179A(4) of the Act;
Existing 2024 Notes Guarantee	means the obligations of the Company under the Existing 2024 Notes;
Existing 2024 Notes	means the notes issued to each of the Scheme Creditors pursuant to Existing 2024 Notes Indenture;
Existing 2024 Notes Indenture	means that certain indenture dated July 27, 2017 (as amended, restated, supplemented or otherwise modified), with Wilmington Trust, National Association serving as trustee, paying agent, transfer agent and registrar, in respect of the Existing 2024 Notes and pursuant to which the Company is a guarantor;
Existing 2024 Notes Security	means the collateral granted by the Company to secure its Existing 2024 Note Guarantees;
Group	has the meaning set out in the Background;
Issuer	means Constellation Oil Services Holding S.A., a public limited liability company (*société anonyme*) incorporated under the laws of the Grand Duchy of Luxembourg and registered with the Luxembourg Trade and Companies' Register under number B163424;
JPL Appointment Order	has the meaning set out in the Background;

JPLs	has the meaning set out in the Background;
Liability	means any debt or liability to which the Company is subject as at the RJ Closing Date arising as a result of it being a guarantor under the Existing 2024 Notes. In relation to the above for any Liability: (i) 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; (ii) "liability" includes (subject to (i) above) a liability to pay money or money's worth, including any liability under any enactment, any liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution; (iii) in determining whether any liability in tort is a liability, 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; (iv) "debt" or "liability" does not include a debt or liability which would be statute barred at the RJ Closing Date under the BVI law or the laws of any other jurisdiction which applies to it; and (v) for the avoidance of doubt the expression Liability does not include a Scheme Expense;
Liquidation Event	means the making of an order for the winding up of or the passing of any resolution for the winding up of the Company under the Act or the BVI Insolvency Act, 2003 (as the case may be) or the taking in relation to the Company of any analogous step or analogous proceedings in any jurisdiction to which it is subject;
New 2024 Notes	means the notes issued pursuant to the terms of the relevant Participating Notes Indenture, the notes issued pursuant to the Stub Notes Indenture and the notes issued pursuant to the terms of the Non-Participating Notes Indenture;
New 2024 Notes Guarantees	means the obligations the Company will owe then or in the future under the New 2024 Notes when it accedes to the Participating Notes Indenture, the Stub Notes Indenture and the Non-Participating Notes Indenture;

New 2024 Notes Security	means the security provided pursuant to the relevant documents listed at Schedule 1, which will consist of and be substantially consistent with the terms of the Existing 2024 Notes Security;
Non-Participating Notes Indenture	means an indenture to be dated the RJ Closing Date (as may be amended, amended and restated, supplemented, extended, restated or otherwise modified from time to time) among the Issuer, the guarantors from time to time party thereto, and the Trustee, pursuant to which the Issuer will issue its 10.00% PIK / Cash Senior Secured Fourth Lien Notes due 2024;
Noteholder	means a person with a Book Entry Interest in the Existing 2024 Notes at the Record Time;
Notes Registered Holder Nominee	means Cede & Co., as nominee for the Notes Registered Holder;
Notes Registered Holder or **DTC**	means the Depository Trust Company;
Olinda Scheme Outside Date	means 31 March 2020;
Olinda Term Sheet	has the meaning set out in the Background;
Order	means any order made by the BVI Court or any other court in any other relevant jurisdiction, including an order to stay any Proceedings;
Parent	has the meaning set out in the Recitals;
Participating Notes Indenture	means an indenture to be dated the RJ Closing Date (as may be amended, amended and restated, supplemented, extended, restated or otherwise modified from time to time) among the Issuer, the guarantors from time to time party thereto, and the Trustee, transfer agent, paying agent and registrar, pursuant to which the Issuer will issue 10.00% PIK / Cash Senior Secured Notes due 2024, comprised of a 10.00% PIK / Cash Senior Secured First Lien Tranche, 10.00% PIK / Cash Senior Secured Second Lien Tranche and 10.00% PIK / Cash Senior Secured Third Lien Tranche on the terms and conditions therein set out;
Post	means airmail or a generally recognised commercial courier service;
Proceedings	means any form of proceedings in any jurisdiction or forum, including without limitation, any demand, legal proceedings, arbitration, alternative dispute resolution,

	adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or any step taken for the purpose of creating or enforcing a lien;
Record Time	means 17:00 (New York time) on 10 January 2020.
RJ	has the meaning set out in the Background;
RJ Closing Date	has the meaning set out in the Background;
RJ Debtors	has the meaning set out in the Background;
RJ Plan	has the meaning set out in the Background and is as attached at Schedule 4 to this Scheme;
Sanctioning Order	has the meaning set out in Clause 3.1(b);
Scheme	means this scheme of arrangement together with any modification of or addition to it which is approved or imposed by the BVI Court or the Scheme Creditors;
Scheme Administrator	means Eleanor Fisher in her capacity as JPL;
Scheme Creditor	means: (i) the Trustee; (ii) the Notes Registered Holder, as the registered holder of the Global Notes (as defined in the Existing 2024 Notes Indenture) or the Escrow Position; (iii) the Notes Registered Holder Nominee, as nominee for the Notes Registered Holder; and (iv) the Noteholders, as contingent creditors and/or in respect of all and any claims or rights they or each have pursuant to the Existing 2024 Notes Indenture;
Scheme Implementation Documents	means: (a) the New 2024 Notes Security (and any accession instrument thereto); (b) each of: the Participating Notes Indenture (and any accession instrument thereto to be executed by the Company); the Non-Participating Notes Indenture (and any accession instrument thereto to be executed by the Company), the Stub Notes Indenture (and any accession instrument thereto); and the Working Capital Facility (and any accession instrument thereto), the Bradesco L/C Agreements (and any accession instrument thereto); and

	(c) those other documents listed at Schedule 2, (copies or draft copies of the items at (a) to (c) above will be appended to notice convening the Court Convened Meeting); and (d) any other agreement or instrument contemplated or permitted by, or ancillary to, any of the foregoing;
Scheme Meeting	means any meeting of the Scheme Creditors (other than a Court Convened Meeting) convened in accordance with the terms of the Scheme;
Scheme Terms	means the terms upon which the Admitted Liabilities will be satisfied as set out in this Scheme;
Stub Notes Indenture	means an indenture to be dated the RJ Closing Date (as may be amended, amended and restated, supplemented, extended, restated or otherwise modified from time to time) among the Issuer, the guarantors from time to time party thereto, and the Trustee, the Issuer will issue 10.00% PIK / Cash Senior Secured Third Lien Notes due 2024 on the terms and conditions therein set out;
Trustee	means Wilmington Trust, National Association;
US Dollars or **US$** or **USD**	means the lawful currency of the United States of America;
Voting and Proxy Form	means the documents entitled "Voting and Proxy Form" as set out in Schedule 3 of this Scheme; and
Working Capital Facility	means collectively, (x) the Credit Agreement, to be dated the RJ Closing Date, among Constellation Overseas, as borrower, the guarantors from time to time party thereto, the lenders party thereto, and Banco Bradesco, and (y) the Amended and Restated Credit Agreement, to be dated the RJ Closing Date, among Constellation Overseas, as borrower, the guarantors from time to time party thereto, the lenders party thereto, and Banco Bradesco, in each case, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any one or more agreements or indentures extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or altering the maturity thereof.

1.2 In this Scheme (and unless the context otherwise requires):

(a) references to clauses are references to clauses of this Scheme and references to pages and Schedules are references to pages and Schedules of this Scheme;

(b) references to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any state or agency thereof;

(c) references to the date of a document, form, notice or report mean the date shown on such document, form, notice or report as its date;

(d) the singular includes the plural, the masculine, the feminine and vice versa;

(e) headings are given for ease of reference only and shall not affect the interpretation of this Scheme;

(f) references to any statute or statutory provision include the same as amended, re-enacted or consolidated; and

(g) the event of a conflict or inconsistency between the terms of any of the Participating Notes Indenture, the Stub Notes Indenture and the Non-Participating Notes Indenture and this Scheme, the terms and definitions of this Scheme shall prevail.

2. RELEASE OF EXISTING 2024 NOTES AND ISSUANCE OF THE NEW 2024 NOTES

2.1 On the Effective Date:

(a) the Company will be released from the Existing 2024 Notes Guarantee and all other obligations under the Existing 2024 Notes Indenture and the Existing 2024 Notes will be terminated;

(b) the Company will accede to the Participating Notes Indenture, the Stub Notes Indenture and the Non-Participating Notes Indenture in accordance with the terms set out therein and become a guarantor under the New 2024 Notes pursuant to the New 2024 Notes Guarantee. The New 2024 Notes Guarantee will be secured by the New 2024 Notes Security;

(c) all of the security over the assets granted by the Company and over the shares in the Company in relation to the Existing 2024 Notes will be released by the Scheme Creditors and the New 2024 Notes Security will be granted over the assets and shares of the Company in accordance with the New 2024 Notes; and

(d) the Company agrees that it will guarantee the obligations under the Working Capital Facility and the Bradesco L/C Agreements, which guarantee shall be secured by the New 2024 Notes Security in accordance with the priorities provided in the New 2024 Notes and the intercreditor agreement to be dated the RJ Closing Date between, among others, Constellation Overseas Ltd and the Trustee (the "**Bradesco Guarantee and Security**").

2.2 It is noted that Banco Bradesco is not a Scheme Creditor for the purpose of the Scheme and therefore not entitled to vote at the Court Convened Meeting.

2.3 Following the completion of the matters set out in Clauses 2.1, all of the Scheme Creditors will remain creditors of the Company, but in accepting or having accepted the New 2024 Notes in exchange for the Existing 2024 Notes, the Scheme Creditors will have received notes on substantially the same terms as the Existing 2024 Notes but with certain modifications, including an enhanced collateral package.

2.4 The matters set out in Clause 2.1 will be implemented by, *inter alia*, the execution and carrying out of the Scheme Implementation Documents, and from the Effective Date and notwithstanding any term of any relevant document, the Company and each Scheme Creditor shall be obliged to enter into and execute each Scheme Implementation Document (and those other documents referred to at Clauses 2.4(b)(ii) to (iii) below) to which it is a party at the Effective Date, and:

(a) the Company shall enter into those Scheme Implementation Documents, and any other documents referred to at clauses 2.4(b)(ii) to (iii), to which the Company is a party; and

(b) in the event of any delay in execution by a Scheme Creditor, each Scheme Creditor hereby irrevocably authorises, appoints and instructs the Scheme Administrator as its true and lawful agent and attorney (and as agent and attorney of any person to whom a Scheme Creditor has assigned or transferred any claim or right) to, for and on behalf of each Scheme Creditor:

(i) enter into, execute and deliver (whether as a deed or otherwise) any of the Scheme Implementation Documents to which is it expressed to be a party;

(ii) enter into, execute and deliver (whether as a deed or otherwise) for and on behalf of each Scheme Creditor, any document, notice or instruction as may be necessary or appropriate to give effect to the instruction to any person in respect of the entry into, implementation or carrying out of the Scheme Implementation Documents; and

(iii) enter into, execute and deliver (whether as a deed or otherwise) any other document and give any other notice, confirmation, consent, order, instruction or direction as may be reasonably necessary or appropriate in the discretion of the Company (acting reasonably) to release and/or otherwise give effect to the Scheme and/or the Scheme Implementation Documents, provided in each case that any such document (i) is consistent with the Olinda Term Sheet and/or the RJ Plan and (ii) would not materially, adversely or disproportionately affect the rights of any Scheme Creditor in any manner that is not otherwise contemplated by the Scheme, the Scheme Implementation Documents, the Olinda Term Sheet or the RL Plan,

provided that the documents referred to above will only become effective in accordance with their respective terms, whereupon they shall be binding on all Scheme Creditors and each of the other parties thereto.

3. EFFECTIVE DATE AND CONDITIONALITY

3.1 This Scheme shall come into operation on the Effective Date if:

(a) it is approved by the Scheme Creditors in accordance with Clause 3.2;

(b) it has been sanctioned by an order of the BVI Court (the "**Sanctioning Order**"); and

(c) the Sanctioning Order is filed with the Registrar of Corporate Affairs in the BVI pursuant to Section 179(A)4 of the Act.

3.2 This Scheme shall be approved by the Scheme Creditors if it is approved at a Court Convened Meeting by a majority in number representing 75% in value of the Scheme Creditors or class of the Scheme Creditors present and voting either in person or by proxy, as prescribed by Section 179A(3) of the Act.

3.3 It is noted that the Company does not intend to file the Sanctioning Order with the Registrar of Corporate Affairs in the BVI until such time as it receives a full force and effect order as part of the Chapter 15 Proceeding referred to at Clause 7.

4. PURPOSE AND APPLICATION OF THIS SCHEME

4.1 The purpose of this Scheme is to restructure the debts of the Company so that they mirror the debt restructuring of the RJ Debtors in the RJ Plan in an efficient and timely manner in order to secure a better return for the Company's creditors than they would otherwise receive in the liquidation of the Company.

4.2 This Scheme shall only apply to the Admitted Liabilities.

5. ENFORCEMENT OF LIABILITIES

5.1 Each Scheme Creditor is deemed to acknowledge that the process of establishing the Scheme Creditors' debt restructuring by exchanging the Existing 2024 Notes and obligations thereunder with the New 2024 Notes Guarantee and the New 2024 Notes Security pursuant to the terms of this Scheme, and consequently, the Admitted Liabilities, is fair and that, if it is approved by the requisite majorities of the Scheme Creditors and sanctioned by the BVI Court, the Company and all of the Scheme Creditors shall be bound by it.

5.2 Save as expressly provided for in this Scheme, no Scheme Creditor shall be entitled to take or continue any step or do or continue any act against or in respect of the Existing 2024 Notes, the New 2024 Notes, the Company or the Scheme Administrator after the Effective Date, for the purpose of obtaining payment, or establishing the quantum of any Liability from the Existing 2024 Notes or the Company.

6. SCHEME EXPENSES

6.1 The Company and each of the Scheme Creditors shall take all such steps as may be necessary to effect the terms set out in Clause 2 on the Effective Date.

6.2 All costs, charges and expenses of and incidental to the preparation, administration and implementation of this Scheme and the performance by the Scheme Administrator of their functions shall be Scheme Expenses, including, without prejudice to the generality of the foregoing:

(a) the cost of remunerating the Scheme Administrator in connection with the exercise and performance of the powers, duties and functions of the Scheme Administrator and JPL under this Scheme on a full indemnity basis;

(b) all liabilities, expenses, costs and disbursements incurred by the Company and the Scheme Administrator in the course of the exercise or performance of their respective powers, duties and functions under, or for the purpose of implementing, this Scheme on a full indemnity basis;

(c) all costs, charges and expenses incurred by the Company and the Scheme Administrator in connection with the negotiation and preparation of this Scheme (including, but not limited to, all legal, accounting, financial and other consultants' fees, expenses and other costs) on a full indemnity basis;

(d) any court and filing fees incurred in relation to this Scheme on a full indemnity basis;

(e) the costs of holding any Court Convened Meeting and any meetings of shareholders or directors of the Company convened to consider this Scheme and the costs of obtaining the sanction of the BVI Court and filing of the Sanctioning Order with the Registrar of Corporate Affairs in the British Virgin Islands on a full indemnity basis;

(f) the costs incurred in employing agents and professional advisers to advise or assist the Scheme Administrator and their staff in connection with the exercise and performance of their powers, duties and functions as Scheme Administrator on a full indemnity basis;

(g) the costs of summoning meetings of the Scheme Creditors in accordance with this Scheme or the Act and any costs of preparing advertising and sending out any notices or reports to be given by or to the Scheme Creditors or any other person under this Scheme or the Act and, at the discretion of the Scheme Administrator, on a case by case basis; and

(h) all taxes, duties, administrative, licence, listing, audit, filing, registration, directors' and other fees, costs and expenses incurred by this Scheme Administrator on behalf of the Company in connection with this Scheme on a full indemnity basis,

6.3 All costs, fees, charges, filing fees, expenses or any other disbursements of and incidental to the joint provisional liquidation of Olinda by either the JPLs or their advisors (the "**JPL Costs**") shall be irrevocably ratified and approved by Olinda and the creditors upon an affirmative vote on this Scheme of Arrangement.

6.4 In the event that there is any dispute in relation to the Scheme Expenses or JPL Costs, they will be remitted to the BVI Court for assessment.

7. RECOGNITION IN US CHAPTER 15 PROCEEDINGS

7.1 The Scheme Administrator may, if appropriate, as Foreign Representative for the purposes of the US Bankruptcy Code, apply to the US Bankruptcy Courts to have the Scheme recognized in Chapter 15 Proceedings and a full force and effect order obtained.

7.2 The Scheme Creditors agree not to oppose any relief sought in the US pursuant to Clause 7.1.

8. SCHEME CREDITORS' AND THE COMPANY OBLIGATIONS

8.1 Each Scheme Creditor is to follow the debt restructuring in the terms of the RJ Plan and as if the Company was a party to the RJ Plan in each case in the manner set out in the Olinda Term Sheet.

8.2 The Company is to complete its debt restructuring as set out in the Scheme in a way that mirrors the RJ Plan and as if the Company were an RJ Debtor in each case in the manner set out in the Olinda Term Sheet.

9. THE SCHEME ADMINISTRATOR

9.1 Eleanor Fisher in her capacity as a court appointed joint provisional liquidator pursuant to the 2019 Insolvency Protocol (a copy of which is attached at Schedule 6) shall act as Scheme Administrator in order to progress the terms of the Scheme.

9.2 The Scheme Administrator shall, subject to the provisions of this Scheme, have all the powers necessary to implement this Scheme and the Scheme Terms, and do all such other things as may be required for the proper implementation and management of this Scheme from time to time.

9.3 Nothing in this Scheme shall render the Scheme Administrator liable for any Liabilities or obligations of the Company.

9.4 The Scheme Administrator or any of them may resign their appointment at any time if they terminate their appoint as JPL with the BVI Court.

9.5 The office of a Scheme Administrator shall be vacated if the Scheme Administrator:

(a) dies;

(b) is convicted of an indictable offence;

(c) resigns office by notice in accordance with Clause 9.4;

(d) becomes bankrupt;

(e) becomes disqualified from acting as JPL; or

(f) is admitted to hospital because of mental health or becomes the subject of an order made by any court having jurisdiction whether in BVI or elsewhere in matters concerning his mental health.

9.6 If the office of the Scheme Administrator is vacated in accordance with Clause 9.5 above the Company shall be entitled to appoint replacement Scheme Administrator provided that any such new appointment is consented to in writing by a majority in value of Scheme Creditors.

10. SPECIFIC POWERS AND OBLIGATIONS OF THE SCHEME ADMINISTRATOR

10.1 In carrying out their duties and functions under this Scheme, the Scheme Administrator shall (without prejudice to the full terms of this Scheme) be empowered:

(a) to have full access to all such information as they may from time to time require in relation to the affairs of the Company or the operation of this Scheme and to all books, papers, documents and other information contained or represented in any format whatsoever in the possession or under the control of the Company. Such information, books, papers and documents may be disclosed by the Scheme Administrator to the Scheme Creditors if they consider such disclosure would assist the implementation of this Scheme in accordance with its terms;

(b) to employ and remunerate, as a Scheme Expense, accountants, actuaries, lawyers and other professional advisers or agents in connection with this Scheme;

(c) to petition the courts in any jurisdiction to obtain recognition or enforcement of this Scheme or to bring, commence or defend any Proceedings in the name of and, insofar as is permitted by law, on behalf of the Company in any matter affecting the Company in any jurisdiction, or to prevent the continuation or commencement of any Proceedings against the Company or its Property;

(d) to apply to the BVI Court for directions in relation to any particular matter arising under, or in the course of the operation of this Scheme;

(e) to do all acts and to execute in the name and, insofar as permitted by law, on behalf of the Company any deed, transfer, instrument, cheque, bill of exchange, receipt or other document which may be necessary for or incidental to the full and proper implementation of this Scheme;

(f) to procure the presentation of a petition for the liquidation of the Company or to request the directors and shareholders of the Company to resolve to liquidate the Company;

(g) to propose, where they consider it to be in the interests of the Company in relation to a defined class of creditor or member, a further scheme of arrangement under Section 179A of the Act. In the event such a scheme of arrangement as is referred to in this clause is proposed, the Scheme Administrator shall, subject to the jurisdiction of the BVI Court, only be required to convene a meeting or meetings under Section 179A of the Act of those creditors of the Company to whom it is proposed such a scheme should apply. The Scheme Administrator may propose such a scheme of arrangement in respect of any class of creditor or member on any number of occasions;

(h) to do all other things incidental to the exercise of the foregoing powers, including the exercise of any powers analogous to those which the Scheme Administrator would have had under Section 179A of the Act, in order to effect the restructuring of the Company's debt in accordance with the terms of the RJ Plan; and

(i) to exercise any other powers necessary for or incidental to the full and proper implementation of this Scheme.

11. COURT CONVENED MEETING AND SCHEME CREDITORS VOTING RIGHTS

11.1 The Court Convened Meeting will be held at the offices of White & Case LLP at 1221 Avenue of the Americas, New York, New York 10020-1095 or such other place as the BVI Court may require or allow on such date and at such time as the BVI Court shall determine for the purpose of voting to approve this Scheme.

11.2 The Court Convened Meeting shall be chaired by the Scheme Administrator as appointed by the BVI Court.

11.3 Without prejudice to Clause 11.5 every Scheme Creditor shall be entitled to vote on the matters in respect of this Scheme by attending and voting at the Court Convened Meeting in person.

11.4 Subject to Clause 11.6, every Scheme Creditor shall have one (1) vote for every US Dollar of its Admitted Liabilities.

11.5 Every Scheme Creditor entitled to vote shall have the right to appoint any person as its proxy to attend a Court Convened Meeting and vote thereat in its place. The Voting and Proxy Form set out in Schedule 3 must be completed and returned to the Scheme Administrator as soon as possible and in any event at the latest by 13:00 (New York Time) on the Business Day before the day of the Court Convened Meeting.

11.6 While the Trustee is not a Scheme Creditor for the purpose of the Scheme as Admitted Liabilities are limited to beneficial entitlements to payment, the Trustee shall be considered not to have any votes at the Court Convened Meeting.

11.7 Each Scheme Creditor (if attending in person or by a duly authorised representative) or its proxy will be required to register its attendance at the Court Convened Meeting prior to its commencement. Proof of personal identity will be required to attend the Court Convened Meeting (for example, a passport or driving licence with photo). If appropriate personal identification is not produced, then that person may not be permitted to attend and vote at the Scheme Meeting – whether or not such a person is permitted to attend at the Scheme Meeting shall be at the discretion of the Scheme Administrator.

11.8 Before the Scheme can become effective and binding on the Company and the Scheme Creditors, the BVI Court must sanction the Scheme. The sanction hearing at the BVI Court will take place if the requisite statutory majorities of the relevant Scheme Creditors have approved the Scheme at the Court Convened Meeting.

11.9 Scheme Creditors are entitled to appear at the sanction hearing at the BVI Court. The Scheme Administrator and the Company will notify the Scheme Creditors of the date of any sanction hearing. Scheme Creditors who wish to ask any questions in advance of the Court Convened Meeting or sanction hearing of the BVI Court are encouraged to contact the Scheme Administrator.

11.10 A Scheme Creditor on whose behalf a duly completed Voting and Proxy Form is submitted before the Court Convened Meeting may still attend the Court Convened Meeting in person. If a Scheme Creditor intends to attend the Court Convened Meeting, it may amend its voting instructions provided in a previously submitted Voting and Proxy Form by submitting a new validly completed Voting and Proxy Forms to the Chairman of the Court Convened Meeting before the start of the Court Convened Meeting.

11.11 Additionally Scheme Creditors will have the opportunity at the Court Convened Meeting to raise with the Scheme Administrator any questions, objections or issues they may have in relation to the Scheme.

12. NOTICE OF THE COURT CONVENED MEETING

12.1 Notice of the Court Convened Meeting shall be sent to the Scheme Creditors in the form set out at Schedule 7 or as otherwise directed by the BVI Court, together with an appropriate voting and proxy form. The notice shall be sent to each Scheme Creditor at its last known address (if any) and e-mail address (if any) or such other address and e-mail address as he may have given to the Company (or the Scheme Administrator) for the service of such notice upon him, or in the case of the Noteholders and for so long as the Existing 2024 Notes are held in global form on behalf of DTC or an Escrow Position, notice may be delivered to and via DTC. Every such notice shall be sent by Post and e-mail (if any) or via DTC.

12.2 The accidental omission to send any such notice to, or the non-receipt of a notice by, any Scheme Creditor entitled to receive the same shall not invalidate the proceedings in any meeting. The Scheme Administrator shall, insofar as they are able, cause to be published an advertisement of each Court Convened Meeting in such newspaper(s) and publication(s) as the BVI Court may direct. The Scheme Administrator may also cause to be published in such other place or places as they deem fit notices or advertisements of the Court Convened Meeting, such as in publications in New York, Brazil, the BVI and India.

13. TERMINATION OF THE APPOINTMENT OF SCHEME ADMINISTRATOR

13.1 The appointment of the Scheme Administrator and all powers and obligations associate therewith will automatically terminate upon: (i) the accession by the Company to the New 2024 Notes; (ii) the provision by the Company of the New 2024 Notes Security; (iii) the termination of the Existing 2024 Notes and the security and obligations granted thereunder; (iv) the provisions by the Company of the Bradesco Guarantee and Security; and (v) either the order of a full force and effect order by the US Bankruptcy Court as part of a Chapter 15 proceeding or the decision of the Scheme Administrator not to seek relief or recognition under or as part of a Chapter 15 proceeding.

13.2 Following the termination of the appointment of the Scheme Administrator pursuant to Clause 13.1, the JPLs shall file for termination of their appointment as JPLs of the Company.

14. EXCLUSIONS AND ACKNOWLEDGEMENTS BY SCHEME CREDITORS

14.1 The Company is expressly authorised to takes the steps necessary to effect the actions set out in Clause 2 of the Scheme.

14.2 Each Scheme Creditor shall have no recourse against the Scheme Administrator or the Scheme Administrator' respective advisers for the termination of the Existing 2024 Notes or the release of any security or obligations thereunder for the purposes of this Scheme or have any other related claim whatsoever with regard to the Admitted Liabilities for any reason.

14.3 The Scheme Administrator and their respective advisers (legal, financial or otherwise) shall not incur any personal liability of any kind under, or by virtue of the this Scheme, or in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum, save for in respect of fraud committed by them.

15. VALIDITY OF ACTS OF AND RESPONSIBILITY OF THE SCHEME ADMINISTRATOR

15.1 Subject to any applicable provision of the Act (or any other applicable BVI law or enactment):

(a) no Scheme Creditor shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the Scheme Administrator in pursuance of her functions or duties under this Scheme, or the exercise or non-exercise by the Scheme Administrator in good faith of any power or discretion conferred upon them for the purposes of this Scheme, and the Scheme Administrator

shall not be liable for any loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion, unless, such loss is attributable to their or any of their own negligence, breach of duty or trust, fraud or dishonesty;

(b) any liability incurred, in respect of the matters referred to in Clause 15.1(a) above, by the Scheme Administrator as a result of their or any of their negligence or breach of duty or breach of trust shall be limited to the value of the net assets of the Company at the Effective Date.

16. INDEMNITIES AND VALIDATION

16.1 The Company shall indemnify the Scheme Administrator against any liability by way of legal and other advisers' costs incurred by them in defending any proceedings in relation to the preparation, negotiation and implementation of this Scheme, whether civil or criminal, in which judgment is given in their favour, or which is discontinued before judgment is given, or in which they are acquitted, or in connection with any application in which relief is granted to them by the BVI Court from liability for negligence, default, breach of duty or breach of trust.

16.2 Notwithstanding a subsequent discovery that there was some defect in the procedure for calling or voting at any meetings, or the passing of resolutions, all acts done by the Scheme Administrator shall be valid as if every such procedure had been correctly adhered to, provided that, in the case of any meeting in respect of which such a defect is discovered, that meeting was quorate.

17. MODIFICATION OF THIS SCHEME

17.1 The BVI Court may order any modification of or addition to this Scheme or to any items or conditions which the BVI Court may think fit to approve or impose at any hearing of the BVI Court or give directions in respect of this Scheme, whether in accordance with Section 179A of the Act or otherwise.

17.2 It is acknowledged by the Scheme Creditors, the Company and the Scheme Administrator that there can be no modification to this Scheme after the BVI Court has sanctioned this Scheme without further order of the BVI Court.

18. EFFECT OF A LIQUIDATION EVENT

18.1 The occurrence of a Liquidation Event after the Effective Date during the implementation of the Scheme shall have no effect on the operation of this Scheme, which shall continue in full force and effect.

18.2 For the avoidance of doubt, notwithstanding the occurrence of any Liquidation Event, the continuation or exercise by the Scheme Administrator of their powers in accordance with this Scheme shall not be affected, save insofar as may be a necessary consequence by operation of law, notwithstanding any loss of agency in respect of the Company which may result from such Liquidation Event.

18.3 In the event of any conflict between the provisions of this Scheme, the provisions of the Act or the BVI Insolvency Act or the BVI Insolvency Rules or any analogous statutes or rules which may apply to the Company following a Liquidation Event, for Scheme purposes only, the provisions of this Scheme shall prevail.

18.4 Where a Liquidation Event has already occurred at, or occurs after, the implementation of the Scheme, the Scheme Creditors shall be entitled to prove in the liquidation or analogous proceedings for the full amount of their Admitted Liabilities.

19. SCHEME CREDITORS TO CO-OPERATE

19.1 The Scheme Creditors shall co-operate with and render in timely manner such assistance to the Scheme Administrator as the Scheme Administrator may reasonably require, including without limitation, the

provision of information and documents in connection with the Admitted Liabilities and the operation and implementation of this Scheme.

20. **DISPUTE RESOLUTION PROCEDURE**

20.1 The Scheme Administrator shall refer any dispute to the BVI Court for directions and/or an order, setting out details of the matter to be resolved and enclosing evidence in support of it, including copies of such of the Company's records as shall be relevant together with any supporting documents including those provided by the relevant Scheme Creditor(s).

20.2 Any order or direction of the BVI Court shall be conclusive and binding on the Company, the Scheme Administrator and the relevant Scheme Creditor(s).

21. **DISPATCH OF NOTICES AND OTHER WRITTEN COMMUNICATIONS AND DOCUMENTS**

21.1 Any notice or other written communication to be given under or in relation to the Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand, is posted on the Issuer's website or (so long as the Existing 2024 Notes are held in global form on behalf of DTC or an Escrow Position) delivered to DTC (in the case of the Noteholders), or is sent by email, fax or Post to the relevant person at its last known address (if any) and e-mail address (if any) or such other address and e-mail address as he may have given to the Company (or the Scheme Administrator), provided that in the case of notices and other written communications and documents to be sent to:

(a) the Scheme Administrator and/or the Company, such shall be sent to or c/o Olinda Star Ltd (In Provisional Liquidation) c/o EY Cayman Ltd., 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman, KY1-1106, Cayman Islands or Eleanor.fisher@ky.ey.com;

(b) the Notes Registered Holder, shall be sent to conversionsandwarrantsannouncements@dtcc.com; amendoza-elix@dtcc.com; skaylor@dtcc.com;

(c) the Notes Registered Holder Nominees, shall be sent to conversionsandwarrantsannouncements@dtcc.com; amendoza-elix@dtcc.com; skaylor@dtcc.com; and

(d) the Trustee, such shall be sent to Wilmington Trust, National Association, 50 South Sixth Street, Suite 1290, Minneapolis, MN 55402, USA,

or in each case such other address(es) as shall be notified to the Scheme Creditors.

21.2 Notices and any other written communications or documents sent by Post to the Scheme Creditors pursuant to this Scheme shall be deemed, in the absence of evidence to the contrary, to have been received by the relevant Scheme Creditor on the tenth (10th) business day after dispatch and references to the receipt by a Scheme Creditor of any such notice, communication or document shall be construed accordingly. Notices or other communications sent by facsimile shall conclusively be deemed to have been received on the first business day following the day they were sent (subject to production of proof of transmission of all pages). References to a Scheme Creditor's address in this clause are to that Scheme Creditor's address as established in accordance with Clause 21.3, and references to "business days" in this clause are to a business day in the country in which such address is located. Notice periods laid down by this Scheme are to be calculated by reference to clear days from the date on which the notice concerned was sent by Post.

21.3 A sworn statement by the Scheme Administrator or a member of their staff that an envelope containing a notice was sent by Post shall be conclusive evidence that the notice was given.

22. EXCLUSIONS BY SCHEME CREDITORS

22.1 Each Scheme Creditor shall have no recourse to the Company's assets and debts other than in accordance with the terms of this Scheme or the New 2024 Notes.

22.2 The Scheme Administrator and their respective advisers (legal, financial or otherwise) shall not incur any personal liability of any kind under, or by virtue of the restructuring of the Company's debts, this Scheme, or in relation to any related matter or claim, whether in contract, tort or restitution or by reference to any other remedy or right, in any jurisdiction or forum, save for in respect of fraud committed by them.

23. EXTENSION AND CALCULATION OF DEADLINES

23.1 Save where expressly provided to the contrary, deadlines laid down by this Scheme shall be calculated by reference to calendar days and not Business Days, but in the event that such a deadline expires on a day which is not a Business Day, such deadline shall be deemed not to expire until close of business on the Business Day next following.

24. GOVERNING LAW

24.1 This Scheme shall be governed by, and construed in accordance with, the laws of the BVI and the BVI Court shall (save as provided in Clause 24.2) have exclusive jurisdiction to hear and determine any dispute or Proceedings arising out of the construction of this Scheme, or the implementation of this Scheme, and the Scheme Creditors shall be subject to the exclusive jurisdiction of the BVI Court for such purposes.

24.2 Notwithstanding the provisions of Clause 24.1, the Scheme Administrator retains the right to bring Proceedings, whether in the name of the Company or otherwise, in the courts of any other country having jurisdiction under its own laws to hear such Proceedings.

SCHEDULE 1

NEW 2024 NOTES SECURITY

1. General Accounts Agreement
2. Account Charge Agreement
3. Olinda Star Mortgage
4. Olinda Star Assignment of Insurance Receivables
5. First Lien Olinda Star Share Charge Agreement
6. Second Lien Olinda Star Share Charge Agreement
7. Third Lien Olinda Star Share Charge Agreement
8. Fourth Lien Olinda Star Share Charge Agreement

SCHEDULE 2

SCHEME IMPLEMENTATION DOCUMENTS

1. New Notes Security (and any accession instruments thereto)

2. The Participating Notes Indenture (and any accession instrument thereto to be executed by the Company)

3. The Non-Participating Notes Indenture (and any accession instrument thereto to be executed by the Company)

4. The Stub Notes Indenture (and any accession instrument thereto)

5. The Working Capital Facility (and any accession instrument thereto)

6. The Bradesco L/C Agreements (and any accession instrument thereto)

7. Release Of Preferred Liberian Mortgage

SCHEDULE 3

VOTING AND PROXY FORM

OLINDA STAR LTD (IN PROVISIONAL LIQUIDATION)

(the "Company")

I/We,_____

having our registered office/address at/of

_____

being a Scheme Creditor of the above named Company, hereby appoint:

the Chairman or:

_____

as my/our proxy to vote for me/us and on my/our behalf on any resolution proposed (including, but not limited to, the Resolution set out below) at the Court Convened Meeting to be held on 14 January 2020 at the offices of White & Case, 1221 6th Avenue, New York, 10020, United States of America, commencing at 13:00 (New York time), or at any adjournment thereof.

Please indicate with an "X" in the space below how you wish your votes to be cast in respect of the Resolutions. If no specific direction as to voting is given, the proxy will vote or abstain from voting at his/her discretion.

RESOLUTION:	**FOR**	**AGAINST**	**ABSTAIN**
THAT the Scheme of Arrangement proposed by the Company, particulars of which are set out in the attached Scheme document, be approved subject to any modification, addition or condition which the Eastern Caribbean Supreme Court of the Territory of the British Virgin Islands may think fit to approve or impose which would not directly or indirectly have a material adverse effect on the rights of the Scheme Creditors.			

Dated: _____2020

_____ _____

Name of the Scheme Creditor Signature of the Scheme Creditor

$_____ (CUSIP Nos. 747ESCAA9 / L78ESCAA5)

Aggregate Principal Amount of Escrow Position Held

NOTES:

1. A Scheme Creditor must insert his full name and registered address in type or block letters.

2. If it is desired to appoint some other person as proxy, the name of the proxy must be inserted in the space provided instead of the option provided which should be deleted.

3. The Proxy Form must:

   - in the case of an individual Scheme Creditor be signed by the Scheme Creditor or his attorney; and

   - in the case of a corporate Scheme Creditor be given either under its common seal or signed on its behalf by an attorney or by a duly authorised officer of the Scheme Creditor.

4. The Proxy Form (and any authority under which it is executed) must be faxed to +1 345 949 8529 or emailed to eleanor.fisher@ky.ey.com by no later than 13:00 (New York Time) on the Business Day prior before the day of the meeting.

SCHEDULE 4

THE RJ PLAN

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PLANO DE RECUPERAÇÃO JUDICIAL CONJUNTO DAS SOCIEDADES INTEGRANTES DO GRUPO CONSTELLATION CONSOLIDADO EM 28 DE FEVEREIRO DE 2019.

SERVIÇOS DE PETRÓLEO CONSTELLATION S.A. – EM RECUPERAÇÃO JUDICIAL, sociedade por ações de capital fechado, inscrita no CNPJ/ME sob n. 30.521.090/0001-27, com sede na Av. Presidente Antônio Carlos, n. 51, 3º, 5º, 6º e 7º andares, Centro, Rio de Janeiro, Estado do Rio de Janeiro, CEP 20020-010 ("Constellation"); **SERVIÇOS DE PETRÓLEO CONSTELLATION PARTICIPAÇÕES S.A. – EM RECUPERAÇÃO JUDICIAL**, sociedade por ações de capital fechado, inscrita no CNPJ/ME sob o n. 12.045.924/0001-93, com sede na Av. Presidente Antônio Carlos, n. 51, sala 601, 6º andar, Centro, Rio de Janeiro, Estado do Rio de Janeiro, CEP 20020-010 ("Constellation Par"); **MANISA SERVIÇOS DE PETRÓLEO LTDA. – EM RECUPERAÇÃO JUDICIAL**, sociedade por quotas de responsabilidade limitada, inscrita no CNPJ/ME sob o n. 11.801.519/0001-95, com sede na Rua do Engenheiro, n. 736, quadra I, lotes 02, 03, 04, 05, 08, 09 e 10, Rio das Ostras, Estado do Rio de Janeiro, CEP 28.890-000 ("Manisa"); **TARSUS SERVIÇOS DE PETRÓLEO LTDA. – EM RECUPERAÇÃO JUDICIAL**, sociedade por quotas de responsabilidade limitada, inscrita no CNPJ/ME sob n. 11.801.960/0001-77, com sede na Rua do Engenheiro, n. 736, quadra I, lotes 02, 03, 04, 05, 08, 09 e 10, Rio das Ostras, Estado do Rio de Janeiro, CEP 28.890-000 ("Tarsus"); **ALPHA STAR EQUITIES LTD. (IN PROVISIONAL LIQUIDATION)**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Alpha Star"); **AMARALINA STAR LTD.**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Amaralina"); **ARAZI S.À.R.L.**, sociedade com sede em Avenue de la Gare, 8-10, CEP: 1616, Luxemburgo ("Arazi"); **BRAVA STAR LTD.**, sociedade com sede em Tortola Pier

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Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Brava Star"); **CONSTELLATION OIL SERVICES HOLDING S.A.**, sociedade com sede na Avenue de la Gare, n. 8-10, Luxemburgo, registrada sob o n. B163424 ("Constellation Holding"); **CONSTELLATION OVERSEAS LTD. (IN PROVISIONAL LIQUIDATION)**, sociedade inscrita no CNPJ/ME sob n. 12.981.793/0001-56, com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Constellation Overseas"); **CONSTELLATION SERVICES LTD.**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas, inscrita no CNPJ/ME sob n. 26.496.540/0001-00 ("Constellation Services"); **GOLD STAR EQUITIES LTD. (IN PROVISIONAL LIQUIDATION)**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Gold Star"); **LANCASTER PROJECTS CORP.**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Lancaster"); **LAGUNA STAR LTD.**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Laguna"); **LONE STAR OFFSHORE LTD. (IN PROVISIONAL LIQUIDATION)**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Lone Star"); **OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION)**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Olinda Star"); **SNOVER INTERNATIONAL INC. (IN PROVISIONAL LIQUIDATION)**, sociedade com sede em Tortola Pier Park, Building 1, 2º Piso, Wickham's Cay I, Road Town, Tortola, Ilhas Virgens Britânicas ("Snover"); **STAR INTERNATIONAL DRILLING LIMITED**, sociedade inscrita no CNPJ/ME sob n. 05.722.506/0001-28, com sede no Clifton House, 75 Fort Street, George Town, P.O.

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Box 1350, Ilhas Cayman ("Star Drilling" e em conjunto com a Constellation, a Constellation Par, a Manisa, a Tarsus, a Alpha Star, a Amaralina, a Arazi, a Brava Star, a Constellation Holding, a Constellation Overseas, a Constellation Services, a Gold Star, a Lancaster, a Laguna, a Lone Star, a Olinda Star, a Snover, por si próprias ou por seus *Joint Provisional Liquidators,* conforme definido abaixo, "Grupo Constellation" ou "Recuperandas") disponibilizam, nos autos da Recuperação Judicial (conforme definido abaixo) em curso perante o Juízo da Recuperação Judicial (conforme definido abaixo), o presente Plano (conforme definido abaixo), na forma do art. 53 da LRF (conforme definida abaixo), cujos termos e condições são regulados a partir das cláusulas a seguir.

1. DEFINIÇÕES E REGRAS DE INTERPRETAÇÃO.

1.1. DEFINIÇÕES. Os termos e expressões utilizados em letras maiúsculas, sempre que mencionados no Plano, terão os significados que lhes são atribuídos nesta Cláusula 1. Tais termos definidos serão utilizados, conforme apropriado, na sua forma singular ou plural, no gênero masculino ou feminino, sem que, com isso, percam o significado que lhes é atribuído.

1.1.1. "Acionistas": são a LuxCo e os CIPEF.

1.1.2. "Acordo de Apoio ao Plano": é o *Plan Support Agreement* firmado em 21 de fevereiro de 2019, por e entre, *inter alia*, Credores ALB, o Bradesco, os Credores dos Bonds 2024 Apoiadores, os Acionistas e o Grupo Constellation, contendo as condições de reestruturação e pagamento dos Créditos ALB, dos Créditos Bradesco e dos Créditos dos Bonds 2024, as quais encontram-se

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refletidas neste Plano e cuja cópia encontra-se a anexa a este Plano na forma do Anexo 1.1.2.

1.1.3. "Acordos de Reembolso Bradesco": são (i) o *Reimbursement Agreement* (Acordo de Reembolso) datado de 25 de maio de 2016, conforme alterado, firmado entre o Bradesco, como emissor da carta de crédito e a Constellation Overseas, na qualidade de solicitante de carta de crédito; e (ii) o *Reimbursement Agreement* (Acordo de Reembolso) datado de 7 de agosto de 2015, conforme alterado, firmado entre o Bradesco, como emissor da carta de crédito e a Constellation Overseas, na qualidade de solicitante de carta de crédito.

1.1.4. "Administrador Judicial": é o escritório de advocacia Marcello Macêdo Advogados, representado pelo Dr. Marcello Macêdo, advogado inscrito na OAB/RJ sob o n. 65.541, conforme nomeação feita pelo Juízo da Recuperação, nos termos do Capítulo II, Seção III da LRF, ou quem venha a substituí-lo de tempos em tempos.

1.1.5. "A/L Cash Collateral Agreement": é o *A/L Cash Collateral Agreement* celebrado em 10 de dezembro de 2018, entre a Amaralina e a Laguna, como tomadoras, *HSBC Bank USA, National Association*, como agente administrativo e agente de garantias, Credores Amaralina e Laguna e as Recuperandas, conforme minuta contratual constante às fls. 1.864/1.880.

1.1.6. "Alienação de Ativos": são as operações de alienação de Ativos, sejam eles Unidades Produtivas Isoladas ou não, de acordo com as regras contidas nos artigos 60, parágrafo único, 142 e 145 da LRF e artigo 133 do Código Tributário Nacional, nos termos da Cláusula 3.9. abaixo.

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1.1.7. "ANP": é a Agência Nacional do Petróleo, Gás Natural e Biocombustíveis.

1.1.8. "Aprovação do Plano": é a aprovação do Plano na Assembleia de Credores. Para os efeitos deste Plano, considera-se que a Aprovação do Plano ocorre na data da Assembleia de Credores em que votar e aprovar o Plano, ainda que o Plano não seja aprovado por todas as Classes de Credores nesta ocasião, sendo posteriormente homologado judicialmente nos termos dos artigos 45 ou 58 da LRF.

1.1.9. "Assembleia de Credores": é qualquer Assembleia Geral de Credores, realizada nos termos do Capítulo II, Seção IV, da LRF.

1.1.10. "Ativo" ou "Ativos": são todos os bens, móveis ou imóveis, e direitos que integram o ativo circulante e não circulante das Recuperandas, conforme definido na Lei das Sociedades por Ações, aí se incluindo, mas não se limitando, as unidades de perfuração de propriedade das Recuperandas e as participações acionárias em outras empresas.

1.1.11. "Bradesco": é o Banco Bradesco S.A., filial Grand Cayman.

1.1.12. "Brava Cash Collateral Agreement": é o *Brava Cash Collateral Agreement* celebrado em 10 de dezembro de 2018, entre a Brava Star, com tomadora, Citibank, N.A., como agente administrativo e agente de garantias, Credores Brava e as Recuperandas, conforme minuta contratual constante às fls. 1.881/1.897.

1.1.13. "Bonds 2019": são as notas (títulos de crédito) sênior não garantidas com vencimento em 2019, emitidas pela Constellation Holding, à taxa de 6.25%, na forma da Escritura de Emissão dos *Bonds* 2019.

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1.1.14. "Bonds 2024": são as notas (títulos de crédito) sênior garantidas, com vencimento em 2024, emitidas pela Constellation Holding, na forma da Escritura de Emissão dos *Bonds* 2024, à taxa de 9.00% em dinheiro e 0.50% PIK, integralmente garantidos por Constellation Overseas, Alpha Star, Lone Star, Gold Star, Olinda Star, Snover e Star Drilling e parcialmente garantida pela Arazi.

1.1.15. "Caixa Excedente": tem o significado que lhe é atribuído no Anexo V do seu Anexo A do Acordo de Apoio ao Plano.

1.1.16. "Cartas de Crédito Reembolso Bradesco": são as cartas de crédito (*letters of credit*) emitidas pelo Bradesco nos termos dos Contratos de Reembolso (*Reimbursement Agreements*) datados de 07.08.2015 e 25.05.2016, em que a Constellation Overseas figura como tomadora.

1.1.17. "CIPEF": são os fundos de investimentos acionistas minoritários diretos ou indiretos das Recuperandas, cujo assessor de investimento é a Capital International Inc.

1.1.18. "Classes": Categorias nas quais se classificam os Créditos Concursais das Recuperandas de acordo com a natureza dos Créditos Concursais, conforme o previsto no artigo 41 da LRF.

1.1.19. "CNPJ/ME": é o Cadastro Nacional da Pessoa Jurídica do Ministério da Economia.

1.1.20. "Compromisso *Backstop*": significa o contrato por meio do qual os Credores dos Bonds 2024 Apoiadores se comprometem a prover recursos mínimos para os Novos Recursos Bonds 2024, celebrado nos termos do Anexo F ao Acordo de Apoio ao Plano.

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1.1.21. "Contas Reserva": são as contas reserva do serviço da dívida (*debt service reserve account*), as quais servem de garantia aos Créditos ALB.

1.1.22. "Créditos": são os créditos e obrigações (inclusive obrigações de fazer) detidos pelos Credores contra as Recuperandas, sejam vencidos ou vincendos, materializados ou contingentes, líquidos ou ilíquidos, objeto ou não de disputa judicial, procedimento arbitral ou procedimento administrativo, iniciados ou não, existentes na Data do Pedido ou cujo fato gerador seja anterior ou coincidente com a Data do Pedido ou que decorram de contratos, instrumentos ou obrigações existentes na Data do Pedido, estejam ou não relacionados na Lista de Credores, e sejam ou não sujeitos aos efeitos deste Plano.

1.1.23. "Créditos ALB": são os Créditos Amaralina e Laguna e o Crédito Brava.

1.1.24. "Créditos Amaralina e Laguna": são os Créditos devidos pela Amaralina e pela Laguna decorrentes do Contrato de Empréstimo Sindicalizado (*Senior Syndicated Credit Facility Agreement*) celebrado em 27 de março de 2012 e aditado de tempos em tempos,, celebrado entre a Amaralina e a Laguna, como tomadoras, determinados bancos, como credores, e o HSBC Bank USA, National Association, como agente administrativo e de garantias.

1.1.25. "Créditos Apoiadores": são os Créditos detidos pelos Credores Apoiadores.

1.1.26. "Créditos Bradesco": são os Créditos Concursais titularizados pelo Bradesco decorrentes dos contratos de empréstimo (*loan agreements*)

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datados de 09.05.2014 e 30.01.2015, firmados entre o Bradesco, na condição de credor, e a Constellation Oversas, na condição de devedora.

1.1.27. "Créditos Brava": são os Créditos devidos pela Brava Star, decorrentes do Contrato de Empréstimo Sindicalizado (*Senior Syndicate Credit Facility Agreement*) celebrado em 21 de novembro de 2014, pela Brava Star, como tomadora, determinados bancos credores e o Citibank N.A., como agente administrativo e de garantias.

1.1.28. "Créditos Bonds 2019": são os Créditos detidos pelos Credores dos Bonds 2019.

1.1.29. "Créditos Bonds 2024": são os Créditos detidos pelos Credores dos Bonds 2024.

1.1.30. "Créditos Bonds 2024 Não-Participantes": são os Créditos detidos pelos Credores dos Bonds 2024 que não participarem do aporte dos Novos Recursos Bonds 2024.

1.1.31. "Créditos Bonds 2024 Participantes": são os Créditos detidos pelos Credores dos Bonds 2024 que participarem do aporte dos Novos Recursos Bonds 2024[1].

1.1.32. "Créditos com Garantia Real": são os Créditos assegurados por direitos reais de garantia, até o limite do valor do respectivo bem, nos termos do artigo 41, inciso II e 83, inciso II da LRF, incluindo os Créditos ALB e os Créditos Bonds 2024, os quais serão reestruturados nos termos da Cláusula 4.2 abaixo.

[1] **Nota EM**: entendemos que alteração similar feita nos "Novo Recursos" já endereça a questão da proporcionalidade.

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1.1.33. "Créditos Concursais": são os Créditos detidos pelos Credores contra as Recuperandas, ou que estas possam vir a responder por qualquer tipo de coobrigação, sejam vencidos ou vincendos, materializados ou contingentes, líquidos ou ilíquidos, objeto ou não de disputa judicial ou procedimento arbitral, existentes na Data do Pedido ou cujo fato gerador seja anterior à Data do Pedido, ou que decorram de contratos, instrumentos ou obrigações existentes na Data do Pedido, sujeitos aos regime de recuperação judicial e que, em razão disso, se submetem a este Plano, nos termos da LRF.

1.1.34. "Créditos de Fornecedores": são os Créditos Quirografários e Créditos ME/EPP titularizados por Credores Fornecedores.

1.1.35. **"Créditos Parceiros":** são os Créditos titularizados por Credores Parceiros, os quais serão reestruturados nos termos da Cláusula 4.5 abaixo.

1.1.36. "Créditos Ilíquidos": são os Créditos detidos pelos Credores contra as Recuperandas, sejam vencidos ou vincendos, materializados ou contingentes, objeto ou não de disputa judicial ou administrativa ou procedimento arbitral, iniciados ou não, derivados de quaisquer relações jurídicas e contratos existentes antes da Data do Pedido, ainda que liquidados até da Data de Homologação, incluindo serviços já prestados e pendentes de medição, cuja existência e/ou valores sejam ou venham a ser questionados pelas Recuperandas. Não são ilíquidos os Créditos Concursais reconhecidos pelas Recuperandas na Lista de Credores, os quais serão reestruturados nos termos da Cláusula 4.6 abaixo.

1.1.37. "Créditos ME/EPP": são os Créditos detidos pelos Credores Concursais constituídos sob a forma de microempresas e empresas de pequeno porte, conforme definidas pela Lei Complementar n. 123, de 14 de

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dezembro de 2006, e pelos artigos 41, inciso IV e 83, inciso IV, d, da LRF, os quais serão reestruturados nos termos da Cláusula 4.4 abaixo.

1.1.38. "Créditos Quirografários": são os Créditos Concursais previstos nos artigos 41, inciso III e 83, inciso VI da LRF, incluindo os Créditos Bradesco e os Créditos Bonds 2019, os quais serão reestruturados nos termos da Cláusula 4.3 abaixo.

1.1.39. "Créditos Retardatários": são os Créditos que forem habilitados na Lista de Credores após a sua publicação na imprensa oficial, na forma do disposto no artigo 7º, parágrafo 2º da LRF.

1.1.40. "Créditos Trabalhistas": são os Créditos e direitos derivados da legislação do trabalho ou decorrentes de acidente de trabalho, nos termos do artigo 41, inciso I e 83, inciso I da LRF e os créditos e direitos consistentes em honorários advocatícios, os quais serão reestruturados nos termos da Cláusula 4.1 abaixo.

1.1.41. "Credores": são as pessoas físicas ou jurídicas titulares de Créditos, estejam ou não relacionadas na Lista de Credores.

1.1.42. "Credores Amaralina e Laguna" são os Credores Titulares de Créditos Amaralina e Laguna.

1.1.43. "Credores ALB": são os Credores titulares de Créditos ALB.

1.1.44. "Credores Brava": são os Credores titulares dos Créditos Brava.

1.1.45. "Credores Apoiadores": são os Credores Concursais das Recuperandas que firmaram o Acordo de Apoio ao Plano; que, em conjunto, representam nesta data o percentual de 74.8% dos Créditos com Garantia Real e 59.2% dos Créditos Quirografários, de acordo com a Lista de Credores, e que, em razão de estarem contribuindo para a reestruturação do Grupo

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Constellation, aí incluindo, mas não se limitando, ao aporte de novos recursos, consoante previsto nesse Plano e no Acordo de Apoio ao Plano, isto é, Credores que acreditam na viabilidade econômica das Recuperandas e antecipadamente concordaram com a reestruturação de seus Créditos Concursais na forma prevista no Acordo de Apoio ao Plano. Este Credores têm a previsão de pagamento ds seus créditos contemplada nas sub classes das Cláusulas 4.2.1, 4.2.2 e 4.3.3.

1.1.46. "Credores Cessionários": são os Credores que se tornarem titulares de Créditos Concursais em razão da celebração de contratos de cessão de crédito em que figurem como cedente um Credor Concursal e o objeto da cessão seja um Crédito Concursal.

1.1.47. "Credores com Garantia Real": são os Credores titulares de Créditos com Garantia Real.

1.1.48. "Credores Concursais": são os Credores titulares de Créditos Concursais.

1.1.49. "Credores dos Bonds 2019": são os Credores cujos Créditos se originam na Escritura de Emissão dos *Bonds* 2019.

1.1.50. "Credores dos Bonds 2024": são os Credores cujos Créditos se originam na Escritura de Emissão dos *Bonds* 2024.

1.1.51. "Credores dos Bonds 2024 Apoiadores": são os Credores titulares de Créditos Bonds 2024 que firmaram o Acordo de Apoio ao Plano.

1.1.52. "Credores dos Bonds 2024 Não-Participantes": são os Credores titulares de Créditos Bonds 2024 Não-Participantes.

1.1.53. "Credores dos Bonds 2024 Participantes": São os Credores titulares de Créditos Bonds 2024 Participantes.

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1.1.54. "Credores Fornecedores": são os titulares de Créditos Quirografários e Créditos ME/EPP que derivam de relações de fornecimento de bens e serviços necessários ao desenvolvimento das atividades do Grupo Constellation e/ou de sua reestruturação.

1.1.55. "Credores Parceiros": são os Credores Fornecedores que mantiveram o fornecimento de bens e/ou serviços às Recuperandas, sem alteração injustificada dos termos e condições praticados até a Data do Pedido; que uma vez solicitados por qualquer das Recuperandas, não se recusarem a fornecer bens e/ou serviços nos termos e condições praticados até a Data do Pedido; que não possuam qualquer tipo de litígio em curso contra qualquer das Recuperandas e que não tenham adotado procedimentos de cobrança, protestos ou quaisquer outros atos relacionados aos Créditos Concursais que impliquem na restrição do crédito do Grupo Constellation ("Credores Parceiros Operacionais"); são também os Credores contratantes das Recuperandas que mantiverem a relação contratual e comercial corrente com as Recuperandas ou que estabeleçam novos contratos com as Recuperandas a contar da Data do Pedido ("Credores Parceiros Clientes"); seus empregados e ex-empregados detentores de Créditos Quirografários ("Credores Parceiros Empregados"); bem como Credores Quirografários que prestaram serviços de assessoria financeira no processo de reestruturação das dívidas das Recuperandas ("Credores Parceiros Reestruturação")

1.1.56. "Credores Ilíquidos": São os Credores titulares de Créditos Ilíquidos.

1.1.57. "Credores ME/EPP": São os Credores titulares de Créditos ME/EPP.

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1.1.58. "Credores Quirografários": são os Credores titulares de Créditos Quirografários.

1.1.59. "Credores Retardatários": são os Credores titulares de Créditos Concursais que, no todo ou em parte, possam ser considerados Créditos Retardatários.

1.1.60. "Credores Sub-rogatários": são os Credores que se sub-rogarem na posição de Credor Concursal em razão de terem efetuado pagamento, espontaneamente ou não, de qualquer Crédito Concursal em relação ao qual sejam considerados coobrigados, por contrato, previsão legal ou determinação judicial.

1.1.61. "Credores Trabalhistas": são os Credores titulares de Créditos Trabalhistas.

1.1.62. "Credores Trabalhistas Pessoas Físicas detentores de Créditos *Sub-Judice*": são os Credores Trabalhistas pessoas físicas que ajuizarem qualquer ação judicial, administrativa e/ou arbitral em face do Grupo Constellation até a Homologação Judicial do Plano, incluindo os Credores Trabalhistas que, na Data do Pedido, já tinham ações judiciais, administrativas e/ou arbitrais em curso, em face do Grupo Constellation.

1.1.63. "Data da Decisão de Processamento": é a data em que foi proferida decisão deferindo o processamento da Recuperação Judicial ajuizada pelas Recuperandas, *i.e.*, 06.12.2018.

1.1.64. "Data de Fechamento": é a data correspondente à emissão e início da eficácia dos Novos Instrumentos de Reestruturação, conforme definido e especificado na Cláusula 1.01. do Acordo de Apoio ao Plano (*Restructuring*

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Closing Date), observados os prazos previstos no Acordo de Apoio ao Plano, a qual será oportunamente comunicada nos autos da Recuperação Judicial.

1.1.65. "Data de Homologação": é a data em que ocorrer a publicação na Imprensa Oficial da decisão de Homologação Judicial do Plano proferida pelo Juízo da Recuperação.

1.1.66. "Data do Pedido": é a data em que o pedido de Recuperação Judicial foi ajuizado pelas Recuperandas, *i.e.*, 06.12.2018.

1.1.67. "Dia Útil": é qualquer dia que não seja sábado, domingo, feriado nacional, feriado municipal ou que, por qualquer motivo, não haja expediente forense e/ou bancário nas Cidades de São Paulo, Rio de Janeiro, Nova Iorque, Londres, Luxemburgo, Cidade do Panamá e Mumbai. Para fins do cumprimento das obrigações previstas no Acordo de Apoio ao Plano, será considerada a definição de dia útil constante no Acordo de Apoio ao Plano.

1.1.68. "Edital de Credores": é o edital previsto no § 1º do art. 52 da LRF apresentado pelo Grupo Constellation na Recuperação Judicial e publicado em 18.12.2018 no Diário de Justiça Eletrônico do Tribunal de Justiça do Estado do Rio de Janeiro e em 19.12.2018 no Diário Comércio Indústria & Serviços.

1.1.69. "Escritura de Emissão dos *Bonds* 2019": é a Escritura (*Indenture*) datada de 9 de novembro de 2012, conforme alterada de tempos em tempos, com o Deutsche Bank Trust Company Americas, na qualidade de *trustee*, agente de pagamento, de transferência e de registro.

1.1.70. "Escritura de Emissão dos *Bonds* 2024": é a Escritura (*Indenture*) datada de 27 de julho de 2017, celebrada entre a Constellation Holding, como emissora, a Constellation Overseas, a Lone Star, a Gold Star, a Olinda Star, a Snover e a Star Drilling, como garantidoras, a Arazi como garantidora parcial

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e Wilmington Trust, National Association, como *trustee*, agente de pagamento, de transferência e registro.

1.1.71. "Grupo Constellation": é o grupo econômico formado pelas Recuperandas.

1.1.72. "Holdco 1": tem o significado a ela atribuído na Cláusula 3.7. abaixo.

1.1.73. "Holdco 2": tem o significado a ela atribuído na Cláusula 3.7. abaixo.

1.1.74. "Homologação Judicial do Plano": é a decisão judicial proferida pelo Juízo da Recuperação que concede a recuperação judicial, nos termos do artigo 58, *caput* e/ou §1º da LRF. Para os efeitos deste Plano, considera-se que a Homologação Judicial do Plano ocorre na Data de Homologação.

1.1.75. "Instrumento dos Novos Recursos Bradesco": significa o contrato de empréstimo a ser celebrado entre o Bradesco e as Recuperandas com os termos e condições aplicáveis aos Novos Recursos Bradesco, incluindo *inter alia* as condições precedentes para que o desembolso dos Novos Recursos Bradesco ocorra na Data de Fechamento, as garantias a serem outorgadas ao Bradesco na forma do Acordo de Apoio ao Plano, obrigações de fazer e de não fazer, hipóteses de vencimento antecipado.

1.1.76. "Juízo da Recuperação": é o Juízo da 1ª Vara Empresarial da Comarca da Capital do Estado do Rio de Janeiro, para o qual foi distribuído o pedido de Recuperação Judicial do Grupo Constellation.

1.1.77. "*Joint Provisional Liquidators*": Eleanor Fisher e Paul Pretlove, nomeados conjuntamente pela Corte Superior das Ilhas Virgens Britânicas, em 19 de Dezembro de 2018, para atuar, juntos ou separadamente, como liquidantes provisórios das seguintes Recuperandas: Constellation Overseas, Lone Star, Olinda Star, Snover, da Alpha Star e Gold Star.

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1.1.78. "Laudos": são (i) o laudo de viabilidade econômico-financeira; e (ii) o laudo de avaliação de bens e ativos das Recuperandas, apresentados nos termos e para os fins do artigo 53, incisos II e III, da LRF, que integram os Anexos I e II a este Plano, respectivamente.

1.1.79. "Lei das Sociedades por Ações": é a Lei Federal n. 6.404, de 15 de dezembro de 1976, conforme alterada.

1.1.80. "LIBOR": é a *London Interbank Offered Rate*, que é composta das taxas para depósitos em dólares divulgada pela Bloomberg Financial Markets Service às 11h00 (horário de Londres) ou por qualquer outro serviço similar que divulgue as taxas da British Bankers Association. Para fins deste Plano, será considerada a variação da LIBOR para operações em dólares norte-americanos na forma do Acordo de Apoio ao Plano.

1.1.81. "Lista de Credores": é a relação consolidada de credores das Recuperandas elaborada e publicada pelo Administrador Judicial, nos termos do § 2º do art. 7º da LRF.

1.1.82. "LRF": é a Lei Federal n. 11.101, de 09 de fevereiro de 2005, conforme alterada, que regula a recuperação judicial, a extrajudicial e a falência do empresário e da sociedade empresária.

1.1.83. "LuxCo": é a LUX Oil & Gas International S.a.r.L., acionista majoritário, direta ou indireta, das Recuperandas.

1.1.84. "Novos Instrumentos de Reestruturação": significa os instrumentos que serão assinados e se tornarão eficazes na Data de Fechamento desde que verificadas as condições precedentes previstas no Acordo de Apoio ao Plano e refletidas nestes instrumentos, bem como para reger e instrumentalizar (i) os Novos Recursos ALB, os Novos Recursos Bonds

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2024 e os Novos Recursos Bradesco; (ii) as garantias a serem outorgadas na forma do Acordo de Apoio ao Plano; e (iii) as demais transações previstas neste Plano e no Acordo de Apoio ao Plano, conforme necessário.

1.1.85. "Novos Recursos ALB": significa os novos empréstimos às Recuperandas Amaralina, Laguna e Brava realizados pelos Credores ALB, nos termos do Acordo de Apoio ao Plano, no valor total de US$ 39,074,535.41, descritos na Cláusula 3.5.1 abaixo, que serão liberados por meio de *tranches* dos Créditos ALB reestruturados, na forma do Acordo de Apoio ao Plano.

1.1.86. "Novos Recursos Bonds 2024": significa os novos empréstimos às Recuperandas realizados pelos Credores dos Bonds 2024 Participantes, nos termos do Acordo de Apoio ao Plano e do Compromisso *Backstop*, no valor de US$ 27.000.000,00, descrito na Cláusula 3.5.2 abaixo.

1.1.87. "Novos Recursos Bradesco": significa o novo empréstimo às Recuperandas a ser realizado pelo Bradesco, nos termos do Acordo de Apoio ao Plano, no valor total de US$ 10.000.000,00 (dez milhões de dólares americanos), descrito na Cláusula 3.5.3 abaixo.

1.1.88. "OPEP": é a Organização dos Países Exportadores de Petróleo.

1.1.89. "Partes Isentas": são os Acionistas, os Joint Provisional Liquidators, as Recuperandas, suas controladas, subsidiárias e outras sociedades pertencentes ao mesmo grupo, e seus respectivos diretores, conselheiros, funcionários, advogados, assessores, agentes, mandatários, representantes, incluindo seus antecessores e sucessores, considerando ainda que as Partes Isentas não incluem nenhum parceiro ou sócio em "Joint Venture", ex-sócio de qualquer entidade Recuperanda ou qualquer outra entidade que não integre o Grupo Constellation e seja devedora de entidade do Grupo Constellation.

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1.1.90. "Petrobras": é a Petróleo Brasileiro S.A., sociedade por ações de economia mista federal criada pela Lei n. 2.004, de 03 de outubro de 1953, e regida pela Lei n. 9.478, de 06 de agosto de 1997, inscrita no CNPJ/ME sob o n. 33.000.167/0001-01, com sede na Av. República do Chile n. 65, sala 502, Centro, Rio de Janeiro/RJ, CEP 20.031-912.

1.1.91. "PIK": significa capitalização de juros sem pagamento em dinheiro nos termos do contrato específico.

1.1.92. "Plano": é este plano de recuperação judicial, conforme aditado, modificado ou alterado de tempos em tempos.

1.1.93. "Processos": significa todo e qualquer litígio, em esfera judicial, administrativa ou arbitral (em qualquer fase, incluindo execução/cumprimento de sentença), em qualquer jurisdição, em curso na Data do Pedido envolvendo discussão relacionada a qualquer dos Créditos perante o Poder Judiciário ou tribunal arbitral, conforme o caso, inclusive reclamações trabalhistas.

1.1.94. "Processo Auxiliar no Exterior": é o procedimento auxiliar ajuizado pela Recuperandas perante a jurisdição norte-americana, com base no capítulo 15 do *U.S. Bankruptcy Code* (*Chapter 15*), bem como o procedimento auxiliar ajuizado pelas Recuperandas nas Ilhas Virgens Britânicas, chamado "*soft touch provisional liquidation*".

1.1.95. "Recuperação Judicial": é o processo de recuperação judicial das Recuperandas autuado sob o n. 0288463-96.2018.8.19.0001.

1.1.96. "Recuperandas": tem o significado a elas atribuído no preâmbulo.

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1.2. **ACORDO DE APOIO AO PLANO.** O Acordo de Apoio ao Plano, aí incluídos todos os seus Anexos, é parte integrante, inseparável e indivisível deste Plano em sua integralidade e consta, para os devidos fins, no Anexo 1.1.2 deste Plano; sendo certo que na hipótese de conflito de qualquer natureza entre as disposições deste Plano e do Acordo de Apoio ao Plano, prevelecerá (i) o disposto no Acordo de Apoio ao Plano, no que diz respeito aos Credores ALB, Bradesco, Credores dos Bonds 2024 e aos Créditos ALB, Créditos Bradesco, Créditos Bonds 2024, Novos Recursos ALB, Novos Recursos Bonds 2024, Novos Recusos Bradesco e (ii) o disposto no Plano, no que diz respeito aos demais Credores Concursais que não os Credores Apoiadores e seus respectivos Créditos Concursais.

1.2.1. A Aprovação do Plano e a Homologação Judicial do Plano implicam na concomitante aprovação e homologação judicial do Acordo de Apoio ao Plano.

1.3. **TRADUÇÃO.** Em caso de divergência entre a versão original em português do Plano e a versão traduzida para o Inglês do Plano que exista ou seja disponibilizada pelo Grupo Constellation ou seus assessores, a versão em Português deverá prevalecer. Em caso de divergência entre a versão original em inglês do Acordo de Apoio ao Plano e seus anexos e a versão traduzida para o português do Acordo de Apoio ao Plano e seus anexos, a versão em inglês deverá prevalecer.

1.3.1. Os *Joint Provisional Liquidators* se basearam em uma versão do Plano traduzida para o inglês e, reservando todos os seus direitos, na pendência de uma tradução juramentada para o inglês do Plano.

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1.4. Cláusulas e Anexos. Exceto se especificado de forma diversa, todas as Cláusulas e Anexos mencionados neste Plano referem-se a Cláusulas e Anexos deste Plano, assim como as referências a Cláusulas ou itens deste Plano referem-se também às respectivas subcláusulas e subitens. Todos os Anexos a este Plano são a ele incorporados e constituem parte integrante, inseparável e indivisível do Plano. Na hipótese de haver qualquer inconsistência entre este Plano e qualquer Anexo, o Plano prevalecerá, exceto quando se tratar de disposições do Acordo de Apoio ao Plano.

1.5. Títulos. Os títulos dos capítulos e das cláusulas deste Plano foram incluídos exclusivamente para referência e não devem afetar sua interpretação ou o conteúdo de suas disposições.

1.6. Termos. Os termos "incluem", "incluindo" e termos similares devem ser interpretados como se estivessem acompanhados da expressão, "mas não se limitando a".

1.7. Referências. As referências a quaisquer documentos ou instrumentos incluem todos os respectivos aditivos, consolidações e complementações, conforme aplicáveis, exceto se de outra forma expressamente previsto neste Plano.

1.8. Disposições Legais. As referências a disposições legais e leis devem ser interpretadas como referências a essas disposições tais como vigentes nesta data ou em data que seja especificamente determinada pelo contexto.

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1.9. Prazos. Todos os prazos previstos neste Plano serão contados na forma determinada no artigo 132 do Código Civil, desprezando-se o dia do começo e incluindo-se o dia do vencimento. Quaisquer prazos deste Plano (sejam contados em Dias Úteis ou não) cujo termo final caia em um dia que não seja um Dia Útil serão automaticamente prorrogados para o primeiro Dia Útil subsequente.

2. Considerações Gerais.

2.1. Breve Histórico. Em que pesem os primeiros registros relativos ao desenvolvimento do setor de petróleo e gás no Brasil remontem ao período imperial, foi apenas na década de 30 – e com a criação da Petrobras – que a exploração e produção petrolífera ganhou destaque no país.

Em 1980, foi fundada no Rio de Janeiro a Queiroz Galvão Perfurações S.A. – o embrião do Grupo Constellation e, atualmente, denominada Serviços de Petróleo Constellation S.A.

Inicialmente, prestando serviços à Petrobras, a atuação do Grupo Constellation se deu através da locação de sondas de perfuração terrestres, as chamadas sondas *onshore*, com atuação, principalmente, no Norte e Nordeste do país.

Paralelamente ao desenvolvimento da atividade de perfuração *onshore*, acompanhando o novo momento econômico do Brasil, o Grupo Constellation se desenvolveu e internacionalizou, passando a se dedicar também à atividade de perfuração *offshore*, com marcada atuação em águas ultra profundas.

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Atualmente, o Grupo Constellation detém o total de 17 sondas, das quais: (a) 9 sondas de perfuração *onshore*, sendo 4 convencionais e 5 helitransportáveis; e (b) 8 sondas de perfuração *offshore*, sendo 2 semissubmersíveis ancoradas para operação em lâmina d'água de até 1.100 metros, 3 de posicionamento dinâmico para operação em lâmina d'água de até 2.700 metros e 3 navios-sonda para operação em lâmina d'água até 3.000 metros.

O resultado existoso do Grupo Constellation também decorre de maciços investimentos realizados pelas Recuperandas. Desde sua fundação até a Recuperação Judicial, o Grupo Constellation investiu aproximadamente US$ 5 bilhões de dólares em sua atividade empresarial.

A atividade operacional predominante do Grupo Constellation se dá por meio das sondas offshore, que do total de 8, 7 estão no Brasil. As referidas sondas foram adquiridas pelo Grupo Constellation conforme a demanda do setor de óleo e gás brasileiro, a fim de atender, prioritariamente, os prospectos empreendidos pela Petrobras no país.

O Grupo Constellation é líder em desempenho em operações no pré-sal devido: (a) à sua elevada eficiência operacional; (b) à tecnologia de monitoramento de operações em tempo real (RTOC), que permite a supervisão das operações à distância e o aumento da segurança de processos, por meio do acompanhamento de performance e colaboração na resolução de problemas; (c) à larga experiência com as questões operacionais, que contemplam uma tripulação ambientada com os desafios deste ambiente operacional, em conjunto com procedimentos especialmente desenvolvidos para auxiliar a atividade de perfuração; e (d) aos equipamentos das unidades de perfuração perfeitamente adaptados às especificidades da área do pré-sal.

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Para além da exploração das sondas, o Grupo Constellation também atua em consórcios que operam FPSOs (*Floating Production Storage and Offloading*) que se destinam à exploração (produção), armazenamento de petróleo e/ou gás natural e escoamento da produção por navios petroleiros.

Em suma, o Grupo Constellation constitui um dos maiores grupos empresariais do setor de de prestação de serviços para exploração de óleo e gás com atuação no Brasil, tendo sua notabilidade e excelência sido reconhecidas pelos seus clientes, pela ANP e por *players* institucionais. Portanto, é inquestionável a importância das Recuperandas, sendo fundamental o seu soerguimento e sua preservação para o setor de óleo e gás no país.

2.2. ESTRUTURA SOCIETÁRIA E OPERACIONAL. A estrutura societária e operacional do Grupo Constellation está representada no organograma constante no Anexo 2.2 a este Plano. Cuida-se de estrutura societária típica do setor de óleo e gás, com a sociedade mãe no exterior controlando sociedades de propósito específico, também no exterior, que tomam financiamento no exterior, adquirem sondas e as afretam a cliente – historicamente, no caso do Grupo Constellation, a Petrobras –, com a empresa operacional localizada no país do cliente, onde as sondas efetivamente operam, no caso o Brasil.

Com efeito, a organização societária das Recuperandas reflete a preocupação do Grupo Constellation com sua eficiência administrativa, financeira e operacional, de modo que todas as Recuperandas têm se coordenado empresarialmente para direcionar seus ativos à prestação, com excelência, de serviços para exploração de petróleo e gás preponderantemente no Brasil.

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2.3. RAZÕES DA CRISE. A atual situação financeira do Grupo Constellation decorre de uma série de fatores, notadamente: a queda do preço do barril do petróleo, a crise da demanda no setor de óleo e gás, a contratação de financiamentos para aquisição de unidades de perfuração, as restrições de acesso ao crédito para empresas do setor de óleo e gás, a queda da taxa de remuneração dos contratos de prestação de serviços e afretamento, a conjuntura e o cenário político e econômico do Brasil, o Programa de Desinvestimento da Petrobras, exigências regulatórias e o aumento da carga tributária.

Com efeito, ultrapassada a crise econômica mundial de 2008, que desacelerou o crescimento econômico mundial, reduzindo o consumo de petróleo, o preço do barril do petróleo voltou a crescer, chegando a custar mais de US$ 124,00 em março de 2012. O êxtase do setor estimulara o amplo acesso a crédito às empresas ligadas à exploração do petróleo – como aquelas do Grupo Constellation – , bem como, e por consequência, fomentou todo o desenvolvimento do setor, que efetivamente se preparou para um aumento de produção.

Foi justamente nesse contexto de crescimento que foram contraídas as principais dívidas do Grupo Constellation, com a aquisição de diversas unidades de perfuração – os financiamentos das unidades Amaralina e Laguna, por exemplo, tiveram início em 2012, e o da Brava, em 2014, sendo certo que todos os demais Projects Finances/Bonds para financiamento de outras sondas foram regularmente quitados, tendo inclusive sido repagos na maioria dos casos de forma acelerada ao cronograma originalmente previsto em tais instrumentos de dívida, em razão da performance operacional das sondas.

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Ocorre que, desde o segundo semestre de 2014, os preços do barril de petróleo vêm apresentando quedas dramaticamente acentuadas, sem que a indústria tenha apresentado recuperação rápida.

Os fatores exógenos que causam a queda dos preços do barril do petróleo são conhecidos: (i) a redução do consumo de petróleo da China – dada a sua desaceleração econômica – e de outros países historicamente demandantes, como a Alemanha; (ii) a quase autossuficiência dos Estados Unidos – através da exploração alternativa do chamado "*shale oil*" –; (iii) a maior demanda e desenvolvimento de outras matrizes energéticas; e (iv) a postura dos países que integram a OPEP em manter a produção de petróleo elevada, mesmo diante da redução do consumo, a fim de, em última análise, com preços baixos, tornar inviável a produção alternativa de óleo e gás, notadamente mais cara – como aquela desenvolvida nos Estados Unidos, ou no pré-sal brasileiro.

Diante de muita oferta e redução da procura, o mercado estacionou. A baixa remuneração do barril de petróleo e a insegurança em relação às projeções tornou o acesso ao crédito mais restrito, impactando diretamente a higidez dos vultosos projetos relacionados à exploração de petróleo.

Não só. Os contratos de prestação de serviços e de afretamento, cuja equação econômico-financeira originariamente suportava o pagamento das dívidas contraídas para a fabricação das unidades de perfuração, atualmente, possuem uma taxa de remuneração diária substancialmente inferior à que vinha sendo praticada.

O gráfico abaixo demonstra as oscilações da taxa de remuneração dos contratos ao longo do tempo e a queda dramática nos últimos anos[2]:

[2] Fonte: IHS Petrodata, Arctic Securities, Rystad Energy – Abril 2018 . Tradução livre do título do gráfico: Águas Ultra profundas por tipo de sonda, 2007-2018 (Dólares americanos - mil).

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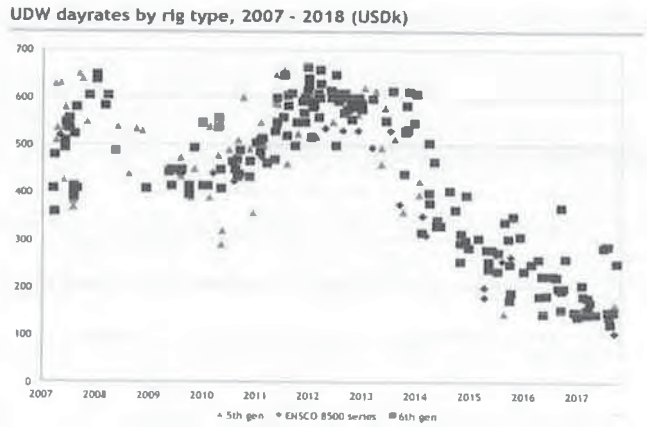

O declínio brusco a partir de 2014 deixa clara a oscilação do mercado, que afeta diretamente a taxa de remuneração dos contratos. Não é difícil concluir, portanto, pelo desequilíbrio da equação econômico-financeira da operação e, consequentemente, pelo prejuízo suportado pelo Grupo Constellation.

A este cenário soma-se a conjuntura econômica do nosso país. O Grupo Constellation tem sua atividade operacional desenvolvida principalmente no Brasil, fornecendo serviços prioritariamente para uma empresa brasileira, sabidamente, a Petrobras. Ou seja, os efeitos da crise no país ressoaram imperdoavelmente sobre as Recuperandas, historicamente prestadoras de serviços para a Petrobras.

Não por outro motivo, a crise sem precedentes gerou dificuldades não só para a estatal, mas, naturalmente, para toda a sua cadeia de fornecedores.

Ocorre que, em decorrência da crise, a Petrobras, por razões evidentes, interrompeu projetos, estacionou investimentos e vem contratando de forma menos acelerada que no passado.

Não fosse o bastante, o Grupo Contellation suportou prejuízos em torno de US$ 400 milhões em razão de aportes de capital não realizados por ex-acionista minoritário das sociedades Amaralina e Laguna. Isso obrigou as Recuperandas a

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fazerem frente a esses aportes, não só em seu nome, mas também em nome desse ex-acionista minoritário, e assumir integralmente a responsabilidade pela operação das sondas *offshore* pertencentes a Amaralina e Laguna, a fim de garantir a incolumidade das operações dessas sondas.

Portanto, apesar das Recuperandas serem sociedades altamente reconhecidas no mercado pela sua solidez e pela sua capacidade administrativa-operacional e eficiência, a crise econômica e petrolífera que se instaurou internacionalmente e, principalmente, no território brasileiro, afetou brutalmente o seu fluxo de caixa, tornando necessária, para a manutenção integral de suas atividades, a restruturação de suas dívidas por meio da Recuperação Judicial.

2.4. Medidas Prévias de Reestruturação Adotadas. O processo de reestruturação do Grupo Constellation se iniciou muito antes do ajuizamento da Recuperação Judicial. Desde que os primeiros sinais de crise no setor de óleo e gás começaram a se apresentar, o Grupo Constellation iniciou intensa renegociação das suas dívidas, marcadamente com os Credores dos Bonds 2019, o que resultou numa transação, em julho de 2017, que originou os Bonds 2024.

Com a aproximação da data de vencimento de suas outras obrigações financeiras e a necessidade de alongamento dos prazos de vencimento, o Grupo Constellation deu início a um amplo processo de negociação de suas dívidas com seus Credores, que contou com o suporte de seus assessores, incluindo, White & Case LLP, Alvarez & Marsal, Houlihan Lokey, Inc., Ogier e Galdino & Coelho Advogados.

O processo de renegociação foi exitoso, resultando na obtenção antecipada do apoio dos Credores Apoiadores à recuperação do Grupo Constellation.

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Inicialmente, o consenso dos Credores ALB e do Bradesco foi formalizado com a assinatura da primeira versão do Acordo de Apoio ao Plano, constante às fls. 1.795/1.901. Desta forma, a Recuperação Judicial foi ajuizada na Data do Pedido já contando com o suporte dos Credores ALB e do Bradesco. Após o ajuizamento da Recuperação Judicial, as Recuperandas seguiram em um amplo processo de negociação com seus Credores, que resultou na assinatura do Acordo de Apoio ao Plano, contando, agora, com o suporte dos Credores Apoiadores. Esse amplo apoio, obtido de forma antecipada, torna a Recuperação Judicial eficiente e ágil para as Recuperandas, para o Administrador Judicial, para os Credores, para o Juízo da Recuperação Judicial e para os demais envolvidos. Muito provavelmente um processo pioneiro nos tribunais do país.

Adicionalmente, é importante dizer que as Recuperandas envidaram todos os esforços possíveis para estabilizar seus caixas, sendo certo que adotaram, nos últimos anos, (i) ajustes nos orçamentos anuais de suas diversas áreas, tendo em vista a realidade atual; (ii) congelamento de reajustes salariais espontâneos; (iii) redimensionamento das estruturas organizacionais; e (iv) adequação do quadro de pessoal.

2.5. Razões para o Plano Conjunto. Como já indicado na petição inicial da Recuperação Judicial, as Recuperandas, em que pese tenham personalidades jurídicas diversas, patrimônios autônomos, estruturas próprias adequadas para exercício de suas atividades (substância econômica) e sejam em sua maioria sociedades estrangeiras, reúnem esforços no sentido de possibilitar o desenvolvimento da operação de sondas *onshore* e *offshore* no Brasil.

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Isso fica bastante evidente por meio das inúmeras garantias cruzadas e iminente possibilidade de inadimplemento cruzado, o que, em última análise, impossibilita a reestruturação isolada das Recuperandas.

Dito de outro modo: as Recuperandas, a toda evidência, compõem grupo econômico. Sociedades que, apesar de juridicamente independentes, com personalidades jurídicas, estruturas operacionais e patrimônios próprios, são economicamente interligadas.

Assim, pressupor que alguma sociedade do Grupo Constellation poderá não ser objeto da Recuperação Judicial enquanto outras se recuperam implica ignorar a consequência danosa que se oporia à atividade remanescente, à luz das complexidades jurídicas e práticas que o insucesso de uma das empresas poderia criar, visto que o soerguimento de uma única Recuperanda depende da recuperação de todo o Grupo Constellation, conjuntamente.

Tal fato, inclusive, já foi reconhecido pelos Credores Apoiadores, representantes de 71.9% do passivo concursal e, de forma segregada, titulares de créditos representativos de 74.8% da Classe II e de 59.2% da Classe III desta Recuperação Judicial, que não só reconheceram a competência da jurisdição brasileira *in casu*, como também, no Acordo de Apoio ao Plano, consignaram sua concordância com a necessidade do litisconsórcio ativo das Recuperandas e do processamento e pagamento dos débitos concursais por meio da consolidação substancial.

Reforça ainda a adequação de um plano conjunto os meios de reestruturação previstos neste Plano, que consideram a reestruturação do Grupo Constellation como um todo e não das sociedades isoladamente. A implementação dos meios de reestruturação compreende a interligação econômico-financeira, com

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a concessão de garantias por diversas entidades e distribuição de novos recursos, que beneficiam toda a operação e, novamente, a atividade empresarial exercida de forma concertada, visando a um fim comum. Esses novos recursos são provenientes dos Novos Recursos ALB, dos Novos Recursos Bonds 2024 e dos Novos Recursos Bradesco e, em relação aos Credores Apoiadores, justificam formas diferenciadas de pagamento, consoante previsto nas Cláusulas 4.2.1, 4.2.2 e 4.3.3.

A implementação do Plano, portanto, termina por confirmar a interconexão entre as Recuperandas, antes e depois do processo recuperacional, fundamentando a consolidação substancial como a medida mais adequada e mais eficiente à superação da crise econômico financeira do Grupo Constellation e da recuperação dos créditos dos Credores Concursais.

2.6. VIABILIDADE ECONÔMICA E OPERACIONAL. O Grupo Constellation tem confiança de que a crise de liquidez enfrentada é passageira e não deve afetar de forma definitiva a solidez das suas atividades.

Embora não se espere, no curto prazo, a recuperação do preço do barril do petróleo, a superação da crise da demanda no setor de óleo e gás e a recuperação do descasamento do valor da taxa de remuneração dos contratos de prestação de serviços e afretamento e dos financiamentos contraídos para aquisição de unidades de perfuração, que foram os principais fatores que conduziram as Recuperandas à Recuperação Judicial, as Recuperandas confiam que a situação é transitória.

Isso porque as Recuperandas são sociedades altamente capacitadas e especializadas e estão aptas a participar do novo cenário do setor de óleo e gás no país, que irá, necessariamente, proporcionar a exploração do petróleo do pré-sal.

Adicionalmente, as Recuperandas já estão sendo muito bem-sucedidas em relação a novos negócios. Embora a gênese do Grupo Constellation seja a prestação

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de serviços à Petrobras e sem deixar de participar dos processos de concorrência conduzidos pela estatal, como forma de enfrentar a crise no país, as Recuperandas tem firmado contratos com outras empresas do setor.

Ainda em 2017, o Grupo Constellation firmou contrato *offshore* internacional com a *Oil and Natural Gas Corporation*, empresa estatal de exploração de petróleo indiana, para afretamento da sonda Olinda Star, com duração de 3 anos. A operação está sendo desenvolvida em um dos blocos de gás natural em águas profundas na bacia Krishna Godavaria, localizada na costa leste indiana.

Ainda nesse sentido, o Grupo Constellation tem obtido vitórias importantes, refletidas em novos contratos com a Shell Brasil Petróleo Ltda., com a Queiroz Galvão Exploração e Produção S.A. e com a Total E&P do Brasil Ltda.

Tal fato apenas ressalta que, não obstante a situação de crise singular vivida pelo país, o mercado nacional possui uma enorme demanda potencial que pode ser atendida pelo Grupo Constellation, dada sua notoriedade no mercado brasileiro.

Para além disso, em uma perspectiva global, o cenário futuro político e econômico do Brasil é positivo para o setor de óleo e gás, diante da grande demanda de energia mundial e, principalmente, da previsão de aumento do preço dos produtos básicos energéticos – para 2018, a estimativa era de um aumento próximo a 4%[3].

O quadro abaixo indica as projeções para os próximos 4 anos, consultado em dez fontes diferentes e, em todos os cenários, a perspectiva é felizmente positiva[4]:

[3] Último acesso em 09.11.2018: http://www.worldbank.org/pt/news/press-release/2017/10/26/commodity-prices-likely-to-rise-further-in-2018-world-bank

[4] Tradução livre do título do gráfico: Perspectivas do preço do petróleo (premissas do mercado).

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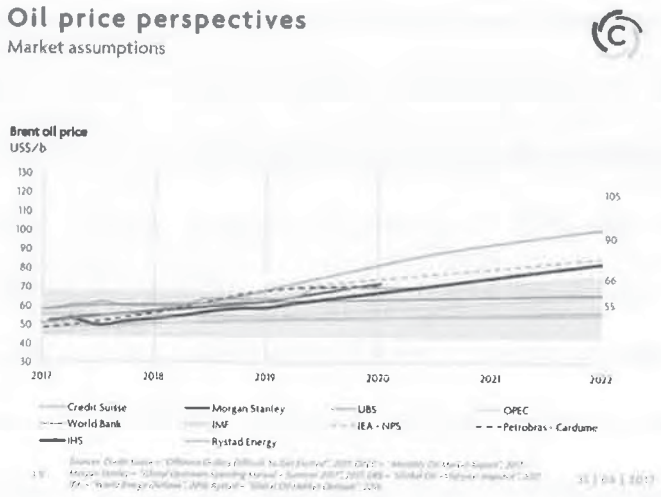

Como se não bastasse, desde o início de 2017, o Governo Federal e a ANP realizaram diversas alterações regulatórias relacionadas ao setor de Petróleo e Gás Natural, a fim de tornar mais atraentes as rodadas de licitação e, consequentemente, estimular novos investimentos na área do pré-sal, inclusive com a realização de um número maior de leilões realizados pela ANP. Uma alteração positiva foi permitir a abertura do mercado para outras empresas, que não somente a Petrobras, permitindo que outros operadores dividam entre si a produção do óleo e gás.

A expectativa do governo com essas alterações é que a exploração renda valor superior a R$ 100 bilhões em investimento[5]. Além disso, é notório que a produção de óleo no mundo em países não pertencentes à OPEP vem declinando a taxas constantes nos últimos anos. Neste sentido, o pré-sal brasileiro e as áreas petrolíferas do Canadá são tratados como meios de compensação das taxas de declínio global[6].

[5] Última consulta em 05.12.2018: http://www.brasil.gov.br/economia-e-emprego/2017/10/com-regras-mais-claras-leilao-do-pre-sal-cria-expectativa-positiva-na-economia

[6] Último acesso em 09.11.2018: https://www.woodmac.com/news/feature/non-opec-decline-rates-remain-stable-until-2020/

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Com efeito, o cenário para o setor é positivo e a demanda por sondas *offshore* para exploração em águas ultra profundas tende a aumentar para os próximos anos. Neste sentido, a relevância do Grupo Constellation desponta no setor, já que 6 de suas 8 sondas offshore são aptas para perfuração em águas ultra profundas, sendo certo que o Grupo Constellation é líder em operações do gênero, tendo até o momento trabalhado em mais de 120 poços em águas profundas e ultraprofundas, incluindo 95 em áreas do pré-sal brasileiro.

Portanto, está claro o grande interesse no estímulo às atividades das Recuperandas. A Recuperação Judicial possibilitará a manutenção de mais de 1.200 postos de trabalho diretos no país – e tantos outros indiretos –, a implementação de medidas e eficiência operacional e reestruturação societária, permitindo a atuação competitiva no setor de óleo e gás do país – e internacionalmente.

Não há dúvidas que o Grupo Constellation é completamente viável e de grande importância para o segmento de óleo e gás, sendo certo que há total comprometimento não só em garantir a melhor performance possível nos contratos em curso – possibilitando eventual renovação –, como também total empenho na acirrada disputa por novos contratos.

Todos esses fatores induzem a conclusão de que a Recuperação Judicial do Grupo Constellation é plenamente possível, o que atende aos fins da LRF. A viabilidade do Plano e das medidas nele previstas para a Recuperação Judicial do Grupo Constellation é atestada e confirmada pelos Laudos, subscritos por empresa especializada, conforme artigo 53, incisos II e III, da LRF, os quais constam do Anexo I e II a este Plano.

3. VISÃO GERAL DAS MEDIDAS DE REESTRUTURAÇÃO.

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3.1. Objetivo do Plano. O Plano visa permitir que as Recuperandas superem sua crise econômico-financeira e preservem a manutenção de empregos diretos e indiretos e os direitos de seus Credores.

3.2. Medidas de Reestruturação. O Grupo Constellation propõe a adoção das medidas descritas nas Cláusulas abaixo como forma de superar a sua atual e circunstancial crise econômico-financeira, podendo ainda utilizar-se de todos os meios de recuperação previstos no artigo 50 da LRF e outras leis aplicáveis. Em síntese, este Plano prevê (a) concessão de prazos e condições especiais para pagamento das obrigações vencidas ou vincendas; (b) a criação de subsidiárias integrais; (c) a novação do passivo concursal e, em alguns casos, a constituição de novas garantias; e (d) eventual alienação de ativos, quando necessário; tudo em observância ao Acordo de Apoio ao Plano. Adicionalmente, as Recuperandas poderão tomar todas as providências cabíveis e necessárias em toda e qualquer jurisdição aplicável, incluindo Brasil, Estados Unidos da América e Ilhas Virgens Britânicas, a fim de cumprir com as respectivas legislações aplicáveis e implementar as medidas previstas neste Plano.

3.3. Reestruturação das Dívidas. O Grupo Constellation reestruturará as dívidas contraídas perante os seus Credores representadas pelos Créditos Concursais, na forma prevista na Cláusula 4 abaixo e no Acordo de Apoio ao Plano.

3.4. Aporte de Capital pelos Acionistas. Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no Anexo VII do seu Anexo A, a LuxCo e os CIPEF

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comprometem-se, individualmente, a realizar, na Data de Fechamento, aporte de capital na Constellation Holding, no valor de US$ 20.017.800,00 e US$ 6.982.200,00, respectivamente, a partir de recursos atualmente depositados em garantia (*escrow*), mediante aporte de capital sem emissão de novas ações ou, caso um ou mais co-investidores dos CIPEF não acompanhe o aporte de capital na sua participação *pro rata* de contribuição no valor de aporte dos CIPEF, o aporte de capital será realizado com a emissão de novas ações da mesma classe, sendo que, neste caso, as novas ações emitidas serão subscritas pelos CIPEF e a LuxCo, de modo que (i) a contribuição de capital da LuxCo continue sendo de US$ 20.017.800,00 e dos CIPEF de US$ 6.982.200,00; e (ii) os co-investidores dos CIPEF que não tiverem contribuído na proporção da sua participação no aporte (e somente estes) sejam diluídos.

3.5. **Novos Recursos.** O Grupo Constellation também poderá prospectar e adotar medidas, mesmo durante a Recuperação Judicial, visando à obtenção de novos recursos, inclusive mediante captação no mercado de capitais a serem aprovados nos termos deste Plano, do Acordo de Apoio ao Plano, dos Novos Instrumentos de Restruturação (a partir da Data de Fechamento), e dos respectivos instrumentos societários das Recuperandas, desde que observado o disposto neste Plano, no Acordo de Apoio ao Plano, nos Novos Instrumentos de Restruturação (a partir da Data de Fechamento), e nos artigos 67, 84 e 149 da LRF. Eventuais novos recursos captados no mercado de capitais terão natureza extraconcursal para fins do disposto na LRF, podendo contar com a constituição de novas garantias, desde que observado o disposto no Acordo de Apoio ao Plano e nos Novos Instrumentos de Restruturação (a partir da Data de Fechamento), exceto no que diz respeito a

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eventuais aumentos de capital social, uma vez que não representam obrigações de pagamento.

3.5.1. **Novos Recursos ALB**. Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no Anexo I do seu Anexo A, os Credores ALB comprometem-se a conceder, individualmente, novos empréstimos às Recuperandas no valor total de US$ 39.074.535,41 (sendo US$ 27.202.963,71.00 (69,6%) desembolsados para Amaralina e Laguna, e US$ 11.871.571,70 (30,4%) desembolsados para a Brava Star), com vencimento em 9 de novembro de 2023, sendo que referidos valores decorrem (i) do pagamento de principal e dos pagamentos de *cash sweep* referentes ao mês de agosto de 2018; e (ii) do pagamento de principal e dos pagamentos de *cash sweep* referentes ao mês de setembro de 2018, a serem pagos nos termos da Cláusula 4.2.1 abaixo. A liberação dos Novos Recursos ALB se dará por meio de novas *tranches* dos Créditos ALB reestruturados, conforme previsto no Acordo de Apoio ao Plano, e o pagamento dos Novos Recursos ALB se dará nas mesmas condições dos Créditos ALB, previstas na Cláusula 4.2.1.

3.5.2. **Novos Recursos Bonds 2024.** Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no seu Anexo A, item "2024 Notes New Money" e no seu Anexo F, o Compromisso *Backstop*, o Grupo Constellation envidará todos os esforços para, em até 2 (dois) Dias Úteis após a Aprovação do Plano, oferecer aos Credores dos Bonds 2024, de maneira proporcional à titularidade dos Créditos dos Bonds 2024, a oportunidade de subscrever novos títulos de dívida (*bonds*) no valor de principal agregado de US$ 27.000.000,00

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(vinte e sete milhões de dólares americanos), a serem pagos nas mesmas condições dos Créditos Bonds 2024 Participantes, nos termos da Cláusula 4.2.2 abaixo. Após a oferta, os Credores dos Bonds 2024 terão até 7 (sete) Dias Úteis para, na proporção dos respectivos Créditos Bonds 2024, manifestar intenção irrevogável e irretratável de adquirir esses novos títulos de dívida (*bonds*), sendo certo que os Credores dos Bonds 2024 Apoiadores, em conjunto, na proporção dos Créditos Bonds 2024 por eles titularizados e nos termos do Compromisso Backstop, se comprometeram a adquirir a totalidade desses novos títulos que não forem subscritos, nos termos do Compromisso *Backstop*.

3.5.3. MANUTENÇÃO DAS CARTAS DE CRÉDITO REEMBOLSO BRADESCO E NOVOS RECURSOS BRADESCO. O Bradesco, observados os termos e condições constantes no Acordo de Apoio ao Plano, especialmente em seu Anexo II do seu Anexo A (*Bradesco Loans*), manterá em vigor as Cartas de Crédito Reembolso Bradesco, as quais preservarão os termos e condições de pagamento previstos nos Acordos de Reembolso Bradesco, e concederá novo empréstimo às Recuperandas, no valor total de US$ 10.000.000,00 (dez milhões de dólares americanos), a ser desembolsado na Data de Fechamento desde que verificadas as condições supensivas previstas no Acordo de Apoio ao Plano e no Instrumento dos Novos Recursos Bradesco. Após o desembolso dos Novos Recursos Bradesco, o pagamento dos Novos Recursos Bradesco será efetuado nas mesmas condições aplicáveis aos Créditos Bradesco, previstas na Cláusula 4.3.3. abaixo.

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3.6. Geração de Caixa Excedente (*Cash Sweep*). Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no Anexo V do seu Anexo A, os Credores ALB, os Credores dos Bonds 2024 Participantes e o Bradesco farão jus ao Caixa Excedente (Cash Sweep) à US$ 140.000.000,00 (cento e quarenta milhões de dólares americanos) livre das Recuperandas, para amortização de seus Créditos, conforme abaixo. O Caixa Excedente será compartilhado a partir de 2021 até 2025 entre os Credores ALB, os Credores dos Bonds 2024 Participantes, o Bradesco e as Recuperandas na forma estipulada no Acordo de Apoio ao Plano, mais especificamente no Anexo V do seu Anexo A, e abaixo resumida:

	Se o saldo devido dos Créditos ALB for superior a 50% do valor devido na Data do Pedido, incluindo os valores de principal depositados em *escrow*:	**Se o saldo devido dos Créditos ALB for inferior a 50% do valor devido na Data do Pedido, incluindo os valores de principal depositados em *escrow*:**
Credores ALB	57,00%	23,75%
Credores dos Bonds 2024 Participantes	23,75%	47,50%
Bradesco	14,25%	23,75%
Grupo Constellation	5,00%	5,00%

3.7. Criação de Empresas *Holding* Intermediárias. Conforme previsto no Acordo de Apoio ao Plano e descrito no Anexo B de seu Anexo A, respeitadas as limitações impostas pela Lei das Sociedades por Ações e demais leis e regulamentações aplicáveis, (i) a Constellation Overseas constituirá três empresas *holdings* subsidiárias integrais ("Holdcos 1"), as quais deterão a totalidade da participação societária nas Holdcos 2, conforme definido abaixo; (ii) as Holdcos 1 constituirão três empresas *holdings* subsidiárias integrais ("Holdcos 2"), as quais passarão a deter, respectivamente, toda a participação societária da Constellation Overseas na Amaralina, na Laguna, na Brava Star; (iii) as três Holdcos 1 constituirão em garantia

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aos Credores ALB, penhor das ações de emissão das Holdcos 2 e respectivas sociedades subsidiárias, (iv) a Constellation Overseas constituirá em garantia aos Credores dos Bonds 2024 Participantes e ao Bradesco, penhor das ações de emissão das Holdcos 1 tudo conforme previsto no Anexo B do Anexo A do Acordo de Apoio ao Plano.

3.8. Garantia Pecuniária (*Cash Collateral*). Conforme previsto no Acordo de Apoio ao Plano e especificado no Brava *Cash Collateral Agreement* e no *A/L Cash Collateral Agreement*, a Brava Star, a Laguna e a Amaralina passam a ter direito de acessar e usar os recursos depositados em contas restritas até então empenhadas aos Credores ALB, nos prazos e formas de acordo com a remuneração estabelecidos no Brava *Cash Collateral Agreement* e no *A/L Cash Collateral Agreement* e no Acordo de Apoio ao Plano, exceto (i) pelos recursos relacionados ou depositados em qualquer das Contas Reserva; e (ii) por quaisquer pagamentos feitos em decorrência de qualquer cobertura de seguro (conforme assim definido no *Brava Credit Agreement* e no *A/L Credit Agreement*) superior a US$10.000.000,00, em qualquer caso sujeitos aos termos e condições do *A/L Cash Collateral Agreement* e do *Brava Cash Collateral Agreement*.

3.9. Alienação e/ou Oneração de Ativos. Como forma de obtenção de recursos, reforço de liquidez para a estrutura de capital das Recuperandas, reinvestimento nos negócios e otimização da operação, o Grupo Constellation poderá promover, durante todo o período da Recuperação Judicial (ou depois dele), a alienação e/ou oneração de bens que integram o ativo financeiro, tangível ou intangível, incluindo mas não se limitando a participações societárias das Recuperandas, sem

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necessidade de prévia autorização de Credores, Classe ou da Assembleia de Credores nos termos do artigo 66 da LRF, desde que observadas as disposições deste Plano, do Acordo de Apoio ao Plano e, a partir da Data de Fechamento, dos Novos Instrumentos de Restruturação. Desse modo, a alienação dos Ativos do Grupo Constellation fica desde já autorizada, independente de nova aprovação dos Credores Concursais observados os limites estabelecidos na LRF, neste Plano, nos Novos Instrumentos de Reestruturação, eventuais direitos reais de garantia dos Credores e na legislação aplicável ao Processo Auxiliar em curso nas Ilhas Virgens Britânicas.

3.10. Bid/Performance Bonds. Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no item "Bid/Performance Bonds" do seu Anexo A, os Credores ALB, conforme aplicável em cada caso, sujeito às demais condições previstas no Acordo de Apoio ao Plano e de acordo com a capacidade dos Credores ALB e, ainda, sujeito às necessárias aprovações internas, irão outorgar garantias financeiras e/ou garantias de performance, neste caso relacionadas aos ativos garantidos nos Créditos ALB, para assegurar a participação das Recuperandas em novos contratos e/ou propostas e/ou leilões (*Bid*) realizados para operação offshore dos ativos que constituem as garantias dos Créditos ALB. Conforme previsto no Acordo de Apoio ao Plano, mais especificamente no Anexo II do seu Anexo A, o Bradesco irá outorgar garantias financeiras e/ou garantias de performance para assegurar a participação das Recuperandas em novos contratos e/ou propostas e/ou leilões (*Bid*) realizados para operação no Brasil, sujeitos à observância dos procedimentos aplicáveis.

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4. REESTRUTURAÇÃO E LIQUIDAÇÃO DE DÍVIDAS.

4.1. PAGAMENTO DOS CREDORES TRABALHISTAS.

4.1.1. CREDORES TRABALHISTAS. Todos os Credores Trabalhistas, ressalvadas as previsões contidas nas Cláusulas 4.1.2, 4.1.3 e 4.1.4, terão seus Créditos Trabalhistas adimplidos sem a incidência de juros ou correção monetária em até 30 dias contados da Data de Homologação.

4.1.2. CREDORES TRABALHISTAS PESSOAS FÍSICAS DETENTORES DE CRÉDITOS SUB-JUDICE. Os Credores Trabalhistas Pessoas Físicas detentores de Créditos Sub-Judice terão seus Créditos Trabalhistas adimplidos sem a incidência de juros ou correção monetária em até 12 meses contados da Data de Homologação.

4.1.3. HONORÁRIOS ADVOCATÍCIOS. Todos os Créditos Trabalhistas que consistem em honorários advocatícios serão adimplidos sem a incidência de juros ou correção monetária da seguinte maneira:

(a) Se o Credor Trabalhista for titular de Crédito Concursal até R$ 600.000,00 (seiscentos mil reais), em 3 (três) parcelas iguais, pagas em 30 (trinta), 60 (sessenta) e 90 (noventa) dias a contar da Data de Homologação.

(b) Se o Credor Trabalhista for titular de Crédito Concursal acima de R$ 600.000,00 (seiscentos mil reais), em 2 (duas) parcelas iguais, a

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primeira paga no 1º (primeiro) dia útil subsequente à Data de Homologação e a segunda na Data de Fechamento.

4.1.4. CRÉDITOS TRABALHISTAS RETARDATÁRIOS. Todos os Credores Trabalhistas que forem Credores Retardatários terão seus Créditos Trabalhistas adimplidos sem a incidência de juros ou correção monetária em até 12 meses contados do trânsito em julgado da decisão que habilitar o Crédito Trabalhista.

4.2. PAGAMENTO DOS CREDORES COM GARANTIA REAL.

4.2.1. PAGAMENTO DOS CRÉDITOS ALB. O pagamento dos Créditos ALB detidos pelos Credores ALB observará integralmente os termos e condições previstos no Acordo de Apoio ao Plano, especificamente no Anexo I do seu Anexo A, cuja disciplina de pagamento e garantias encontra-se aqui resumida.

(a) DATA DE VENCIMENTO: 09 de novembro de 2023.

(b) AMORTIZAÇÃO: O valor do principal será pago nos meses de março, junho, setembro e dezembro, conforme descrito a seguir:

1º trimestre de 2021	Créditos Amaralina e Laguna: US$ 13,05 milhões (69,6%) Créditos Brava: US$ 5,70 milhões (30,4%) Total US$ 18,75 milhões
2º de trimestre de 2021	Créditos Amaralina e Laguna: US$ 13,05 milhões (69,6%) Créditos Brava: US$ 5,70 milhões (30,4%) Total US$ 18,75 milhões
3º trimestre de 2021	Créditos Amaralina e Laguna: US$ 1,10 milhões (69,6%) Créditos Brava: US$ 0,48 milhões (30,4%)

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	Total US$ 1,58 milhões
3º trimestre de 2021	Créditos Amaralina e Laguna: US$ 7,53 milhões (43,9%) Créditos Brava: US$ 9,64 milhões (56,1%)
4º trimestre de 2021	Créditos Amaralina e Laguna: US$ 8,23 milhões (43,9%) Créditos Brava: US$ 10,52 milhões (56,1%)
2022	Amortizações trimestrais no montante total de US$ 75,0 milhões anuais (Créditos Amaralina e Laguna: US$ 32,90 milhões, Créditos Brava: US$ 42,10 milhões)
1º, 2º e 3º trimestres de 2023	Amortizações trimestrais no montante total de US$ 56,25 milhões para os 3 trimestres (Créditos Amaralina e Laguna: US$ 24,68 milhões, Créditos Brava: US$ 31,57 milhões)
09.11.2023	Pagamento *bullet* do saldo remanescente, incluindo Juros/Atualização Monetária remanescentes, conforme previsto no item (d) abaixo.

(c) CARÊNCIA DO PRINCIPAL: de setembro de 2018 até dezembro de 2020.

(d) JUROS/ATUALIZAÇÃO MONETÁRIA: Serão pagos/capitalizados nos meses de março, junho, setembro e dezembro, conforme opções abaixo descritas. As Recuperandas ponderão optar entre pagar juros em dinheiro ou PIK, sendo certo que o PIK prevalecerá caso não se pronunciem.

De 01.09.2018 a 31.01.2019	LIBOR + 2,75% em dinheiro, mais 1,50% PIK; ou taxa de juros PIK de 10,00%
De 01.02.2019 a 31.07.2019	LIBOR + 2,75% em dinheiro, mais 1,50% PIK; ou taxa de juros PIK de 12,00%
De 01.08.2019 a 31.12.2019	LIBOR + 2,75% em dinheiro, mais 1,50% PIK; ou taxa de juros PIK de 14,00%
De 01.01.2020 a 09.11.2023	LIBOR + 2,75% em dinheiro, mais 1,50% PIK

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(e) GARANTIAS: Serão outorgadas garantias na forma do Acordo de Apoio ao Plano.

(f) OBRIGAÇÕES DE FAZER E NÃO FAZER: Serão observadas as obrigações de fazer e não fazer na forma disciplinada no Acordo de Apoio ao Plano.

(g) EVENTOS DE VENCIMENTO ANTECIPADO: Serão observados os eventos de vencimento antecipado na forma disciplinada no Acordo de Apoio ao Plano.

4.2.2. PAGAMENTO DOS CRÉDITOS BONDS 2024: O pagamento dos Créditos Bonds 2024 detidos pelos Credores dos Bonds 2024 observará integralmente os termos e condições previstos no Acordo de Apoio ao Plano, especificamente no Anexo III do seu Anexo A, cuja disciplina de pagamento encontra-se aqui resumida.

(a) DATA DE VENCIMENTO: 09 de novembro de 2024.

(b) AMORTIZAÇÃO: Não haverá amortização para Credores dos Bonds 2024 Não-Participantes. O valor do principal será amortizado para Credores dos Bonds 2024 Participantes, conforme descrito a seguir:

2023	US$ 16,0 milhões
2024	US$ 8,0 milhões

(c) CARÊNCIA DO PRINCIPAL: de setembro de 2018 até dezembro de 2022.

(d) JUROS/ATUALIZAÇÃO MONETÁRIA PARA CREDORES DOS BONDS 2024 PARTICIPANTES:

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De 01.09.2018 a 09.11.2021	10,00% PIK
De 10.11.2021 a 09.11.2024	9,00% em dinheiro + taxa de juros PIK de 1,00% Os juros são capitalizados semestralmente em maio e novembro de cada ano.

(e) JUROS/ATUALIZAÇÃO MONETÁRIA PARA CREDORES DOS BONDS 2024 NÃO-PARTICIPANTES:

(i) Se os Novos Recursos Bonds 2024 forem completamente aportados:

De 01.09.2018 a 09.11.2021	10,0% PIK
De 10.11.2021 a 09.11.2024	7,00% em dinheiro + 3,00% PIK Os juros são capitalizados semestralmente em maio e novembro de cada ano.

(ii) Se os Novos Recursos Bonds 2024 não forem completamente aportados:

De 01.09.2018 a 09.11.2024	10,0% PIK

(f) GARANTIAS: Serão outorgadas garantias na forma do Acordo de Apoio ao Plano.

(g) OBRIGAÇÕES DE FAZER E NÃO FAZER: Serão observadas as obrigações de fazer e não fazer na forma disciplinada no Acordo de Apoio ao Plano.

(h) EVENTOS DE VENCIMENTO ANTECIPADO: Serão observados os eventos de vencimento antecipado na forma disciplinada no Acordo de Apoio ao Plano.

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4.3. PAGAMENTO DOS CREDORES QUIROGRAFÁRIOS.

4.3.1. Todos os Créditos Quirografários, ressalvadas as formas de pagamento previstas nas Cláusulas 4.3.2, 4.3.3 e 4.3.4, bem como as previsões contidas nas Cláusulas 4.5, 4.6 e 4.7, serão pagos sem a incidência de juros ou correção monetária, até 31 de dezembro de 2050.

4.3.2. CRÉDITOS BONDS 2019: O pagamento dos Créditos Bonds 2019 detidos pelos Credores dos Bonds 2019 observará integralmente os termos e condições previstos no Acordo de Apoio ao Plano, especificamente no Anexo IV do seu Anexo A. Isto é, serão pagos em 09 de novembro de 2030, com a incidêndia de juros de 6,25% PIK, capitalizados semestralmente nos meses de maio e novembro. Não haverá qualquer amortização de juros ou do valor principal devido até o vencimento.

4.3.3. CRÉDITOS BRADESCO: O pagamento dos Créditos Bradesco observará integralmente os termos e condições previstos no Acordo de Apoio ao Plano, especificamente no Anexo II do seu Anexo A, cuja disciplina de pagamento encontra-se aqui resumida.

(a) DATA DE VENCIMENTO: 09 de novembro de 2025.

(b) AMORTIZAÇÃO: Período de amortização com pagamentos quatro vezes ao ano (março, junho, setembro e dezembro), a partir de 2022, conforme descrito abaixo:

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2022	Amortizações trimestrais totalizando US$ 5,0 milhões anualmente.
2023	Amortizações trimestrais totalizando US$ 5,0 milhões anualmente.
2024	Amortizações trimestrais totalizando US$ 5,0 milhões anualmente.
2025	Amortizações trimestrais totalizando US$ 7,5 milhões até o terceiro trimestre de 2025.

(c) CARÊNCIA DO PRINCIPAL: de setembro de 2018 até dezembro de 2021.

(d) JUROS/ATUALIZAÇÃO MONETÁRIA:

De 01.09.2018 a 31.01.2021	LIBOR + 2,00% (diferidos até a data de vencimento)
De 01.02.2021 a 09.11.2025	LIBOR + 2,00% Pagamento em dinheiro limitado a 2,75% e o remanescente capitalizados trimestralmente e diferidos até a data de vencimento. Pagos de forma trimestral, exceto pelos juros capitalizados, cujo pagamento é diferido até a data do vencimento.

(e) GARANTIAS: Serão outorgadas garantias na forma do Acordo de Apoio ao Plano.

(f) OBRIGAÇÕES DE FAZER E NÃO FAZER: Serão observadas as obrigações de fazer e não fazer na forma disciplinada no Acordo de Apoio ao Plano.

(g) EVENTOS DE VENCIMENTO ANTECIPADO: Serão observados os eventos de vencimento antecipado na forma disciplinada no Acordo de Apoio ao Plano.

4.3.4. CRÉDITOS DE FORNECEDORES: O pagamento dos Créditos de Fornecedores detidos pelos Credores Fornecedores serão pagos, sem a

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incidência de juros ou correção monetária, até 2 (dois) anos após a Data de Homologação.

4.4. Pagamento dos Credores ME/EPP. Todos os Créditos ME/EPP, ressalvadas as previsões contidas nas Cláusulas 4.5, 4.6 e 4.7, serão pagos, sem a incidência de juros ou correção monetária, até 2 (dois) anos após a Data de Homologação.

4.5. Pagamento dos Credores Parceiros. Todos os Credores Quirografários, excetuados o Bradesco e os Bonds 2019, e todos os Credores ME/EPP, que sejam considerados Credores Parceiros, ainda que sejam Credores Retardatários, serão pagos sem a incidência de juros ou correção monetária da seguinte maneira:

(a) Credores Parceiros Operacionais, Credores Parceiros Clientes e Credores Parceiros Empregados:

(a.1) Em até 30 (trinta) dias a contar da Data de Homologação, todos os Credores Parceiros serão pagos até o limite de R$ 10.000,00 (dez mil reais) para cada Credor Parceiro.

(a.2) Os Credores Parceiros cujo Crédito Parceiro for superior a R$ 10.000,00 (dez mil reais) terão o saldo remanescente do seu Crédito Concursal pago em 3 (três) parcelas iguais, em 30 (trinta), 60 (sessenta) e 90 (noventa) dias a contar da Data de Homologação.

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(b) Credores Parceiros Reestruturação serão pagos em 2 (duas) parcelas iguais, a primeira paga no 1º (primeiro) dia útil subsequente à Data de Homologação e a segunda na Data de Fechamento.

(c) Caso a habilitação do Crédito Parceiro se dê após a Data de Homologação, o Crédito Parceiro será pago em 3 (três) parcelas iguais e mensais, sendo a primeira parcela devida 30 (trinta) dias após o trânsito em julgado da decisão que habilitar o Crédito Parceiro.

4.6. Pagamento dos Créditos Ilíquidos. Todos os Créditos Ilíquidos, inclusive aqueles que também vierem a ser classificados como Créditos Retardatários, serão pagos sem a incidência de juros ou correção monetária até 31 de dezembro de 2050.

4.7. Pagamento dos Créditos Retardatários. Todos os Créditos Retardatários, se de outro modo não dispuser esse Plano, serão pagos sem a incidência de juros ou correção monetária até 31 de dezembro de 2050.

4.8. Pagamento dos Créditos detidos pelos Credores Sub-rogatários. Os Créditos detidos pelos Credores Sub-rogatários serão pagos nas mesmas condições previstas nesse Plano para pagamento do credor original.

5. Regras adicionais a serem observadas para a liquidação da dívida.

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5.1. Forma de Pagamento. Exceto para os Credores Trabalhistas partes em Processos, que sempre receberão mediante depósito judicial nos autos dos respectivos Processos, salvo se houver previsão diversa no Plano, no Acordo de Apoio ao Plano ou nos Novos Instrumentos de Reestruturação, os valores devidos aos Credores, serão pagos mediante (i) transferência direta de recursos ou depósito na conta bancária do respectivo Credor; ou (ii) por ordem de pagamento a ser sacada diretamente no caixa da instituição financeira pelo respectivo Credor, conforme o caso, servindo o comprovante da referida operação financeira como prova da quitação do respectivo pagamento. Sendo certo que, os Credores Quirografários e os Credores de ME/EPP devem, no prazo de 30 dias contados da Data de Homologação, informar suas respectivas contas bancárias para os fins previstos nesta Cláusula, mediante comunicação por escrito endereçada a qualquer uma das Recuperandas, nos termos da Cláusula 7.4 abaixo, sendo certo que, os pagamentos que não forem realizados tempestivamente em razão de os Credores Quirografários e os Credores de ME/EPP não terem informado suas contas bancárias em referido prazo não serão considerados como um evento de descumprimento do Plano. Neste caso, a critério das Recuperandas, os pagamentos devidos aos Credores Quirografários e aos Credores de ME/EPP que não tiverem informado suas contas bancárias poderão ser realizados em juízo, às suas expensas, que responderão por quaisquer custos agregados em razão da utilização da via judicial para depósito. Não haverá a incidência de juros, multas, encargos moratórios ou descumprimento deste Plano se os pagamentos não tiverem sido realizados em razão de os Credores Quirografários e os Credores de ME/EPP não terem informado tempestivamente suas contas bancárias.

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5.2. Majorações dos valores dos Créditos por decisão judicial ou acordo. Na hipótese de se verificar eventual majoração no valor de qualquer Crédito decorrente de decisão judicial transitada em julgado ou acordo entre as partes, o valor majorado do Crédito será pago na forma prevista neste Plano, a partir do trânsito em julgado da decisão judicial ou da celebração do acordo entre as partes. Neste caso, as regras de pagamento do valor majorado de tais Créditos passarão a ser aplicáveis apenas a partir do referido trânsito em julgado ou da data da celebração do acordo entre as partes.

5.3. Lista de Credores e Edital de Credores. As projeções de pagamento previstas neste Plano foram elaboradas tendo como base no Edital de Credores, sendo certo que poderá sofrer alterações, até a Assembleia de Credores, em razão ou não da Lista de Credores.

5.3.1. Todos os Créditos Concursais, relacionados na Lista de Credores, alcançam o valor total de endividamento no montante de R$ 5.783.609.779,49, que pode ser assim sintetizado:

	Reais[7]
Créditos Trabalhistas	**13.906.823,09**
Créditos com Garantia Real	**4.772.275.733,78**
Créditos ALB	2.303.608.980,36
Bonds 2024	2.468.666.753,42
Créditos Quirografários	**996.277.943,26**
Bradesco	589.378.347,09

[7] Para conversão foi utilizado o câmbio de R$ 3,8555 por dólar americano. Tal câmbio deverá sofrer alterações, considerando o disposto no art. 38 da LRF.

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BONDS 2019	381.214.747,79
DEMAIS CREDORES	25.684.848,39
CRÉDITOS ME/EPP	**1.149.279,36**

5.3.2. Para fins deste Plano, todos os Créditos Concursais foram apurados e atualizados em conformidade com os respectivos encargos contratuais até a Data do Pedido.

6. EFEITOS DO PLANO.

6.1. **VINCULAÇÃO DO PLANO.** A partir da Homologação Judicial do Plano, as disposições deste Plano vinculam as Recuperandas, seus Acionistas, os Credores e respectivos Credores Cessionários e sucessores, nos termos do artigo 59 da LRF. A Aprovação do Plano, juntamente com a Homologação Judicial do Plano, constitui autorização e consentimento vinculante concedido pelos Credores para que as Recuperandas possam, dentro dos limites da lei aplicável, incluindo a LRF, deste Plano e do Acordo de Apoio ao Plano, adotar todas e quaisquer providências que sejam apropriadas e necessárias para a implementação das medidas previstas neste Plano, inclusive obtenção de medida judicial, extrajudicial ou administrativa (seja de acordo com a LRF ou no âmbito de qualquer procedimento de natureza principal ou incidental) pendente ou a ser iniciado pelo Grupo Constellation, qualquer dos representantes das Recuperandas ou qualquer representante da Recuperação Judicial em qualquer jurisdição que não seja o Brasil com o propósito de conferir força, validade e efeito ao Plano e sua implementação. Para o bem da clareza, os Credores que aprovarem o Plano expressamente declaram que se comprometem a

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aprovar qualquer outro instrumento de composição em outra jurisdição formalizado pelas Recuperandas, desde que tal instrumento reflita os termos e condições deste Plano e do Acordo de Apoio do Plano, com a finalidade de implementar os termos desse Plano, observado o quanto disposto no Acordo de Apoio ao Plano.

6.2. ADITAMENTOS, ALTERAÇÕES OU MODIFICAÇÕES DO PLANO. Após a Homologação Judicial do Plano, aditamentos, alterações ou modificações ao Plano podem ser propostos a qualquer tempo pelas Recuperandas, desde que tais aditamentos, alterações ou modificações sejam aceitos pelos Credores, na forma da LRF e do Acordo de Apoio ao Plano, e, se após a Data de Fechamento, dos Novos Instrumentos de Restruturação, respeitados os quóruns ali previstos. Aditamentos ao Plano, desde que aprovados nos termos deste Plano, do Acordo de Apoio ao Plano e, após a Data de Fechamento, dos Novos Instrumentos de Restruturação, em conformidade com a LRF, obrigam todos os credores a ele sujeitos, independentemente da expressa concordância destes com aditamentos posteriores.

6.3. NOVAÇÃO. Este Plano implica a novação dos Créditos Concursais, que serão pagos na forma estabelecida neste Plano. Por força da referida novação, todas as obrigações, *covenants*, índices financeiros, hipóteses de vencimento antecipado, bem como outras obrigações e garantias referentes aos Créditos Concursais que sejam incompatíveis com as condições deste Plano deixarão de ser aplicáveis, sendo integralmente substituídas pelas previsões contidas neste Plano, no Acordo de Apoio ao Plano e, após a Data de Fechamento, nos Novos Instrumentos de Reestruturação.

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6.4. Ratificação de Atos e Anuência. A Aprovação do Plano pela Assembleia de Credores, juntamente com a Homologação Judicial do Plano, representará a concordância e ratificação das Recuperandas, dos *Joint Provisional Liquidators* e dos Credores Concursais de todos os atos praticados e obrigações contraídas para integral implementação e consumação deste Plano e da Recuperação Judicial, aí incluindo a celebração do Acordo de Apoio ao Plano e o ajuizamento de Processo Auxiliar no Exterior, cujos atos ficam expressamente autorizados, validados e ratificados para todos os fins de direito, ressalvando-se que em relação às Recuperandas incorporadas sob a Lei das Ilhas Virgens Britânicas, sujeitas a Processo Auxiliar no Exterior, os atos dos Joint Provisional Liquidators possam eventualmente requerer a aprovação das Cortes das Ilhas Virgens Britânicas até que se encerre o Processo Auxiliar no Exterior. Os Credores Concursais têm plena ciência de que os valores, prazos, termos e condições de satisfação de seus Créditos são alterados por este Plano. Os Credores Concursais, no exercício de sua autonomia da vontade, declaram que concordam expressamente com as referidas alterações, nos termos previstos neste Plano, abrindo mão do recebimento de quaisquer valores adicionais, ainda que previstos nos instrumentos que deram origem aos Créditos ou em decisão judicial, administrativa ou arbitral, por estarem convencidos de que este Plano reflete condições econômico-financeiras que lhes são mais favoráveis do que a manutenção das condições originais de pagamento de seus Créditos.

6.5. Poderes do Grupo Constellation para implementar o Plano. Após a Homologação Judicial do Plano, o Grupo Constellation fica desde já autorizado a adotar todas as medidas necessárias para (i) se necessário, submeter a Aprovação

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do Plano a Processo Auxiliar no Exterior, com o objetivo de conferir efeitos ao Plano em território norte-americano e nas Ilhas Virgens Britânicas, nos termos da legislação aplicável, (ii) iniciar e/ou dar andamento a outros procedimentos judiciais, extrajudiciais ou administrativos, sejam de insolvência ou de outra natureza, em outras jurisdições além da República Federativa do Brasil, incluindo o território norte-americano e as Ilhas Virgens Britânicas, conforme necessário, (iii) pagar os custos dos *Joint Provisional Liquidators*, bem como (iv) tomar todas as medidas necessárias, de acordo com a legislação brasileira e/ou estrangeira aplicável, para cumprir o Plano e o Acordo de Apoio ao Plano. O Processo Auxiliar no Exterior não poderá alterar os termos e as condições deste Plano.

6.5.1. As Recuperandas poderão realizar operações de reorganização societária, tais como cisão, fusão, incorporação de uma ou mais sociedades do Grupo Constellation, transformação, dissolução ou liquidação entre as próprias Recuperandas e/ou quaisquer de suas afiliadas, sempre com o objetivo de otimizar as suas operações e incrementar seus resultados, contribuindo para a consecução deste Plano, desde que respeitado o Acordo de Apoio ao Plano até a Data de Fechamento e, após a Data de Fechamento, os Novos Instrumentos de Reestruturação.

6.6. **Extinção de Ações.** Os Credores, a partir da Homologação Judicial do Plano, não mais poderão com relação aos seus respectivos Créditos Concursais (i) exceto pelo quanto disposto na LRF, ajuizar e/ou dar continuidade a quaisquer medidas, nesta jurisdição ou em qualquer outra, relacionadas a toda e qualquer disputa, pretensão, causa de pedir, sejam elas previamente identificadas ou não, conhecidas

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ou não, incluindo quaisquer pretensões atribuídas às Recuperandas que os Credores possam ter (seja de forma individualizada ou coletiva) contra as Recuperandas ou os *Joint Provisional Liquidators*; (ii) executar contra as Recuperandas qualquer sentença, decisão judicial ou administrativa ou sentença arbitral relacionada a qualquer Crédito Concursal; (iii) continuar adotando quaisquer medidas e/ou ações adversas, em quaisquer jurisdições, notadamente aquelas em andamento perante a jurisdição dos Estados Unidos da América e Ilhas Virgens Britânicas, contra as Recuperandas ou os *Joint Provisional Liquidators*; (iv) penhorar quaisquer bens das Recuperandas para satisfazer seus Créditos Concursais ou praticar qualquer outro ato constritivo contra tais bens; (v) criar, aperfeiçoar ou executar qualquer garantia real sobre bens e direitos das Recuperandas para assegurar o pagamento de seus Créditos Concursais, com exceção das garantias previstas no Acordo de Apoio ao Plano; (vi) reclamar qualquer direito de compensação contra as Recuperandas em relação a qualquer Crédito Concursal; e (vii) buscar a satisfação de seus Créditos Concursais por quaisquer outros meios. Todas as eventuais execuções judiciais em curso contra as Recuperandas relativas aos Créditos Concursais serão extintas e as penhoras e constrições existentes serão liberadas. Estão preservados direitos e pretensões advindos da novação originada da Homologação Judicial do Plano, do Acordo de Apoio ao Plano e, a partir da Data de Fechamento, dos Novos Instrumentos de Restruturação, conforme Cláusula 6.3 acima.

6.7. Quitação. Os pagamentos realizados na forma estabelecida neste Plano acarretarão, quando realizados em sua totalidade (cumprimento integral deste Plano), de forma automática e independentemente de qualquer formalidade adicional, a quitação plena, irrevogável e irretratável, de todos os Créditos

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Concursais de qualquer tipo e natureza contra as Recuperandas e seus controladores e garantidores, inclusive juros, correção monetária, penalidades, multas e indenizações. Com a ocorrência da quitação, os Credores Concursais serão considerados como tendo quitado, liberado e/ou renunciado integralmente a todos e quaisquer Créditos, e não mais poderão reclamá-los, contra as Recuperandas, controladas, subsidiárias, afiliadas e coligadas e outras sociedades pertencentes ao mesmo grupo societário e econômico, e seus diretores, conselheiros, acionistas, sócios, agentes, *Joint Provisional Liquidators*, funcionários, representantes, fiadores, avalistas, garantidores, sucessores e Credores Sub-rogatário e Credores Cessionários a qualquer título.

6.8. Compensação. Os Credores Concursais não poderão, sob qualquer hipótese, promover a compensação, após a Data do Pedido, dos Créditos Concursais de que sejam titulares com eventuais créditos detidos pelas Recuperandas contra eles.

6.9. Isenção de Responsabilidade e Renúncia das Partes Isentas: Em razão da Aprovação do Plano, os Credores Concursais expressamente reconhecem e isentam as Partes Isentas, as quais tenham agido em conformidade com as leis e normas aplicáveis, de toda e qualquer responsabilidade pelos atos praticados e obrigações relacionadas ou em conexão com a Recuperação Judicial e/ou os Procedimentos Auxiliares, incluindo a preparação da Recuperação Judicial e/ou dos Procedimentos Auxiliares e a negociação e documentação do Plano, contratadas antes e/ou no curso da Recuperação Judicial, conferindo às Partes Isentas quitação ampla, rasa, geral, irrevogável e irretratável de todos os direitos e pretensões materiais ou morais porventura decorrentes dos referidos atos a qualquer título na medida em que tais

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liberações sejam permitidas pela lei aplicável (exceto pelo cumprimento dos termos deste Plano, do Acordo de Apoio ao Plano e, a partir da Data de Fechamento, dos Novos Instrumentos de Restruturação, os quais permanecem integralmente exigíveis contra todas as partes aplicáveis, de acordo com seus respectivos termos). A Aprovação do Plano igualmente representa expressa e irrevogável renúncia dos Credores Concursais, na medida do permitido pela lei aplicável, a quaisquer reivindicações, ações ou direitos de ajuizar, promover ou reivindicar, judicial ou extrajudicialmente, a qualquer título e sem reservas ou ressalvas, a compensação por danos e/ou outras ações ou medidas contra as Partes Isentas em relação aos atos praticados e obrigações assumidas pelas Partes Isentas no âmbito da Recuperação Judicial, desde que a sua atuação tenha se dado dentro dos limites das leis aplicáveis (exceto pelo cumprimento dos termos deste Plano, do Acordo de Apoio ao Plano e, a partir da Data de Fechamento, dos Novos Instrumentos de Restruturação, os quais permanecem integralmente exigíveis contra todas as partes aplicáveis, de acordo com seus respectivos termos). A Aprovação do Plano igualmente representa a concordância dos Credores Concursais com o pagamento dos custos dos *Joint Provisional Liquidators*.

6.10. Formalização de documentos e outras providências. As Recuperandas obrigam-se a realizar todos os atos e firmar todos os contratos e outros documentos que, na forma e na substância, sejam necessários ou adequados ao cumprimento e implementação deste Plano e obrigações correlatas.

6.11. Cessão e transferência de Créditos Concursais.

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6.11.1. Nenhum dos Credores Apoiadores poderá, até a Data de Fechamento, ceder quaisquer dos Créditos Apoiadores para terceiros, exceto nos termos previstos no Acordo de Apoio ao Plano.

6.11.2. Este Plano ou o Acordo de Apoio ao Plano não deve, de forma alguma, ser interpretado no sentido de impedir que os Credores Apoiadores adquiram Créditos Concursais adicionais, desde que qualquer Credor Apoiador que adquira Créditos Concursais até a Data de Fechamento o faça nos termos das disposições do Acordo de Apoio ao Plano.

6.11.3. Os Credores Concursais poderão ceder ou transferir os seus Créditos Concursais, desde que o façam sob as seguintes condições: (i) a cessão seja notificada às Recuperandas com antecedência mínima de 10 Dias Úteis antes das datas de pagamento; e (ii) a notificação seja acompanhada da comprovação de que os cessionários receberam e confirmaram o recebimento e aceitação deste Plano, reconhecendo que o Crédito Concursal cedido, seja por força de lei ou adesão voluntária, está sujeito aos efeitos deste Plano.

6.11.3.1. A partir da Data de Fechamento e observadas as disposições do Acordo de Apoio ao Plano, excetuam-se do regramento contido na Cláusula 6.11.3 acima os Créditos Concursais que, dada a sua natureza, devam circular livremente no mercado.

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6.11.4. As Recuperandas não têm obrigação de emitir qualquer documento ou divulgar publicamente quaisquer informações com a finalidade de permitir que um Credor Concursal transfira quaisquer de seus Créditos Concursais.

6.11.5. Os termos de eventuais acordos de confidencialidade firmados pelas Recuperandas com terceiros permanecerão válidos e eficazes, não substituindo este Plano ou o Acordo de Apoio ao Plano quaisquer direitos ou obrigações decorrentes de tais acordos de confidencialidade.

6.11.6. Qualquer transferência em violação às presentes disposições e ao Acordo de Apoio ao Plano será considerada nula *ab initio*.

7. DISPOSIÇÕES GERAIS.

7.1. DESCUMPRIMENTO DO PLANO. Para fins deste Plano, estará efetivamente caracterizado seu descumprimento caso, após o recebimento de notificação enviada pela parte prejudicada em decorrência de descumprimento de alguma obrigação do Plano, o referido descumprimento não seja sanado no prazo de até 90 (noventa) dias contados do recebimento da notificação. No caso de não saneamento após decorrido referido prazo, as Recuperandas poderão requerer, ao Juízo da Recuperação, a convocação de uma Assembleia de Credores com a finalidade de deliberar junto aos Credores Concursais sobre a medida mais adequada para sanar o descumprimento do Plano.

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7.1.1. O disposto na Cláusula 7.1 acima não se aplica (i) até a Data de Fechamento, aos Credores Apoiadores, para os quais serão aplicáveis as disposições do Acordo de Apoio ao Plano sobre descumprimento e rescisão, e (ii) após à Data de Fechamento, aos detentores dos Novos Instrumentos de Reestruturação, para os quais serão aplicáveis os termos previstos nos Novos Instrumentos de Reestruturação.

7.2. **CONTRATOS EXISTENTES E CONFLITOS.** Na hipótese de conflito entre as disposições deste Plano e as obrigações previstas nos contratos celebrados com qualquer Credor Concursal anteriormente à Data do Pedido, o Plano prevalecerá, observado o disposto na Cláusula 1.2 acima.

7.3. **ENCERRAMENTO DA RECUPERAÇÃO JUDICIAL.** Uma vez homologado o Plano de Recuperação Judicial, os Credores Concursais e as Recuperandas concordam em dispensar a supervisão pelo prazo de 2 (dois) anos prevista nos artigos 61 e 63 da LRF, devendo o processo ser extinto o mais rapidamente possível após a Data de Fechamento, momento em que as medidas de reestruturação previstas na Cláusula 3 acima já terão sido implementadas.

7.4. **COMUNICAÇÕES.** Todas as notificações, requerimentos, pedidos e outras comunicações às Recuperandas, requeridas ou permitidas por este Plano, para serem eficazes, devem ser feitas por escrito e serão consideradas realizadas quando (i) enviadas por correspondência registrada, com aviso de recebimento, ou por courier, e efetivamente entregues ou (ii) enviadas por e-mail ou outros meios, quando efetivamente entregues e confirmadas. Todas as comunicações devem ser

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endereçadas da seguinte forma, exceto se de outra forma expressamente prevista neste Plano, ou, ainda, de outra forma que venha a ser informada pelo Grupo Constellation:

GALDINO & COELHO ADVOGADOS

Av. Rio Branco, n. 138, 11º andar

Rio de Janeiro, RJ

CEP: 20040-002

A/C: Flavio Galdino

Telefone: +55 21 3195-0240

E-mail: constellation@gc.com.br

7.5. ENCARGOS FINANCEIROS. Salvo nos casos expressamente previstos no Plano, não incidirão juros e nem correção monetária sobre o valor dos Créditos Concursais.

7.6. CRÉDITOS EM MOEDA ESTRANGEIRA. Créditos denominados em moeda estrangeira serão mantidos na moeda original para todos os fins de direito, em conformidade com o disposto no artigo 50, § 2º, da LRF. Para os fins de apuração de valores limites e quóruns previstos neste Plano, os Créditos denominados em moeda estrangeira serão convertidos em reais com base na cotação de fechamento da taxa de venda de câmbio de Reais, disponível no SISBACEN – Sistema de Informações do Banco Central do Brasil, transação PTAX-800 na Data da Homologação, salvo disposto de forma diversa neste Plano e ou no Acordo de Apoio ao Plano.

7.7. DIVISIBILIDADE DAS PREVISÕES DO PLANO. Na hipótese de qualquer termo ou disposição do Plano ser considerada inválida, nula ou ineficaz pelo Juízo da

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Recuperação, o restante dos termos e disposições do Plano devem permanecer válidos e eficazes, salvo se, a critério das Recuperandas for considerado que tal invalidade parcial do Plano compromete a capacidade de seu cumprimento, caso em que, por simples declaração, poderá restituir as Partes ao estado anterior e, se for o caso, submeter novo Plano de Recuperação Judicial à aprovação dos credores.

7.8. Lei Aplicável. Os direitos, deveres e obrigações decorrentes deste Plano deverão ser regidos, interpretados e executados de acordo com as leis vigentes na República Federativa do Brasil, ainda que os Créditos, o Acordo de Apoio ao Plano e os Novos Instrumentos de Reestruturação, sejam regidos pelas leis de outras juridisções.

7.9. Eleição de Foro. Todas as controvérsias ou disputas que surgirem ou estiverem relacionadas a este Plano serão resolvidas pelo Juízo da Recuperação, observado o disposto no Acordo de Apoio ao Plano.

Rio de Janeiro, 28 de fevereiro de 2019.

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I, Lucas Livingstone Felizola Soares de Andrade, Sworn Public Translator, attest that I was presented with an original document in Portuguese language to be translated to the English language, which I perform in compliance with my duty, as follows://
//

Joint financial restructuring plan of the companies belonging to Constellation group consolidated on february 28th, 2019.

Serviços de Petróleo Constellation S.A. - under financial restructuring, closed capital company, enrolled with the CNPJ/ME under No. 30.521.090/0001-27, with registered office at Av. Presidente Antônio Carlos, n. 51, 3º, 5º, 6º, 7º andares, Centro, Rio de Janeiro, State of Rio de Janeiro, Zip Code 20020-010 ("Constellation"); **Serviços de Petróleo Constellation Participações S.A. - under financial restructuring**, closed capital company, enrolled with the CNPJ/ME under No. 12.045.924/0001-93, with registered office at Av. Presidente Antonio Carlos, n. 51, sala 601, 6º andar, Centro, Rio de Janeiro, State of Rio de Janeiro, Zip Code 20020-010 ("Constellation Par"); **Manisa Serviços de Petróleo Ltda. – under financial restructuring**, limited liability company, enrolled with the CNPJ/ME under No. 11.801.519/0001-95, with registered office at Rua do Engenheiro, n. 736, quadra I, lotes 02, 03, 04, 05, 08, 09, 10, Rio das Ostras, State of Rio de Janeiro, Zip Code 28.890-000 ("Manisa"); **Tarsus Serviços de Petróleo Ltda. – under financial restructuring**, limited liability company, enrolled with the CNPJ/ME under No. 11.801.960/0001-77, with registered office at Rua do Engenheiro, n. 736, quadra I, lotes 02, 03, 04, 05, 08, 09, 10, Rio das Ostras, State of Rio de Janeiro, Zip Code 28.890-000 ("Tarsus"); **Alpha Star Equities Ltd. (in provisional liquidation)**, company with registered office at Tortola Pier Park, Building 1, 2º Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Alpha Star"); **Amaralina Star Ltd.**, company with registered office at Tortola Pier Park, Building 1, 2º Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Amaralina"); **Arazi S.À.R.L.**, company with registered office at Avenue de la Gare, 8-10, Zip Code: 1616, Luxembourg ("Arazi"); **Brava Star Ltd.**, company with registered office at Tortola Pier Park, Building 1, 2º Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Brava Star"); **Constellation Oil Services Holding S.A.**, company with registered office at Avenue de la Gare, n. 8-10, Luxembourg, registered under n. B163424 ("Constellation Holding"); **Constellation Overseas Ltd. (in provisional liquidation)**, company enrolled with the CNPJ/ME under No. 12.981.793/0001-56, with registered office at Tortola Pier Park, Building 1, 2º Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Constellation Overseas"); **Constellation Services Ltd.**, company with registered office at Tortola Pier Park, Building 1, 2º Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands, enrolled with the CNPJ/ME under No. 26.496.540/0001-00 ("Constellation Services"); **Gold Star Equities Ltd. (in provisional liquidation)**, a company with registered office at Building 1, 2º Piso, Wichhams Cay

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I, Road Town, Tortola, British Virgin Islands ("Gold Star"); **Lancaster Projects Corp.**, company with registered office at Building 1, 2° Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Lancaster"); **Laguna Star Ltd.**, company with registered office at Tortola Pier Park, Building 1, 2° Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Laguna"); **Lone Star Offshore Ltd. (in provisional liquidation)**, company with registered office at Building 1, 2° Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Lone Star"); **Olinda Star Ltd. (in provisional liquidation)**, company with registered office at Tortola Pier Park, Building 1, 2° Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Olinda Star"); **Snover International Inc. (in provisional liquidation)**, company with registered office at Tortola Pier Park, Building 1, 2° Piso, Wichhams Cay I, Road Town, Tortola, British Virgin Islands ("Snover"); **Star International Drilling Limited**, company enrolled with CNPJ / ME under No. 05.722.506/0001-28, with registered office at Huntlaw Building, Fort Street, Huntlaw Building, Fort Street, HuntLaw Corporate Services Limited, P.O. Box 1350, Cayman Islands ("Star Drilling") and, together with Constellation, Constellation Par, Manisa, Tarsus, Alpha Star, Amaralina, Arazi, Brava Star, Constellation Holding, Constellation Overseas, Constellation Services, Gold Star, Lancaster, Laguna, Lone Star, Olinda Star, Snover, (individually or through their Joint Provisional Liquidators, as defined below, the "Constellation Group" or the "Debtors") make available in the case records of the Judicial Restructuring (as defined below) in progress before the Restructuring Court (as defined below), the present Plan (as defined below), pursuant to Article 53 of the LRF (as defined below), whose terms and conditions are governed by the following clauses.

1. Definitions and Rules of Interpretation

1.1 Definitions. The terms and expressions used in capital letters, whenever mentioned in the Plan, shall have the meanings assigned to them in this Clause 0 above. Such terms defined shall be used, as appropriate, in their singular or plural form, in the male or female gender, without, thereby, losing the meaning assigned to them.

1.1.1 "Shareholders": LuxCo and CIPEF.

1.1.2 "Plan Support Agreement": the Plan Support Agreement signed on February 21, 2018, between, among others, the ALB Creditors, Bradesco, the Supporting 2024 Bondholders, the Shareholders and the Constellation Group, containing the conditions for the restructuring and payment of ALB Claims, Bradesco Claims, and the 2024 Bond Claims, which are reflected in this Plan, and a copy of which is attached to this Plan in the form of Annex 1.1.2.

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1.1.3 "Bradesco Reimbursement Agreements": (i) the Reimbursement Agreement dated May 25, 2016, as amended, entered into between Bradesco, as issuer of the letter of credit and Constellation Overseas, as requestor of the letter of credit; and (ii) the Reimbursement Agreement dated August 7, 2015, as amended, entered into by Bradesco, as issuer of the letter of credit, and Constellation Overseas, as requestor of the letter of credit.

1.1.4 "Judicial Administrator": The law firm Marcello Macêdo Advogados, represented by Marcello Macêdo Esq., lawyer enrolled with OAB/RJ under No. 65.541, as appointed by the Restructuring Court, under the terms of Chapter II, Section III of the LRF, or whoever replaces him from time to time.

1.1.5 "A/L Cash Collateral Agreement": The A/L Cash Collateral Agreement entered into on December 10, 2018, between Amaralina and Laguna, as borrowers, HSBC Bank USA, National Association, as administrative agent and collateral agent, the Amaralina and Laguna Creditors and the Debtors, pursuant to that agreement at pages 1864/1880.

1.1.6 "Disposal of Assets": Operations for the disposal of Assets, whether Isolated Production Units or not, according to the rules contained in articles 60, sole §, 142 and 145 of the LRF and article 133 of the National Tax Code, under the terms of Clause 3.9 below.

1.1.7 "ANP": the *Agência Nacional do Petróleo, Gás Natural e Biocombustíveis* [The National Agency of Petroleum, Natural Gas and Biofuels].

1.1.8 "Plan Approval": The approval of the Plan at a Creditors' Meeting, deemed to have occurred on the date of the Creditors' Meeting at which the Plan is voted on and approved, even if the Plan is not approved by all Creditor Classes on this occasion, so long as that plan is subsequently judicially homologated pursuant to articles 45 or 58 of the LRF.

1.1.9 "Creditors' Meeting": Any General Creditors' Meeting held under the terms of Chapter II, Section IV of the LRF.

1.1.10 "Asset" or "Assets": All assets, movable or immovable, and rights that comprise the current and non-current assets of the Debtors, as defined in the *Lei das Sociedades por Ações* [the Corporate Law], including but not limited to the drilling units owned by the Debtors as well as equity interests in other companies.

1.1.11 "Bradesco": Banco Bradesco S.A., Grand Cayman branch.

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1.1.12 "Brava Cash Collateral Agreement": The Brava Cash Collateral Agreement entered into on December 10, 2018, between Brava Star, as borrower, Citibank, N.A., as administrative agent and collateral agent, the Brava Creditors and the Debtors, pursuant to that agreement at pages 1864/1880.

1.1.13 "2019 Bonds": The unsecured senior 6.25% bonds (securities) due 2019, issued by Constellation Holding and governed by the 2019 Bond Indenture.

1.1.14 "2024 Bonds": The secured senior 9.00% cash, 0.50% PIK bonds (securities) due 2024, issued by Constellation Holding pursuant to the 2024 Bond Indenture, fully guaranteed by Constellation Overseas, Alpha Star, Lone Star, Gold Star, Olinda Star, Snover, and Star Drilling, and partially guaranteed by Arazi.

1.1.15 "Surplus Cash": This term has the meaning assigned to it in Annex V of Annex A of the Plan Support Agreement.

1.1.16 "Bradesco Reimbursement Letters of Credit": The letters of credit issued by Bradesco under the terms of the Reimbursement Agreements dated August 7, 2015 and May 25, 2016, to Constellation Overseas as the primary borrower.

1.1.17 "CIPEF": investment funds of direct or indirect minority shareholder of the Debtors, whose investment advisor is Capital International Inc.

1.1.18 "Classes": The categories into which the RJ-Subject Claims against the Debtors are classified according to their nature, per article 41 of the LRF.

1.1.19 "CNPJ/ME": The *Cadastro Nacional* [Corporate Tax Registration Number] of the *Pessoa Jurídica do Ministério da Economia* [Ministry of Finance].

1.1.20 "Backstop Commitment": The agreement pursuant to which the Supporting 2024 Bondholders agree to provide minimum funds as the 2024 Bond New Money, entered into in accordance with Annex F to the Plan Support Agreement.

1.1.21 "Reserve Accounts": The debt service reserve accounts, which serve as collateral for ALB Claims.

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1.1.22 "Claims": Claims and obligations (including obligations for specific performance) held by Creditors against the Debtors, whether due or not yet due, contingent or not contingent, net or gross, subject or not to judicial dispute, arbitration proceeding or administrative proceeding (whether initiated or not), existing on the Filing Date or deriving from causes of action which arose at any time up to (and including on) the Filing Date, and claims arising from contracts, instruments or obligations existing on the Filing Date, in each case whether or not listed in the List of Creditors, and whether or not the claim is subject to the effects of this Plan.

1.1.23 "ALB Claims": the Amaralina and Laguna Claims and the Brava Claims.

1.1.24 "Amaralina and Laguna Claims": The Claims owed by Amaralina and Laguna arising from the Senior Syndicated Credit Facility Agreement dated March 27, 2012, as amended from time to time, entered into between Amaralina and Laguna as borrowers, certain banks as creditors, and HSBC Bank USA, National Association as administrative and collateral agent.

1.1.25 "Supporting Claims": The Claims held by the Supporting Creditors.

1.1.26 "Bradesco Claims": The RJ-Subject Claims held by Bradesco pursuant to loan agreements dated May 9, 2014 and January 30, 2015, entered into between Bradesco as creditor and Constellation Overseas as borrower.

1.1.27 "Brava Claims": The Claims owed by Brava Star under the Senior Syndicate Credit Facility Agreement entered into on November 21, 2014 by Brava Star as borrower, certain banks as creditors, and Citibank N.A. as administrative agent and collateral agent.

1.1.28 "2019 Bond Claims": The Claims held by the 2019 Bondholders.

1.1.29 "2024 Bond Claims": The Claims held by the 2024 Bondholders.

1.1.30 "Non-Participating 2024 Bond Claims": The Claims held by 2024 Bondholders who do not contribute to the 2024 Bond New Money.

1.1.31 "Participating 2024 Bond Claims": The Claims held by 2024 Bondholders who do contribute to the 2024 Bond New Money1.

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1.1.32 "Secured Claims": As defined in article 41, section II and 83, item II of the LRF, claims secured by collateral rights up to the limit of the value of the collateral, including the ALB Claims and the 2024 Bond Claims, which will be restructured under the terms of Clause 0 below below.

1**EM Note**: we understand that the similar change that was made in "New Money" already addresses the issue of proportionality.

1.1.33 "RJ-Subject Claims": Claims held by Creditors against the Debtors, or those that the Debtors may be held liable for under any type of co-obligation, that under the terms of the LRF are subject to the financial restructuring scheme and that, thereupon, are subject to this Plan, whether due or not due yet, contingent or not contingent, net or gross, subject or not to judicial dispute, arbitration proceeding or administrative proceeding (whether initiated or not), existing on the Filing Date or deriving from causes of action which arose at any time up to (and including on) the Filing Date, and claims arising from contracts, instruments or obligations existing on the Filing Date.

1.1.34 "Vendor Claims": The Unsecured Claims and ME/EPP Claims held by Vendor Creditors.

1.1.35 "Partner Claims": Claims securitized by Partner Creditors, which will be restructured pursuant to Section 4.5 below.

1.1.36 "Unilquidated Claims": Claims held by Creditors against the Debtors, whether due or not yet due, contingent or not contingent, net or gross, subject or not to judicial dispute, arbitration proceeding or administrative proceeding (whether initiated or not), existing on the Filing Date or deriving from causes of action which arose at any time up to (and including on) the Filing Date, and claims arising from contracts, instruments or obligations existing on the Filing Date,even if settled by the Homologation Date, including services already provided and pending measurement, the existence and/or value of which may be challenged by the Debtors. RJ-Subject Claims that have been listed by the Debtors in the List of Creditors are not unliquidated claims and will be restructured pursuant to Section 4.6 below.

1.1.37 "ME/EPP Claims": As defined in the *Lei Complementar* [Complementary Law] No. 123 of December 14, 2006, and by articles 41, item IV and 83, item IV, d, of the LRF, claims held by RJ-Subject Creditors organized in the form of micro and small enterprises, which will be restructured pursuant to Clause 4.4 below.

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1.1.38 "Unsecured Claims": Those of the RJ-Subject Claims defined in articles 41, item III and 83, item VI of the LRF, including Bradesco Claims and 2019 Bond Claims, which will be restructured in accordance with Clause 0 below below.

1.1.39 "Late Claims": As defined in article 7, § 2 of the LRF, those Claims authorized in the List of Creditors after its publication in the official press.

1.1.40 "Labor Claims": As defined in article 41, item I and 83, item I of the LRF, claims and rights derived from labor legislation or arising from a work accident, and the credits and rights arising from legal fees, which will be restructured in accordance with the Clause 0 below below.

1.1.41 "Creditors": Natural persons or legal entities holding Claims, whether or not listed in the List of Creditors.

1.1.42 "Amaralina and Laguna Creditors": The Creditors that hold Amaralina and Laguna Claims.

1.1.43 "ALB Creditors": Creditors holding ALB Claims.

1.1.44 "Brava Creditors": the Creditors that hold Brava Claims.

1.1.45 "Supporting Creditors": RJ-Subject Creditors of the Debtors that entered into the Plan Support Agreement, which together hold, as of this date, 74.8% of Secured Claims and 59.2% of Unsecured Claims, as determined on the basis of on the List of Creditors, and that are supporting the restructuring of the Constellation Group, including, but not limited to, the contribution of new money, pursuant to this Plan and the Plan Support Agreement, i.e., Creditors that believe in the economic feasibility of the Debtors and agreed in advance with the restructuring of their RJ-Subject Claims, pursuant to the Plan Support Agreement. These Creditors are expected to receive payment for their claims, as set forth in Sections 4.2.1, 4.2.2 and 4.3.3.

1.1.46 "Assignee Creditors": The Creditors who become holders of RJ-Subject Claims due to the execution of credit assignment agreements in which an RJ-Subject Creditor assigns to them an RJ-Subject Credit.

1.1.47 "Secured Creditors": Creditors who hold Secured Claims.

1.1.48 "RJ-Subject Creditors": Creditors who hold RJ-Subject Claims.

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1.1.49 "2019 Bondholders": Creditors whose Claims originate in the 2019 Bond Indenture.

1.1.50 "2024 Bondholders": Creditors whose Claims originate in the 2024 Bond Indenture.

1.1.51 "Supporting 2024 Bondholders": Creditors who hold 2024 Bond Claims and signed the Plan Support Agreement.

1.1.52 "Non-Participating 2024 Bondholders": Creditors who hold Non-Participating 2024 Bond Claims.

1.1.53 "Participating 2024 Bondholders": Creditors who hold Participating 2024 Bond Claims.

1.1.54 "Vendor Creditors": Holders of Unsecured Claims and ME/EPP Claims derived from the supply of goods and/or provision of services required for the activities of the Constellation Group and/or its restructuring.

1.1.55 "Partner Creditors": Vendor Creditors that continue to supply to the Debtors goods and/or services without unjustified alteration of the terms and conditions practiced prior to the Filing Date; and creditors that, if requested by any of the Debtors, do not refuse to provide goods and/or services under the terms and conditions practiced up to the Filing Date; in each case, which do not have any type of ongoing litigation against any of the Debtors, and that did not adopt procedures of collection, protests or any other acts related to the RJ-Subject Claims that imply in the restriction of the credit of Constellation Group ("Operational Partner Creditors"); as well as the contracting Creditors of the Debtors that maintain those current contractual and commercial relationships with the Debtors or that enter into new contracts with the Debtors starting from the Filing Date ("Client Partner Creditors"); as well as their employees and former employees who hold Unsecured Claims ("Employee Partner Creditors"); and Unsecured Creditors who provided financial advisory services in the debt restructuring process of the Debtors ("Restructuring Partner Creditors").

1.1.56 "Unliquidated Creditors": Creditors who hold Unilquidated Claims.

1.1.57 "ME/EPP Creditors": Creditors who hold ME/EPP Claims.

1.1.58 "Unsecured Creditors": Creditors who hold Unsecured Claims.

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1.1.59 "Late Creditors": Creditors who hold RJ-Subject Claims that, in whole or in part, may be considered Late Claims.

1.1.60 "Successor Creditors": Creditors who subrogate an RJ-Subject Creditor after paying, voluntarily or not, any RJ-Subject Credit for which they are considered co-obligated by contract, legal provision or judicial determination.

1.1.61 "Labor Creditors": Creditors who hold Labor Claims.

1.1.62 "Natural Persons Labor Creditors Holding Claims under Dispute": Labor Creditors who are natural persons and have filed any lawsuit, administrative and/or arbitration proceeding against the Constellation Group prior to the Judicial Homologation of the Plan, including those who on already had ongoing lawsuits, administrative and/or arbitration proceeding against Constellation Group as of the Filing Date.

1.1.63 "Processing Date": The date on which a decision was rendered processing the commencement of the Judicial Restructuring filed by the Debtors, i.e., December 6, 2018.

1.1.64 "Closing Date": The date corresponding to the issuance and effective date of the New Restructuring Instruments, as defined in Section 1.01 of the Plan Support Agreement as "Restructuring Closing Date" (subject to the terms set forth in the Plan Support Agreement), and which will be timely informed in the records of the Judicial Restructuring.

1.1.65 "Homologation Date": The date on which the Judicial Homologation of the Plan is published in the Official Press.

1.1.66 "Filing Date": Date on which the request for Judicial Restructuring was filed by the Debtors, namely, December 6, 2018.

1.1.67 "Business Day": Any day other than Saturday, Sunday, a national holiday or municipal holiday or a day on which, for any reason, banks and/or courts are closed in the cities of São Paulo, Rio de Janeiro, New York, London, Luxembourg, or Panama City and Mumbai. For the purpose of fulfilling the obligations set forth in the Plan Support Agreement, the definition of business days included in the Plan Support Agreement will be considered.

1.1.68 "Notice of Creditors": The notice provided for in § 1 of Art. 52 of the LRF presented by Constellation Group in the Judicial Restructuring and published on 12/18/2018 in the Electronic

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Justice Gazette of the Court of Justice of the State of Rio de Janeiro and on December 19, 2018 in *Diário Comércio Indústria & Serviços* [*Journal of Commerce, Industry and Services*].

1.1.69 "2019 Bond Indenture": The Indenture dated November 9, 2012, as amended from time to time, with Deutsche Bank Trust Company Americas, as trustee, payment, transfer and register agent.

1.1.70 "2024 Bond Indenture": The Indenture dated July 27, 2017, entered into between Constellation Holding as issuer; Constellation Overseas, Lone Star, Gold Star, Olinda Star, Snover and Star Drilling as guarantors; Arazi as limited guarantor; and Wilmington Trust, National Association as trustee, payment, transfer and register agent.

1.1.71 "Constellation Group": The economic group formed by the Debtors.

1.1.72 "Holdco 1": It has the meaning assigned to it in Clause 3.7 below.

1.1.73 "Holdco 2": It has the meaning assigned to it in Clause 3.7 below.

1.1.74 "Judicial Homologation of the Plan": The judicial decision rendered by the Restructuring Court that grants judicial restructuring pursuant to article 58, caput and/or § 1 of the LRF. For the purposes of this Plan, the Judicial Homologation of the Plan shall be deemed to have occurred on the Homologation Date.

1.1.75 "Bradesco New Money Instrument": The loan agreement to be entered into between Bradesco and the Debtors, setting forth the terms and conditions applicable to the Bradesco New Money, including, *inter alia*, the conditions precedent for the disbursement of the Bradesco New Money on the Closing Date, the guarantees to be provided to Bradesco pursuant to the Plan Support Agreement, affirmative and negative covenants, and events of default.

1.1.76 "Restructuring Court": The 1st Business Court of the Judicial District of the Capital of the State of Rio de Janeiro, to which the request for Judicial Restructuring of Constellation Group was submitted.

1.1.77 "Joint Provisional Liquidators": Eleanor Fisher and Paul Pretlove, jointly appointed by the Superior Court of the British Virgin Islands on December 19, 2018 to act, together or separately, as provisional liquidators of the following Debtors: Constellation Overseas, Lone Star, Olinda Star, Snover, Alpha Star and Gold Star Equities.

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1.1.78 "Reports": (i) The economic and financial feasibility report; and (ii) the valuation report of property and assets of the Debtors, submitted under the terms and for the purposes of article 53, items II and III, respectively, of the LRF, which are included in Annexes I and II to this Plan, respectively.

1.1.79 "*Lei das Sociedades por Ações* [Corporate Law]": Federal Law No. 6.404, dated December 15, 1976, as amended.

1.1.80 "LIBOR": The London Interbank Offered Rate, which is comprised of the dollar deposit rates disclosed by Bloomberg Financial Markets Service at 11 AM (London time) or by any other similar service that discloses the fees of the British Bankers Association. For the purposes of this Plan, LIBOR will be considered for US dollar transactions as provided in the Plan Support Agreement.

1.1.81 "List of Creditors": The consolidated list of creditors of the Debtors prepared and published by the Judicial Administrator pursuant to § 2 of art. 7 of the LRF.

1.1.82 "LRF": Federal Law No. 11.101, of February 9, 2005, as amended, which regulates judicial and extrajudicial restructuring and also businessperson and company bankruptcy.

1.1.83 "LuxCo": LUX Oil & Gas International S.a.r.L., direct or indirect majority shareholder of the Debtors.

1.1.84 "New Restructuring Instruments": The instruments that will be executed and will take effect on the Closing Date provided that the conditions precedent set forth in the Plan Support Agreement and reflected in these instruments are met to govern and operationalize (i) the ALB New Money, 2024 Bond New Money and Bradesco New Money; (ii) the collateral to be provided pursuant to the Plan Support Agreement; and (iii) the other transactions set forth in this Plan and the Plan Support Agreement, as applicable.

1.1.85 "ALB New Money": The new loans to the Debtors Amaralina, Laguna and Brava made by the ALB Creditors under the Plan Support Agreement in the total amount of US$ 39,074,535.41, as described in Section 3.5.1 below, which will be disbursed through tranches of the restructured ALB Claims pursuant to the Plan Support Agreement.

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1.1.86 "2024 Bond New Money": The new loans granted to the Debtors by the Participating 2024 Bondholders, pursuant to the Plan Support Agreement and the Backstop Commitment, in the amount of US$27,000,000.00, as described in Section 3.5.2 below.

1.1.87 "Bradesco New Money": The new loan granted to the Debtors by Bradesco pursuant to the Plan Support Agreement, in the total amount of ten million U.S. dollars (US$10,000,000.00), as described in Section 3.5.3 below.

1.1.88 "OPEC": The Organization of the Petroleum Exporting Countries.

1.1.89 "Exempt Parties": The Shareholders, the Joint Provisional Liquidators, and the Debtors, as well as their entities under control, subsidiaries, and other companies belonging to the same group, and their respective officers, counselors, employees, lawyers, advisers, agents, and representatives, including their predecessors and successors, provided that Exempt Parties shall not include any partner in a Joint Venture, former partner of any Company under Restructuring, or any other entity outside of Constellation Group and that is a debtor of a Constellation Group entity.

1.1.90 "Petrobras": Petróleo Brasileiro S.A., a federal mixed-capital company created by Law No. 2.004, dated October 3, 1953, and governed by Law No. 9.478, dated August 6, 1997, enrolled with the CNPJ/ME under No. 33.000.167/0001-01, with its registered office at Av. República do Chile n. 65, sala 502, Centro, Rio de Janeiro/RJ, Zip Code 20.031-912.

1.1.91 "PIK": The capitalization of interest without payment in cash, as set forth in the relevant governing agreement.

1.1.92 "Plan": This judicial restructuring plan, as amended, modified or altered from time to time.

1.1.93 "Processes": Any and all litigation, whether judicial, administrative or arbitral (in any stage, including execution/enforcement of judgment), in any jurisdiction, in progress on the Filing Date before the Judiciary or arbitration court, as the case may be, and involving discussion related to any of the Claims, including labor claims.

1.1.94 "Foreign Ancillary Proceedings": The ancillary proceedings filed by the Debtors within the North-American jurisdiction based on Chapter 15 of Title 11 of the U.S. Bankruptcy Code (Chapter 15), as well as the ancillary proceedings (termed "soft-touch provisional liquidation") filed in the British Virgin Islands by the Debtors.

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1.1.95 "Judicial Restructuring": The process of judicial restructuring of the Debtors under case No. 0288463-96.2018.8.19.0001.

1.1.96 "Debtors": It has the meaning assigned in the preamble.

1.2 Plan Support Agreement. The Plan Support Agreement, including all its Annexes, is an integral, inseparable and indivisible part of this Plan in its entirety, and it is included, for the due purposes, in Annex 1.1.2 of this Plan; provided that in the event of a conflict of any kind between the provisions of this Plan and the Plan Support Agreement, (i) the provisions of the Plan Support Agreement regarding the ALB Creditors, Bradesco, the 2024 Bondholders, the ALB Claims, the Bradesco Claims, the 2024 Bondholder Claims, the ALB New Money, the 2024 Bond New Money and the Bradesco New Money and their respective Supporting Claims and (ii) the provisions of the Plan regarding the RJ-Subject Creditors, other than Supporting Creditors and their respective RJ-Subject Claims.

1.2.1 The Approval of the Plan and the Judicial Homologation of the Plan include the concurrent approval and judicial homologation of the Plan Support Agreement.

1.3 Translation. In the event of any discrepancy between the Plan's original version in Portuguese and the translated version of the Plan into English that may be provided by Constellation Group or its advisors, the Portuguese version shall prevail. The Joint Provisional Liquidators have relied upon a version of the Plan translated into English. In the event of discrepancy between the original English version of the Plan Support Agreement and its annexes and the version translated into Portuguese, the English version will prevail.

1.3.1 The Joint Provisional Liquidators have relied on a version of the Plan translated into English and reserve all their rights with respect thereto, pending a sworn translation of the Plan.

1.4 Clauses and Annexes. Unless otherwise specified, all Clauses and Annexes mentioned in this Plan refer to Clauses in and Annexes to this Plan, and references to Clauses or items in this Plan refer also to their respective sub-clauses and sub-items. All Annexes to this Plan are incorporated herein and constitute an integral, inseparable and indivisible part of the Plan. In the event of any discrepancy between this Plan and any Annex, the Plan will prevail, except for provisions regarding the Plan Support Agreement.

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1.5 Titles. The titles of the chapters and clauses of this Plan have been included for reference only, and shall not affect their interpretation or the content of their provisions.

1.6 Terms. The terms "include," "including," and similar terms shall be construed to include the phrase "but not limited to."

1.7 References. References to any documents or instruments include all of their respective amendments, consolidations and supplements, as applicable, except as otherwise expressly provided by this Plan.

1.8 Legal Provisions. References to legal provisions and laws shall be construed as references to such provisions as in force on such date or at a date otherwise specified.

1.9 Time Periods. All time periods set forth in this Plan will be counted in the form set forth in article 132 of the Civil Code, that is, excluding the day of the beginning and including the day of the expiration. Any time periods of this Plan (whether counted in Business Days or not) which end on a day that is not a Business Day will be automatically extended to the first subsequent Business Day.

2. General Considerations.

2.1 Brief History. In spite of the fact that the first records related to the development of the oil and gas sector in Brazil go back to the imperial times, it was only in the 1930s — and with the creation of Petrobras — that oil exploration and production gained prominence in the country.

In 1980, Queiroz Galvão Perfurações S.A. was founded in Rio de Janeiro — the embryo of Constellation Group, currently named Serviços de Petróleo Constellation S.A.

Initially providing services to Petrobras, Constellation Group's operations were carried out through the leasing of onshore drilling rigs mainly in the North and Northeast of the country.

In parallel to the development of the onshore drilling activity and following the new economic moment in Brazil, Constellation Group grew and became international with the start of offshore drilling activities with notable ultra-deepwater operations.

Currently, Constellation Group owns a total of 17 rigs consisting of: (a) 9 onshore drilling rigs, of which 4 are conventional and 5 are transportable by helicopter; and (b) 8 offshore drilling rigs,

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with 2 semi-submersible rigs anchored for operation in water depth up to 1,100 meters, 3 dynamic-positioning rigs for operation in water depth up to 2,700 meters, and 3 drillships for operation in water depth up to 3,000 meters.

Constellation Group's successful results are also due to the massive investments made by the Debtors. From its foundation until the Judicial Restructuring, the Constellation Group invested approximately US$ 5 billion dollars in its business activity.

The prevailing operational activity of the Constellation Group is carried out through its offshore rigs, with 7, out of a total of 8, located in Brazil. These rigs were acquired by the Constellation Group to meet the demand of the Brazilian oil and gas industry, and as a priority Petrobras' projects in the country.

Constellation Group is a leader in performance in pre-salt operations due to: (a) its high operating efficiency; (b) real-time operations monitoring technology (RTOC), which enables remote operations supervision and increased process safety through performance monitoring and problem-solving collaboration; (c) broad experience with operational issues, including a crew familiar with the challenges of their operating environment and procedures specially developed for drilling activity; and (d) drilling equipment perfectly adapted to the specificities of the pre-salt area.

In addition to the exploitation of rigs, Constellation Group also operates in consortia that operate FPSO units (FPSOs) (Floating Production Storage and Offloading) for exploitation (production), storage of oil and/or natural gas, and outflow of production by oil tankers.

In short, Constellation Group is one of the largest business groups in the oil and gas exploration and service industry in the country, with its remarkability and excellence recognized by its clients, the ANP and institutional market players. Therefore, the importance of the Debtors is unquestionable, with its rehabilitation and preservation fundamental to the country's oil and gas industry.

2.2 Corporate and Operational Structure. The corporate and operational structure of the Constellation Group is shown in the organizational chart in Annex 2.2 to this Plan. It is a typical corporate structure seen in the oil and gas sector. The parent company is located abroad and controls specific purpose vehicles, which are also located abroad, obtains financing abroad, and purchases and charters rigs to clients – historically, in the case of the Constellation Group, to

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Petrobras – while the operating company is located in the client's country where the rigs effectively operate, in this case, Brazil.

In fact, the corporate organization of the Debtors reflects the interest of Constellation Group in its administrative, financial and operational efficiency, so that all the Debtors have been coordinating, in a business manner, to direct their assets to the excellent provision of services for exploration of oil and gas predominantly in Brazil.

2.3 Reasons for the Crisis. Constellation Group's current financial situation arises from a number of factors, notably: the fall in the price of oil per barrel, the crisis in demand in the oil and gas industry, the contracting of financing for the acquisition of drilling units, restrictions on access to credit for companies in the oil and gas industry, the fall in the rate of remuneration for service and charter contracts, the economic and political scenario in Brazil, the Petrobras Divestment Program, the regulatory requirements and the increase in tax burden.

In fact, after the world economic crisis of 2008, which slowed global economic growth and thereby reduced oil consumption, the price of a barrel of oil rose again, reaching over US$ 124 in March 2012. That period of growth in the sector stimulated broad access to credit for companies involved in oil exploration – such as those of Constellation Group – and consequently stimulated development in the sector, effectively preparing it for an increase in production.

It was precisely in this context of growth that the primary debts of Constellation Group were incurred, with the acquisition of several drilling units – the financing of Amaralina and Laguna units, for example, started in 2012, and of Brava, in 2014, while all Project Finances/Bonds for financing other rigs were regularly paid off and had even been repaid in most cases faster than in the schedule originally foreseen in such debt instruments, due to the rigs' operational performance.

However, since the second half of 2014, oil barrel prices have been dropping dramatically, without the industry showing a rapid recovery.

The external factors causing the drop in oil barrel prices are known: (i) the reduction of China's oil consumption – given its economic slowdown – and other historically demanding countries such as Germany; (ii) the almost self-sufficiency of the United States - through the alternative exploration of the so-called "shale oil"; (iii) the greater demand and development of other energy matrices; and (iv) the decision of OPEC countries to maintain high oil production, even with a reduction in consumption, in order to, ultimately, with low prices, render the alternative

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production of oil and gas unfeasible as notably more expensive – such as that developed in the United States, or in Brazilian pre-salt oil.

Given the high supply and reduced demand, the market has stagnated. The low price of oil and uncertainty in projections made access to credit more restrictive, directly affecting the feasibility of large oil exploration projects.

Not only that, but the service and charter agreements, whose economic and financial equation originally supported the payment of the debts contracted for the manufacture of the drilling units, have seen their daily remuneration rate substantially lowered.

The following chart demonstrates the oscillations of the remuneration rate of contracts over time and the dramatic fall in recent years2:

2Source: IHS Petrodata, Arctic Securities, Rystad Energy - April 2018. Free translation of the chart title: Ultra Deep Waters by Rig Type, 2007-2018 (USDk).

UDW dayrates by rig type, 2007-2018 (USDk)

[There appears chart]

The abrupt decline since 2014 makes clear the market oscillation, which directly affects the remuneration rate of contracts. It is not difficult to identify, therefore, an imbalance in the economic and financial equation of the operations, and, therefore, a loss borne by Constellation Group.

Adding to this scenario is the economic situation in our country. Constellation Group has its operational activity mainly developed in Brazil, providing services primarily to a Brazilian company, Petrobras. That is, the effects of the crisis in the country have a significant impact on the Debtors, which have historically provided services for Petrobras.

For no other reason, the unprecedented crisis has generated difficulties not only for the State-owned company but also, of course, for its entire supply chain.

As a result of the crisis, Petrobras, for obvious reasons, interrupted projects, suspended investments and has been contracting more slowly than in the past.

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As if this was not enough, Constellation Group sustained losses of around US$ 400 million due to capital contributions owed but not recognized by a former minority shareholder of the Amaralia and Laguna companies. This forced the Debtors to make contributions not only in its own name, but also in the name of this former minority shareholder, and to assume full liability for the operation of the offshore rigs operations belonging to Amaralina and Laguna, in order to ensure the safety of operations of these rigs.

Therefore, despite the fact that the Debtors are highly renowned companies in the market due to their soundness and their administrative and operational capacity and efficiency, the economic and oil crisis that occurred internationally – and mainly in the Brazilian territory – brutally affected its cash flow, rendering the restructuring of its debts through Judicial Restructuring necessary for the full maintenance of its activities.

2.4 Previous Restructuring Measures Adopted. The restructuring process of the Constellation Group began long before the Judicial Restructuring was filed. When the first signs of crisis in the oil and gas industry began to appear, the Constellation Group began intense renegotiation of its debts, notably with the 2019 Bondholders, which resulted in a transaction in July of 2017 that gave rise to the 2024 Bonds.

With the maturity of its other financial obligations approaching and the need to extend these approaching maturities, the Constellation Group began a process of negotiating its debts with its Creditors with the help of its advisors, including White & Case LLP, Alvarez & Marsal, Houlihan Lokey, Inc., Ogier and Galdino & Coelho Advogados.

The restructuring process was successful, resulting in the early support of the Supporting Creditors for the judicial restructuring of the Constellation Group. Initially, agreement between the ALB Creditors and Bradesco was formalized with the execution of the first version of the Plan Support Agreement, filed on the RJ docket at pages 1795/1901. Thus, the Judicial Restructuring was filed on the Filing Date with the support of the ALB Creditors and Bradesco. After the filing of the Judicial Restrutucting, the Debtors continued an extensive renegotiation process with their Creditors, resulting in the execution of the Plan Support Agreement, now with the support of all the Supporting Creditors. This ample support, obtained in advance, renders the Judicial Restructuring efficient for the Debtors, the Judicial Administrator, the Creditors, the Restructuring Court, and others involved. It is likely to prove a pioneering process in the country's courts.

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In addition, it is important to say that the Debtors have made every possible effort to stabilize their cash flows, being certain that they have adopted, in recent years, (i) adjustments in the annual budgets of their various departments, in view of the current situation; (ii) salary freezes; (iii) resizing of organizational structures; and (iv) right-sizing the staff.

2.5 Reasons for the Joint Plan. As already indicated in the petition for Judicial Restructuring, the Debtors, in spite of having distinct legal character, autonomous assets, and their own structures suitable for carrying out their activities (i.e., economic substance), as well as consisting mostly of foreign companies, join efforts to enable the development of onshore and offshore rig operations in Brazil.

This is very evident through the numerous cross-guarantees and the imminent possibility of cross-default, which, ultimately, makes it impossible to individually restructure the Debtors.

In other words, the Debtors, as all the evidence shows, make up an economic group. Companies that, although legally independent, with their own legal nature, operational structures and assets, are economically interconnected.

Thus, to assume that any company of Constellation Group may not be subject to Judicial Restructuring while others are restructuring implies ignoring the damaging consequence that would oppose the remaining activity, in light of the legal and practical complexities that the failure of one of the companies could create, since the rehabilitation of any single Debtor depends on the recovery of the entire Constellation Group together.

This fact has already been acknowledged by the Supporting Creditors, representing 71.9% of the pre-petition liabilities; and on a per-class basis, holders of claims representing 74.8% of Class II claims and 59.2% of Class III claims in this Judicial Restructuring, which not only acknowledged the Brazilian jurisdiction in this case, but also, under the Plan Support Agreement, agreed with the need of joinder of plaintiffs regarding the Debtors and the processing and payment of pre-petition claims through substantive consolidation.

The restructuring measures set forth in this Plan also reinforce the adequacy of a joint plan that takes into account a restructuring of the Constellation Group as a whole rather than a restructuring of each company individually. The implementation of the restructuring measures comprehends the economic and financial interconnectedness of the Debtors, given the provision of collateral by several entities to secure the distribution of new money to the benefit of the entire restructuring operation and, again, their concerted business activity and common goal. These new money derive

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from the ALB New Money, the 2024 Bond New Money, and the Bradesco New Money, and, in relation to the Supporting Creditors, justify different forms of payment, as provided for in Clauses 4.2.1, 4.2.2 and 4.3.3.

Therefore, the implementation of the Plan acknowledges the interconnection between the Debtors, both before and after the restructuring process, confirming substantive consolidation as the most appropriate and efficient measure to overcome the economic and financial crisis of the Constellation Group and facilitate recovery on the claims of the RJ-Subject Creditors.

2.6 Economic and Operational Feasibility. Constellation Group is confident that the liquidity crisis faced is temporary and should not permanently affect the soundness of its activities.

Although the price of oil is not expected to recover in the short term, the industry is expected to overcome the oil and gas demand crisis and to recover from the mismatch in the value of the remuneration rate of the service and charter contracts and of financings contracted for the acquisition of drilling units, which were the main factors that led the Debtors to the Judicial Restructuring, the Debtors believe that the situation is transient.

This happens because the Debtors are highly qualified and specialized companies, and are able to participate in the new environment of the oil and gas industry in the country, which will necessarily include the exploration of pre-salt oil.

In addition, the Debtors have already proven to be successful in obtaining new businesses. Although the Constellation Group was created to provide services to Petrobras, as a way of coping with the crisis in the country, the Debtors have entered into agreements with other companies in the industry, although they have not stopped participating in bidding processes conducted by the State-owned company.

Also in 2017, the Constellation Group entered into an international offshore contract with Oil and Natural Gas Corporation, a state-owned Indian oil exploration company, to charter Olinda Star rig for 3 years. The operation is being developed in one of the deepwater natural gas blocks in Krishna Godavaria basin, located on the east coast of India.

Also in this sense, the Constellation Group has achieved other important victories in the form of new contracts with Shell Brasil Petróleo Ltda., Queiroz Galvão Exploração e Produção S.A., and Total E&P do Brasil Ltda.

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This fact only highlights that, despite the crisis experienced by the country, the national market has a huge potential demand that can be fulfilled by Constellation Group, given its reputation in the Brazilian market.

In addition, from a global perspective, the projected political and economic scenario in Brazil is positive for the oil and gas sector, given the large world demand for energy and more importantly for the increase forecasted price of basic energy products — for 2018, an increased estimate close to 4%.3

The chart below shows the projections for the next 4 years, as compiled from ten different sources all agreeing as to a fortunately positive outlook4:

3 Last access on 11.09.2018: http:www.worldbank.org/en/news/press-release/2017/10/26/commodity-prices-likely-to-rise-further-in-2018-world-bank

4Free translation of the chart title: Oil Price Perspectives (market assumptions).

Oil price perspectives
Market assumptions

[There appears chart]

Additionally, since the beginning of 2017, the Federal Government and the ANP have made several regulatory changes related to the Oil and Natural Gas industry in order to make the bidding more attractive and, consequently, to stimulate new investments in pre-salt oil, with a greater number of auctions being carried out by ANP. One positive change was to open the market to companies other than Petrobras, allowing other operators to share in the market for the production of oil and gas.

The government's expectation is that with these changes, exploration will generate a value exceeding R$ 100 billion in investment5. In addition, it is well known that the production of oil in the world in non-OPEC countries has been declining at constant rates in recent years. In this sense, the Brazilian pre-salt and the Canadian oil areas are expected to compensate these global decline rates6.

5 Last consultation on 12.05.2018: http:www.brasil.gov.br/economia-e-emprego/2017/10/com-regras-more-claras-leilao-do-pre-sal-cria-expectativa-positiva-na-economy

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6 Last access on 11.09.2018: https:www.woodmac.com/news/feature/non-opec-decline-rates-remain-stable-until-2020/

Indeed, the projection for the industry is positive, with the expected demand for offshore rigs for ultra-deepwater exploration tending to increase for the next few years. In this sense, the relevance of the Constellation Group in the sector is clear, since 6 of its 8 offshore rigs are suitable for drilling in ultra-deepwaters, and the Constellation Group is a leader in this type of operations, having to date worked on over 120 wells in deep waters and ultradeep waters, including 95 in the Brazilian pre-salt area.

Therefore, the great interest in stimulating the activities of the Debtors is clear. The Judicial Restructuring will allow the maintenance of more than 1,200 direct jobs in the country – and so many other indirect ones – with the implementation of measures and operational efficiency and corporate restructuring facilitating the Group's competitive performance in the oil and gas industry both within the country and abroad.

There is no doubt that the Constellation Group is completely viable and of great importance to the oil and gas industry, given the certainty of its full commitment not only to guarantee the best possible performance in the contracts in progress – which enable its eventual rehabilitation – but also its full commitment in the fierce competition for new contracts.

All these factors lead to the conclusion that the Constellation Group's Judicial Restructuring is fully possible, thus satisyfing the purposes of the LRF. The feasibility of the Plan and the measures provided therein for the Judicial Restructuring of Constellation Group is confirmed by the Reports included in Annexes I and II of this Plan, submitted by specialists per article 53, item II and item III of the LRF.

3. Overview of the Restructuring Measures

3.1 Purpose of the Plan. The Plan aims to enable the Debtors to overcome their economic and financial crisis and to preserve direct and indirect jobs and the rights of their Creditors.

3.2 Restructuring Measures. The Constellation Group proposes to adopt measures described in the clauses as a way to overcome its current and circumstantial economic and financial crisis, and it may also use all means of recovery provided for in article 50 of the LRF and other applicable laws. In short, this Plan provides for: (a) the granting of special terms and conditions for the

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payment of obligations (whether due or not-yet due); (b) the creation of new wholly-owned subsidiaries; (c) the novation of pre-petition liabilities and, in some cases, the provision of new collateral; and (d) the potential sale of assets, as may be necessary; all pursuant to the Plan Support Agreement. In addition, the Debtors may perform all reasonable and necessary arrangements in all and any applicable jurisdictions, including Brazil, the United States of America, and British Virgin Islands, in order to comply with applicable laws and to implement the measures set forth in this Plan.

3.3 Restructuring of Debts. The Constellation Group will restructure the debts owed to its Creditors comprising the RJ-Subject Claims, as provided for in Clause 4 below and in the Plan Support Agreement.

3.4 Capital Contribution by the Shareholders. As provided for in the Plan Support Agreement, more specifically in Annex VII of its Annex A, LuxCo and CIPEF undertake individually to effect on the Closing Date a capital contribution in Constellation Holding in the amounts of US$ 20,017,800.00 and US$ 6,982,200.00, respectively, from the funds presently deposited in escrow accounts, upon capital contribution given without issuance of new shares in return; or, if one or more co-investors of CIPEF fails to make its pro rata share of the contribution due from CIPEF, then in the form of subscription of new shares of the same class, and in this case, the number of new shares to be issued will be agreed between CIPEF and LuxCo such that (i) the capital contribution of LuxCo and CIPEF remains US$ 20,017,800.00 and US$ 6,982,200.00, respectively; and (ii) only CIPEF's co-investors who have not contributed in proportion to their participation in the subscription are diluted.

3.5 New Money. The Constellation Group may also consider and adopt measures, even during Judicial Restructuring, in order to obtain new money, including through fundraising in the capital markets, to be approved pursuant to this Plan, the Plan Support Agreement, the New Restructuring Instruments (as of the Closing Date) and the respective corporate documents of the Debtors, provided that the provisions of this Plan, the Plan Support Agreement, the New Restructuring Instruments (as of the Closing Date), and articles 67, 84 and 149 of the LRF are observed. Possible new money raised in the capitals markets, except for possible capital increases (since they do not represent payment obligations), will be given RJ-exempt status for the purposes of the provisions of the LRF and may be secured by new collateral (subject to the provisions of the Plan Support Agreement and, as of the Closing Date, to the the New Restructuring Instruments as well.

3.5.1 ALB New Money. As provided in the Plan Support Agreement, more specifically in Annex I of its Annex A, ALB Creditors commit individually to granting new loans to the Debtors in the

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total amount of US$ 39,074,535.41 (with US$ 27,202,963.71 (69.6%) disbursed to Amaralina and Laguna, and US$ 11,871,571.70 (30.4%) disbursed to Brava Star), maturing on November 9, 2023, and these amounts derive from (i) the payment of principal and cash sweep payments for the month of August 2018; and (ii) the payment of the principal and cash sweep payments for the month of September 2018, to be paid pursuant to Section 4.2.1 below. The ALB New Money will be disbursed in new tranches of the restructured ALB Claims, pursuant to the Plan Support Agreement, and the ALB New Money will be paid under the same conditions of the ALB Claims, as set forth in Section 4.2.1.

3.5.2 2024 Bond New Money. Pursuant to the Plan Support Agreement, more specifically Annex A thereto, item "2024 Notes New Money," and Annex F thereto; and the Backstop Commitment, the Constellation Group will endeavor to, within two (2) Business Days from the Plan Approval, offer to the 2024 Bondholders, in proportion to their ownership of 2024 Bond Claims, the opportunity to subscribe for new notes, in the aggregate principal amount of twenty-seven million U.S. dollars (US$27,000,000.00), to be paid in the same conditions as those offered to the Participating 2024 Bond Claim pursuant to Section 4.2.2 below. After the offer, the 2024 Bondholders will have seven (7) Business Days to express their irrevocable intention to purchase these new notes in proportion to their respective 2024 Bond Claims; and the Supporting 2024 Bondholders together agree, pursuant to the Backstop Commitment, to purchase, in proportion to the 2024 Bond Claims held by them, all new notes that are not subscribed, pursuant to the Backstop Commitment.

3.5.3 Maintenance of Bradesco Reimbursement Letters of Credit and Bradesco New Money. Bradesco, subject to the terms and conditions set forth in the Plan Support Agreement, in particular Exhibit II of Annex A thereto (*Bradesco Loans*), will maintain in effect the Bradesco Reimbursement Letters of Credit, which will maintain the terms and conditions of payment set forth in the Bradesco Reimbursement Agreements, and grant a new loan to the Debtors, in the total amount of ten million U.S. dollars (US$10,000,000.00), to be disbursed on the Closing Date, provided that the conditions precedent set forth in the Plan Support Agreement and the Bradesco New Money Instrument are met. After the disbursement of the Bradesco New Money, the payment of the Bradesco New Money will be made under the same conditions applicable to the Bradesco Claims, as set forth in Section 4.3.3. below.

3.6 Generation of Surplus Cash (Cash Sweep). As provided in the Plan Support Agreement, more specifically in Annex V of its Annex A, the ALB Creditors, the Participating 2024 Bondholders and Bradesco will be entitled to a Cash Sweep of one hundred and forty million (US$140,000,000) of the Debtors for amortization of their Claims, as set forth below. From 2021

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to 2025, the Surplus Cash will be distributed between the ALB Creditors, the Participating 2024 Bondholders, and Bradesco and the Debtors pursuant to the Plan Support Agreement, more specifically Exhibit V of Annex A thereto, as set forth in the table below:

	If the balance of the ALB Claims payable is above 50% of the amount payable on the Filing Date, including principal amounts deposited in escrow:	**If the balance of the ALB Claims payable is below 50% of the amount payable on the Filing Date, including principal amounts deposited in escrow:**
ALB Creditors	57.00%	23.75%
Participating 2024 Bondholders	23.75%	47.50%
Bradesco	14.25%	23.75%
Constellation Group	5.00%	5.00%

3.7 Creation of Intermediary Holding Companies. As provided in the Plan Support Agreement and described in Annex B of Annex A thereto, in compliance with the limitations imposed by the *Lei das Sociedades por Ações* [the Corporate Law] and other applicable laws and regulations, (i) Constellation Overseas will create three wholly-owned subsidiary holding companies ("Holdcos 1"), which will hold 100% of the equity interests in Holdcos 2, defined below; (ii) Holdcos 1 will create three wholly-owned subsidiary holding companies ("Holdcos 2"), which will hold 100% of the equity interests of Constellation Overseas in Amaralina, Laguna, and Brava Star, respectively; (iii) the three Holdcos 1 will provide as collateral to the ALB Creditors a pledge of shares issued by Holdcos 2 and their respective subsidiaries; and and (iv) Constellation Overseas will pledge the shares issued by Holdcos 1 in favor of the Participating 2024 Bondholders and Bradesco, all pursuant to Exhibit B of Annex A to the Plan Support Agreement.

3.8 Cash Collateral. As provided in the Plan Support Agreement and specified in the Brava Cash Collateral Agreement and in the A/L Cash Collateral Agreement, Brava Star, Laguna and Amaralina are entitled to access and to use the funds deposited in restricted accounts previously encumbered for the benefit of the ALB Creditors pursuant to dates and payment methods set forth in the Brava Cash Collateral Agreement, the A/L Cash Collateral Agreement and the Plan Support Agreement, except for (i) funds related to or deposited in any of the Reserve Accounts; and (ii)

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any payments made as a result of any insurance coverage (as defined in Brava Credit Agreement and in the A/L Credit Agreement) in excess of US$ 10,000,000.00, in all cases subject to the terms and conditions of the A/L Cash Collateral Agreement and the Brava Cash Collateral Agreement.

3.9 Disposal and/or Encumbrance of Assets. As a way to obtain funds, increase liquidity for the capital structure of the Debtors, reinvest in their business and optimize operations, the Constellation Group may promote, during (or after) the period of the Judicial Restructuring, the disposal and/or encumbrance of assets, including financial, tangible and intangible assets, including but not limited to the equity interests of the Debtors, without the need of prior authorization of Creditors, of any Class, or at the Creditors' Meeting, pursuant to article 66 of the LRF and subject to the provisions of this Plan, the Plan Support Agreement and, beginning at the Closing Date, the New Restructuring Instruments. Accordingly, the disposal of the Constellation Group's Assets is hereby authorized, regardless of new approval by the RJ-Subject Creditors, subject to the limits established in the LRF, in this Plan, in the New Restructuring Instruments, in any security instruments of the Creditors, and in the legislation applicable to the Ancillary Proceeding in progress in the British Virgin Islands.

3.10 BID/Performance Bonds. As provided in the Plan Support Agreement, more specifically in the item titled *Bid/Performance Bonds* of Annex A thereto, the ALB Creditors, as applicable in each case, subject to the other conditions set forth in the Plan Support Agreement and in accordance with the capacity of ALB Creditors and also subject to the necessary internal approvals, will grant financial bonds and/or performance bonds related to the collateral supporting the ALB Claims, to ensure the participation of the Debtors in new contracts and/or proposals and/or bids for offshore operation related to the assets guaranteed in the ALB Claims. As provided for in the Plan Support Agreement, more specifically in Annex II of Annex A thereto, Bradesco will provide financial bonds and/or performance bonds to ensure the participation of the Debtors in new contracts and/or proposals and/or bids carried out for operation in Brazil, subject to compliance with applicable procedures.

4. Debt Restructuring and Settlement.

4.1 Payment of Labor Creditors.

4.1.1 Labor creditors. All Labor Creditors shall have their Labor Claims paid without interest or adjustment for inflation within 30 days counted from the Homologation Date, except as otherwise provided in Clauses 4.1.2., 4.1.3. and 4.1.4.

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4.1.2 Natural Person Labor Creditors Holding Claims under Dispute. All Natural Person Labor Creditors Holding Claims under Dispute shall have their Labor Claims paid without interest or adjustment for inflation within 12 months counted from the Homologation Date.

4.1.3 Attorney's Fees. All Labor Claims comprising attorney's fees shall be paid without interest or adjustment for inflation as follows:

(a) if the Labor Creditor holds RJ-Subject Claims of up to six hundred thousand *Reais* (R$ 600,000.00), payment will be made in three (3) equal installments, paid within thirty (30), sixty (60) and ninety (90) days from the Homologation Date.

(b) if the Labor Creditor holds RJ-Subject Claims above six hundred thousand *Reais* (R$600,000.00), payment will be made in two (2) equal installments, the first installment payable on the first (1st) business day subsequent to the Homologation Date and the second installment payable on the Closing Date.

4.1.4 Late Labor Claims. All Labor Creditors that are Late Creditors will have their Labor Claims paid without interest or adjustment for inflation within 12 months counting from the time when the decision approving the Labor Credit is no longer subject to appeal.

4.2 Payment of Secured Creditors.

4.2.1 Payment of ALB Claims. The payment of the ALB Claims held by the ALB Creditors shall fully comply with the terms and conditions set forth in the Plan Support Agreement, specifically in Annex I of Annex A, which payment and collateral terms are summarized herein.

(a) Maturity Date: November 9, 2023

(b) Amortization: The principal amount will be paid in the months of March, June, September and December, as follows:

1st quarter of 2021	Amaralina and Laguna Claims: US$ 13.05 million (69.6%) Brava Claims: US$ 5.70 million (30.4%) Total US$ 18.75 million

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2nd quarter of 2021	Amaralina and Laguna Claims: US$ 13.05 million (69.6%) Brava Claims: US$ 5.70 million (30.4%) Total US$ 18.75 million
3rd quarter of 2021	Amaralina and Laguna Claims: US$ 1.10 million (69.6%) Brava Claims: US$ 0.48 million (30.4%) Total US$ 1.58 million

3rd quarter of 2021	Amaralina and Laguna Claims: US$ 7.53 million (43.9%) Brava Claims: US$ 9.64 million (56.1%)
4th quarter 2021	Amaralina and Laguna Claims: US$ 8.23 million (43.9%) Brava Claims: US$ 10.52 million (56.1%)
2022	Quarterly amortizations in the amount of up to US$ 75.0 million per year (Amaralina and Laguna Claims: US$ 32.90 million, Brava Claims: US$ 42.10 million)
1st, 2nd, and 3rd quarters of 2023	Quarterly amortizations in the amount of up to US$ 56.25 million (Amaralina and Laguna Claims: US$ 24.68 million, Brava Claims: US$ 31.57 million)
November 9, 2023	Payment of remaining balance bullet, including the remaining Interest/Adjustment for Inflation, as set forth in item (d) below.

(c) Grace Period of the Principal: From September 2018 to December 2020.

(d) Interest/Adjustment for inflation: They will be paid/capitalized in the months of March, June, September and December, according to the options described below. The Debtors can choose between paying interest or PIK, and PIK shall prevail if no option is stated.

From September 1, 2018 to January 31, 2019	LIBOR + 2.75% in cash, and1.50% PIK;

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	or PIK interest rate of 10.00%
From February 1, 2019 to July 31, 2019	LIBOR + 2.75% in cash and 1.50% PIK; or PIK interest rate of 12.00%
From August 1, 2019 to December 31, 2019	LIBOR + 2.75% in cash and 1.50% PIK; or PIK interest rate of 14.00%
From January 1, 2020 to November 9, 2023	LIBOR + 2.75% in cash and 1.50% PIK

(e) Guarantee: Guarantee will be granted as provided in the Plan Support Agreement.

(f) Affirmative and Negative Covenants: As set forth in the Plan Support Agreement.

(g) Events of Early Maturity: Early maturity events will be observed as provided in the Plan Support Agreement.

4.2.2. Payment of 2024 Bond Claims: The payment of 2024 Bond Claims held by the 2024 Bondholders will fully comply with the terms and conditions set forth in the Plan Support Agreement, specifically Annex III of its Annex A, with the terms of payment summarized herein.

(a) **Maturity Date: November 9, 2024**

(b) Amortization of the Principal: There will be no amortization for the Non-Participating 2024 Bondholders. Principal amounts owed will be paid to the Participating 2024 Bondholders as set forth below:

2023	US $16.0 million
2024	US $8.0 million

(c) Grace Period of the Principal: From September of 2018 until December of 2022.

(d) Interest/Adjustment for Inflation for the Participating 2024 Bondholders:

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From September 1, 2018 to November 9, 2021	10.00% PIK
From November 10, 2021 to November 9, 2024	9.00% in cash + PIK interest rate of 1.00% Interest will be capitalized semi-annually in May and November of each year.

(e) Interest/Adjustment for Inflation for the Non-Participating 2024 Bondholders:

(i) If the 2024 Bond New Money are fully contributed:

From September 1, 2018 to November 9, 2021	10.0% PIK
From November 10, 2021 to November 9, 2024	7.00% in cash + 3.00% PIK Interest will be capitalized semi-annually in May and November of each year.

(ii) If the 2024 Bond New Money are not fully contributed:

From September 1, 2018 to November 9, 2024	10.0% PIK

(f) Guarantee: Guarantee will be granted as provided for in the Plan Support Agreement.

(g) Affirmative and Negative Covenants: As set forth in the Plan Support Agreement.

(h) Events of Early Maturity: As set forth in the Plan Support Agreement.

4.3 Payment of Unsecured Creditors.

4.3.1 All Unsecured Claims, with the exception of those provided for in Sections 4.3.2, 4.3.3, and 4.3.4 and in the provisions of Clauses 4.5, 4.6, and 4.7 will be paid without interest or adjustment for inflation by December 31, 2050.

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4.3.2 2019 Bond Claims: The payment of 2019 Bond Claims held by the 2019 Bondholders shall fully comply with the terms and provisions set forth in the Plan Support Agreement, specifically in Annex IV of its Annex A. That is, it will be paid on November 9, 2030, with an interest rate of 6.25% PIK capitalized every six months in May and November. There will be no amortization of interest or principal amount due until maturity.

4.3.3 Bradesco Claims: The payment of Bradesco Claims will fully comply with the terms and conditions set forth in the Plan Support Agreement, specifically in Annex II of its Annex A, with those payment terms summarized herein.

(a) Maturity Date: November 9, 2025

(b) Amortization: Amortization period with payments four times a year (March, June, September and December), as of 2022, as described below:

2022	Quarterly amortizations totaling US$ 5.0 million annually.
2023	Quarterly amortizations totaling US$ 5.0 million annually.
2024	Quarterly amortizations totaling US$ 5.0 million annually.
November 2025	Quarterly amortizations totaling US$7.5 million until the 3rd quarter of 2025.

(c) Grace period of the principal: From September 2018 until December 2021.

(d) Interest/Adjustment for Inflation:

From September 1, 2018 to January 31, 2021	LIBOR + 2.00% (deferred until maturity)
From February 1, 2021 to November 9, 2025	LIBOR + 2.00% Payment in cash is limited to 2.75%, and the remainder capitalized on a quarterly basis deferred until maturity. Payments on a quarterly basis, except for compound interest, payment of which is deferred until maturity.

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(e) Guarantees: Guarantees will be granted as provided for in the Plan Support Agreement.

(f) Affirmative and Negative Covenants: As set forth in the Plan Support Agreement.

(g) Events of Early Maturity: As set forth in the Plan Support Agreement.

4.3.4. Vendor Claims: The payment of Vendor Claims held by the Vendor Creditors will be paid without interest or adjustment for inflation within two (2) years after the Homlogation Date.

4.4 Payment of ME/EPP Creditors: All ME/EPP Claims, except for those claims provided for in Clauses 4.5, 4.6, and 4.7, will be paid without interest or adjustment for inflation within two (2) years from the Homologation Date.

4.5 Payment of Partner Creditors. All Unsecured Claims except Bradesco and the 2019 Bondholders, and all ME/EPP Creditors that are Partner Creditors, in each case including those that are Late Creditors, will be paid without interest or adjustment for inflation as follows:

(a) Operational Partner Creditors, Client Partner Creditors and Employee Partner Creditors:

1. Within thirty (30) days from the Homologation Date, all Partner Creditors will be paid up to the limit of ten thousand *Reais* (R$ 10,000.00) for each Partner Creditor.

2. Those Partner Creditors whose Partner Claim exceeds ten thousand *Reais* (R$ 10,000.00) shall have the remaining balance of their RJ-Subject Claim paid in three (3) equal installments, in thirty (30), sixty (60) and ninety (90) days from the Homologation Date.

(b) Restructuring Partner Creditors will be paid in two (2) equal installments, the first installment on the first (1st) business day subsequent to the Homologation Date and the second installment on the Closing Date.

(c) If the approval of the Partner Claim occurs after the Homologation Date, the Partner Claim will be paid in three (3) equal monthly installments, with the first installment being due thirty (30) days after the decision approving the Partner Claim is no longer subject to appeal.

4.6 Payment of Unilquidated Claims. All Unilquidated Claims, including those that are also classified as Late Claims, will be paid without interest or adjustment for inflation by December 31, 2050.

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4.7 Payment of Late Claims. All Late Claims will be paid without interest or adjustment for inflation by December 31, 2050 unless otherwise provided for in this Plan.

4.8 Payment of Claims held by Successor Creditors. The Claims held by the Successor Creditors will be paid as such claim would have been paid as originally provided for in this Plan absent claim transfer.

5 Additional Rules to be Observed for Debt Payment.

5.1. Payment Method. Except for the Labor Creditors who are parties in Proceedings, who will always receive payment from judicial deposits in their respective Proceedings, and except as otherwise provided in the Plan, the Plan Support Agreement, or the New Restructuring Instruments, amounts owed to the Creditors will be paid by (i) direct transfer of funds or deposit to the bank account of the respective Creditor; or (ii) payment order to be withdrawn directly from the cashier of the financial institution by the relevant Creditor, as the case may be, and the proof of said financial transaction shall be evidence of discharge of the relevant payment. The Unsecured Creditors and the ME/EPP Creditors shall within 30 days of the Homologation Date provide their respective bank accounts for the purposes set forth in this Clause in written communication addressed to any of the Debtors under the terms of the Clause 0 below below; if any of the Unsecured Creditors and/or ME/EPP Creditors do not imform the Debtors of their bank accounts within that period, failure to promptly pay those Creditors will not be considered an event of non-compliance with the Plan. In this case, at the discretion of the Debtors, payments due to any Unsecured Creditors and/or ME/EPP Creditors who have not provoided their bank accounts may be made in court, at the expense of such Credtior, who will be liable for any aggregate costs due to the use of the judiciary for deposit. There will be no incidence of interest, fines, default charges or non-compliance with this Plan if the payments have not been made because the Unsecured Creditors and the ME/EPP Creditors have not timely informed their bank accounts.

5.2. Increases in the Amounts of Claims by Judicial Decision or Agreement. In the event of any increase in the value of any Claim resulting from a final judicial decision or agreement between the parties, the increased value of the Claim will be paid in the manner provided for in this Plan, as from the transit in rem judicatam of the judicial decision or of the execution of the agreement between the parties. In this case, the rules for the payment of the increased value of such Claims will only be applicable from the the transit in rem judicatam of the decision or from the date of execution of the agreement between the parties.

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5.3. List of Creditors and Notice of Creditors. The payment projections provided in this Plan were prepared based on the Notice of Creditors, which may be subject to changes (whether or not due to the List of Creditors) up until the Creditors' Meeting.

5.3.1. The RJ-Subject Claims listed in the Notice of Creditors comprise a total indebtedness in the amount of R$ 5,783,609,779.49, summarized as follows:

	*Reais*7
Labor Claims	13,906,823.09
Secured Claims	4,772,275,733.78
ALB Claims	2,303,608,980.36
2024 Bond Claims	2,468,666,753.42
Unsecured Claims	996,277,943.26
Bradesco Claims	589,378,347.09
2019 Bond Claims	381,214,747.79
Other Creditors	25,684,848.39
ME/EPP Claims	1,149,279.36

7 Amounts converted based on the exchange rate of R$3.8555 per U.S. dollar. This exchange rate is expected to change pursuant to account article 38 of the LRF.

5.3.2. For the purposes of this Plan, all RJ-Subject Claims were calculated and updated in accordance with their contractual terms up to the Filing Date.

6. Effects of the Plan.

6.1. Binding of the Plan. From the Judicial Homologation of the Plan, the provisions of this Plan bind the Debtors, its Shareholders, the Creditors and Assignee Creditors and their respective successors, pursuant to article 59 of the LRF. The Approval of the Plan, together with the Judicial Homologation of the Plan, comprises authorization and binding consent granted by the Creditors to the Debtors to, within the limits of applicable law, including the LRF, this Plan and the Plan Support Agreement, adopt any and all measures that are appropriate and necessary for the implementation of the measures set forth in this Plan, including obtaining judicial, extrajudicial or administrative measures (whether in accordance with the LRF or under any procedure of a principal or incidental nature) pending or to be filed by Constellation Group, any representative

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of the Debtors or any representative of the Judicial Restructuring in any jurisdiction other than Brazil for the purpose of granting force, validity and effect to the Plan and its implementation. For the sake of clarity, the Creditors that approve the Plan expressly declare that they undertake to approve any other instrument of composition in another jurisdiction formalized by the Debtors, provided that such instrument reflects the terms and conditions of this Plan and the Plan Support Agreement, in order to implement the terms of this Plan whilee observing the terms of the Plan Support Agreement.

6.2. Amendments, Changes or Modifications to the Plan. After the Judicial Homologation of the Plan, amendments, changes or modifications to the Plan may be proposed at any time by the Debtors, provided that such amendments, changes or modifications are accepted by the Creditors pursuant to the LRF, the Plan Support Agreement, and, following the Closing Date, the New Restructuring Instruments as well. Amendments subsequent to the Plan that they are approved under this Plan, the Plan Support Agreement, and, following the Closing Date, the New Restructuring Instruments as well, and are in accordance with the LRF, bind all creditors subject to it, regardless of their express agreement with those subsequent amendments.

6.3. Novation. This Plan includes the novation of the RJ-Subject Claims, which will be paid in the manner established in this Plan. By virtue of this novation, all obligations, covenants, financial indexes, early maturity conditions, as well as other obligations and guarantees regarding the RJ-Subject Claims that are incompatible with the terms of this Plan shall cease to apply and shall be fully replaced by the provisions contained in this Plan, the Plan Support Agreement, and, following the Closing Date, the New Restructuring Instruments as well.

6.4. Ratification of Acts and Consent. The Approval of the Plan by the Creditors' Meeting, together with the Judicial Homologation of the Plan, will represent the agreement and ratification of the Debtors, the Joint Provisional Liquidators and the RJ-Subject Creditors of all the acts practiced and obligations contracted for the full implementation and consummation of this Plan and the Judicial Restructuring, including the execution of the Plan Support Agreement and the filing of Foreign Ancillary Proceedings, whose acts are expressly authorized, validated and ratified for all legal purposes; except that, in relation to the Debtors incorporated under the Laws of the British Virgin Islands and subject there to a Foreign Ancillary Proceeding, acts of the Joint Provisional Liquidators may occasionally require the approval of the Courts of the British Virgin Islands until termination of the applicable Foreign Ancillary Proceeding. The RJ-Subject Creditors are fully aware that the values, durations, terms and conditions of satisfaction of their Claims are amended by this Plan. The RJ-Subject Creditors, in the exercise of their will, state that they expressly agree with the aforementioned amendments in the terms provided in this Plan and

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thereby waive the receipt of any additional amounts, even if foreseen in the instruments that gave rise to the Claims or in judicial, administrative or arbitration decisions, because they are convinced that this Plan reflects economic and financial conditions that are more favorable to them than the maintenance of the original conditions of payment of their Claims.

6.5. Constellation Group Powers to Implement the Plan. After the Judicial Homologation of the Plan, Constellation Group is hereby authorized to take all necessary measures to (i) if necessary, submit the Approval of the Plan in the Foreign Ancillary Proceedings, with the purpose of giving effect to the Plan in the United States of America and in the British Virgin Islands, in accordance with the applicable legislation, (ii) file and/or proceed with other judicial, extrajudicial or administrative proceedings, whether in the realm of insolvency law or not, in jurisdictions other than the Federative Republic of Brazil, including in the United States of America and the British Virgin Islands, as necessary, and (iii) pay the costs of the Joint Provisional Liquidators; as well as (iv) take all required measures, pursuant to applicable Brazilian law and/or foreign law, to implement the Plan and the Plan Support Agreement. No Foreign Ancillary Proceeding can change the terms and conditions of this Plan.

6.5.1 The Debtors may carry out corporate restructuring operations such as a spin-off, merger, incorporation of one or more companies of Constellation Group, transformation, dissolution or liquidation between the Debtors themselves and/or any of their affiliates, always with the purpose of optimizing their operations and bolstering their results and to support the success of this Plan, provided that such actions comply with the terms of the Plan Support Agreement and, after the Closing Date, with the terms of the New Restructuring Instruments as well.

6.6. Dismissal of Lawsuits. As of the Judicial Homologation of the Plan, the Creditors may no longer with regard to their RJ-Subject Claims (i) other than as permitted by the LRF, file and/or proceed with any measures in this jurisdiction or in any other related to any dispute, claim, or cause of action, whether previously identified or not, known or not, including any claims attributed to the Debtors that the Creditors (either individually or collectively) may have against the Debtors or the Joint Provisional Liquidators; (ii) execute against the Debtors any judgment, judicial or administrative decision or arbitration award related to any RJ-Subject Claims; (iii) continue adopting any measures and/or adverse actions in any jurisdictions, notably those in progress before the jurisdiction of the United States of America and the British Virgin Islands, against the Debtors or the Joint Provisional Liquidators; (iv) pledge any assets of the Debtors to satisfy their RJ-Subject Claims or to perform any other constrictive act against such assets; (v) create, perfect or execute any pledge on the assets or rights of the Debtors to ensure the payment of their RJ-Subject Claims, with the exception of those provided for in the Plan Support

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Agreement; (vi) claim any right of compensation against the Debtors in relation to any RJ-Subject Claims; and (vii) seek the payment of its RJ-Subject Claims by any other means. Any judicial executions against the Debtors related to RJ-Subject Claims will be terminated, and existing pledges and liens will be released. The rights and claims arising out of the novation resulting from the Judicial Homologation of the Plan, the Plan Support Agreement and, as of the Closing Date, the New Restructuring Instruments are maintained pursuant to Section 6.3 above.

6.7. Discharge. Payments made in the manner set forth in this Plan, when completed in their entirety (including full performance under this Plan), will lead automatically and regardless of any additional formality to the full, irrevocable and irreversible discharge of all RJ-Subject Claims of any kind and nature against the Debtors and their parent companies and guarantors, including interest, adjustments for inflation, penalties, fines and indemnifications. Upon the occurrence of the discharge, the RJ-Subject Creditors shall be deemed to have discharged, cleared and/or waived in full any and all Claims, and can no longer claim them against the Joint Provisional Liquidators as well as the Debtors and, with respect to each of the foregoing, their subsidiaries, affiliates and associates and other companies belonging to the same corporate and economic group, and the officers, advisors, shareholders, partners, agents, employees, representatives, guarantors, successors and Successor Creditors and Assignee Creditors of each under any title.

6.8. Set-Off. The RJ-Subject Creditors may not under any scenario after the Commencement Date set-off the RJ-Subject Claims they hold against any claims held by the Debtors against them.

6.9. Exemption from Liability and Waiver of Exempt Parties: Due to the Approval of the Plan, the RJ-Subject Creditors expressly acknowledge and exempt the Exempt Parties that have acted in compliance with the applicable laws and standards from any and all liability for the acts performed and obligations related to or in connection with the Judicial Recovery and the Ancillary Proceedings (including preparation of the Judicial Recovery and the Ancillary Proceedings and the negotiation and documentation of the Plan) and contracted before and/or during the Judicial Restructuring, granting the Exempt Parties a broad, general, irrevocable and irreversible discharge of all rights and material or moral claims arising from said acts for any reason to the extent permitted by applicable law (other than enforcement of this Plan, the Plan Support Agreement and, as of the Closing Date, the New Restructuring Instruments, which remain fully enforceable against all applicable parties, pursuant to their respective terms). The Approval of the Plan also represents the express and irrevocable waiver of the RJ-Subject Creditors, to the extent permitted by applicable law, to any claims, actions or rights to sue or claim, judicially or extrajudicially, in any capacity and without reservations or qualifications, compensation for damages and/or other actions or measures against the Exempt Parties in respect of acts committed and obligations

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undertaken by the Exempt Parties within the Judicial Restructuring, provided that they have acted within the limits of the applicable laws (other than enforcement of this Plan, the Plan Support Agreement and, as of the Closing Date, the New Restructuring Instruments, which remain fully enforceable against all applicable parties, pursuant to their respective terms). Plan Approval also represents the consent of the RJ-Subject Creditors to the payment of the costs of the Joint Provisional Liquidators.

6.10. Formalization of Documents and Other Measures. The Debtors undertake to perform all actions and sign all agreements and other documents that, in their form and content, are necessary or adequate to the fulfillment and implementation of this Plan and related obligations.

6.11. Assignment and Transfer of RJ-Subject Claims.

6.11.1. Up until the Closing Date, none of the Supporting Creditors may assign any Supporting Claims to any third party other than in the manner provided in the Plan Support Agreement.

6.11.2. This Plan or the Plan Support Agreement shall not in any way be construed to prevent Supporting Creditors from acquiring additional RJ-Subject Claims; provided that any Supporting Creditor who acquires RJ-Subject Claims at any time up to the Closing Date does so in accordance with the provisions of the Plan Support Agreement.

6.11.3. As a general rule, the RJ-Subject Creditors may assign or transfer their RJ-Subject Claims, provided that they meet the following conditions: (i) the Debtors are notified of the assignment at least 10 Business Days before the payment dates; and (ii) the notice is accompanied by proof that the assignees received and confirmed the receipt and acceptance of this Plan and acknowleged that the RJ-Subject Claim assigned, whether by operation of law or voluntary adhesion, is subject to the effects of this Plan.

6.11.3.1. As of the Closing Date and pursuant to the Plan Support Agreement, the RJ-Subject Claims thats by their nature freely circulate in the market are not subject to Section 6.11.3. above.

6.11.4. The Debtors are under no obligation to issue any document or publicly disclose any information for the purpose of allowing a RJ-Subject Creditor to transfer any of its RJ-Subject Claims.

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6.11.5. The terms of any confidentiality agreements signed by the Debtors with third parties will remain valid and effective, and this Plan or the Plan Support Agreement will not replace any rights or obligations arising from such confidentiality agreements.

6.11.6. Any transfer in breach of these provisions and the Plan Support Agreement will be considered null ab initio.

7. General Provisions

7.1. Non-compliance with the Plan. For the purposes of this Plan, non-compliance occurs if, upon receipt of notice sent by the injured party as a result of non-compliance with any obligation of the Plan, said non-compliance is not remedied within 90 (ninety) days counted from the receipt of the notice. If not remedied after such term has elapsed, the Debtors may request from the Restructuring Court a convening of a Creditors' Meeting with the purpose of deliberating with the RJ-Subject Creditors on the most appropriate measure to remedy the non-compliance with the Plan.

7.1.1. Section 7.1 above does not apply to: (i) until the Closing Date, the Support Creditors, who are subject to the provisions of the Plan Support Agreement regarding non-compliance and termination, and (ii) after the Closing Date, the holders of the New Restructuring Instruments, who will be subject to the provisions of the New Restructuring Instruments.

7.2. Existing Contracts and Conflicts. In the event of conflict between the provisions of this Plan and the obligations provided in agreements entered into with any RJ-Subject Creditor prior to the Filing Date, this Plan shall prevail, in accordance with Clause 1.2 above.

7.3. Closing of the Judicial Restructuring. Once the Judicial Restructuring Plan has been approved, the RJ-Subject Creditors and the Debtors agree to waive the supervision period of 2 (two) years as otherwise provided for in articles 61 and 63 of the LRF, and the RJ should end as rapidly as possible following the Closing Date, when the restructuring measures set forth in Section 3 above have been implemented.

7.4. Communications. All notices, requirements, requests and other communications to the Debtors required or permitted by this Plan must, in order to be effective, be made in writing, and shall be deemed to have been made when (i) sent by registered mail with return receipt, or by courier and effectively delivered, or (ii) sent by email or other means, when effectively delivered

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and confirmed. All communications must be addressed as follows, except as otherwise expressly provided in this Plan or in any other way that may be disclosed by the Constellation Group:

Galdino & Coelho Advogados

Av. Rio Branco, n. 138, 11° andar

Rio de Janeiro, RJ

Zip Code: 20040-002

C/O: Flavio Galdino

Telephone: +55 21 3195-0240

Email: constellation@gc.com.br

7.5. Financial Charges. Except in the cases expressly provided for in the Plan, interest and adjustment for inflation shall not accrue on the RJ-Subject Claims.

7.6. Claims in Foreign Currency. The law states that claims indicated in foreign currency will be kept in their original currency for all legal purposes in accordance with the provisions of article 50, § 2 of the LRF. For the purposes of determining the value limits and quorum provisions set forth in this Plan, the Claims in foreign currency will be converted into *Reais* based on the closing price of the exchange rate of *Reais*, as available on SISBACEN – Information System of the Central Bank of Brazil, transaction PTAX-800 on the Homologation Date, unless otherwise provided for in this Plan and or in the Plan Support Agreement.

7.7. Severability of the Plan's Forecasts. If any term or provision of the Plan is considered to be invalid, void or ineffective by the Restructuring Court, the remainder of the terms and provisions of the Plan shall remain valid and effective unless, at the discretion of the Debtors, such partial invalidity of the Plan compromises the capacity for compliance therewith, in which case, by simple declaration, it may return the Parties to the prior state and, if necessary, submit a new Judicial Restructuring Plan for approval of the creditors.

7.8. Applicable Law. The rights, duties and obligations arising from this Plan shall be governed, construed and enforced in accordance with the laws in force in the Federative Republic of Brazil,

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even if the Claims, the Plan Support Agreement, and the New Restructuring Instruments are governed by the laws other jurisdictions.

7.9. Election of Jurisdiction. Any controversies or disputes that arise or are related to this Plan will be resolved by the Restructuring Court according to the terms of the Plan Support Agreement.

Rio de Janeiro, February 28th, 2019.

(*Signatures on the next page*)

p.p. [Consta assinatura]	pp. [Consta assinatura]
Serviços de Petróleo Constellation S.A. – under financial restructuring	**Serviços de Petróleo Constellation Participações S.A. – under financial restructuring**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Alpha Star Equities Ltd	**Amaralina Star Ltd**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Arazi S.À.R.L.	**Brava Star Ltd**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Constellation Oil Services Holding S.A.	**Constellation Overseas Ltd**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Constellation Services Ltd	**Gold Star Equities Ltd**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Laguna Star Ltd	**Lancaster Projects Corp.**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Lone Star Offshore Ltd	**Manisa Serviços de Petróleo Ltda. – under financial restructuring**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Olinda Star Ltd	**Snover International Inc.**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Star International Drilling Limited	**Tarsus Serviços de Petróleo Ltda. – under financial restructuring**
p.p. [Consta assinatura]	p.p. [Consta assinatura]
Eleanor Fisher	**Paul Pretlove**

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(as Joint Provisional Liquidator and without personal liability)	(as Joint Provisional Liquidator and without personal liability)

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This was the full content of the document that I faithfully translated, verified and attest. This translation is not a judgment on the form, authenticity and/or content of the document. Lucas Livingstone Felizola Soares de Andrade, CPF (Individual Taxpayer Registration) 009.109.715-0, enrollment JUCESP 1879. São Paulo, 03/19/2019.//

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SCHEDULE 5

THE OLINDA TERM SHEET[1][2]

BVI[3] PROCESS	
General Principles	On June 4, 2019, the Rio de Janeiro Court of Appeals entered an order clarifying its prior decision that Olinda Star Ltd. ("Olinda") should be removed as one of the Filing Entities in, and dismissed from, the Brazilian RJ Proceeding (the "June 4 Order"). This term sheet (the "Term Sheet") sets forth the material terms for the restructuring of Olinda's debts (the "Olinda Restructuring") pursuant to a plan of arrangement to be filed in the British Virgin Islands ("BVI") with the Eastern Caribbean Supreme Court (Virgin Islands) Commercial Court presiding over the Olinda BVI Proceeding (the "Olinda BVI Court"). Such plan (the "Olinda Plan") shall be consistent with this Term Sheet and the Plan Support Agreement and shall be in form and substance reasonably satisfactory to the Required Consenting 2024 Noteholders, Bradesco, the Required Consenting Lenders and the joint provisional liquidators (the "JPLs"). The Olinda Restructuring shall be administered under a proceeding commenced in the BVI under Section 177 of the BVI Business Companies Act (as amended) (the "Olinda BVI Proceeding"), separate and apart from the restructuring of the Filing Entities, all of which shall remain debtors in the Brazilian RJ Proceeding. For the avoidance of doubt, the RJ Closing Date is permitted to occur prior to the consummation of the Olinda Plan. The Constellation Group shall take all commercially reasonable steps to implement the Olinda Restructuring consistent with this Term Sheet and the Plan Support Agreement (as applicable). Immediately upon the occurrence of the Olinda Plan Outside Date (as defined below), the obligations of each of the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders to support the Olinda Plan, the Olinda Restructuring and/or the Olinda BVI Proceeding shall terminate and such Term Sheet Parties shall have no continuing obligation to support the Olinda Plan, the Olinda Restructuring and/or the Olinda BVI Proceeding. In such case, the Term Sheet Parties' rights shall be automatically (and without any need for further action or requirement to seek approval from any court, the JPLs or other body or authority) returned to the *status quo ante* as of the

[1] This Term Sheet will be attached as an exhibit to a letter agreement by and among Olinda, Constellation Overseas Ltd., each other member of the Constellation Group that is a party to the Plan Support Agreement (as defined below), the Required Consenting Lenders, the Required Consenting 2024 Noteholders, Bradesco and the JPLs (collectively, in their capacities as parties to this Term Sheet, the "Term Sheet Parties").

[2] Each of the Term Sheet Parties acknowledges and agrees that this Term Sheet is the "Olinda Term Sheet" referenced throughout the Plan Support Agreement (defined below) and RJ Plan Term Sheet, and that the letter agreement to be executed in furtherance of this Term Sheet shall explicitly state that this is the case.

[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Second Amended and Restated Plan Support and Lock-Up Agreement, dated as of June 28, 2019 (as may be further amended, restated, or otherwise modified from time to time, the "Plan Support Agreement").

	date immediately preceding the Olinda BVI Filing Date, as if the Olinda Plan had not been filed, voted on or approved by the Olinda BVI Court in the first instance. The Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders shall agree to support the Olinda Restructuring in accordance with the terms set forth herein. The Required Consenting 2024 Noteholders shall agree to vote in favor of the Olinda Plan and/ or provide written confirmation of their willingness to approve or vote in favour of the Olinda Plan and all Term Sheet Parties shall agree to refrain from taking any actions that would interfere with or delay the Olinda Restructuring. Notwithstanding the foregoing, except as explicitly set forth in this Term Sheet, the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders shall not be required to take any position or support any statement or filing of any kind made by any party, including the JPLs, Olinda or any of its Affiliates, during or in connection with the Olinda Plan or the Olinda BVI Proceeding, and any positions or actions taken or supported by the Term Sheet Parties in connection with this Term Sheet, the Olinda Plan or the Olinda BVI Proceeding (including, without limitation, any vote in favor of the Olinda Plan) shall not be binding on, or be introduced as evidence of any kind by or against, any Term Sheet Party in connection with any subsequent proceeding, including any bankruptcy or insolvency proceeding, litigation, regulatory hearing, arbitral tribunal or similar proceeding (for the avoidance of doubt, this does not include the Olinda BVI Proceeding or the Olinda Chapter 15 Filing to the extent the Olinda Plan and final sealed order are in form and substance reasonably satisfactory to the Required Consenting 2024 Noteholders, the Required Consenting Lenders and Bradesco). For the avoidance of doubt, none of the Required Consenting 2024 Noteholders, the Required Consenting Lenders, Bradesco or the JPLs shall be required to incur any costs, fees or expenses in connection with this Term Sheet, the Olinda Plan, the Olinda BVI Proceeding or the Chapter 15 Proceeding in respect of Olinda, and such Term Sheet Parties shall not be obligated to provide any indemnity or otherwise incur any liability in connection with this Term Sheet, the Olinda Plan, the Olinda BVI Proceeding, the Chapter 15 Proceeding in respect of Olinda or any other Olinda-related process or proceeding. For further avoidance of doubt, to the extent that the Plan Support Agreement is terminated in accordance with its terms (i) in respect of the Filing Entities at any time prior to the RJ Closing Date or (ii) in respect of Olinda at any time prior to the Olinda Confirmation Date, in either event all Term Sheet Parties' respective rights, duties and obligations under this Term Sheet and related Restructuring Documents, taken as a whole, vis-à-vis Olinda, shall terminate in their entirety subject to any terms and conditions of the Term Sheet and the Plan Support Agreement which expressly survive termination. The Olinda Plan, the Olinda Chapter 15 Filing, the Olinda Confirmation Order, the U.S. Enforcement Order, the Olinda FR Application, each as defined below, and any other motions, pleadings or documents to be filed in connection with the Olinda BVI Proceeding will be in form and substance reasonably satisfactory to the Required Consenting 2024 Noteholders, Bradesco, the Required Consenting Lenders and the JPLs. Olinda shall be authorized to continue to pursue an appeal of the June 4

	Order; *provided, however*, that in the event the prosecution or continuation of an appeal of the June 4 Order or non-withdrawal of Olinda from the Brazilian RJ Proceeding would interfere with or delay the Olinda Restructuring or cause, exacerbate or frustrate the progress or consummation of the Olinda Restructuring pursuant to the Olinda Plan or the Olinda BVI Proceeding, or cause any other similar issues with the Olinda BVI Court (*e.g.*, issues that hinder, delay or prevent the Olinda BVI Court from agreeing to accept jurisdiction over the Olinda Restructuring or the Olinda BVI Proceeding, or hearing the Olinda Plan), Olinda agrees that it shall take all steps reasonably necessary to stay or withdraw the appeal.
Old Olinda Guarantee	On the RJ Closing Date, each holder of the Existing 2024 Notes will receive (i) an escrow position in their DTC account corresponding to the principal amount of Existing 2024 Notes held by such holder immediately prior to the RJ Closing Date or (ii) such other proof memorializing its claim to Olinda's accelerated guarantee of the Existing 2024 as may be mutually agreed by the Company and the Required Consenting 2024 Noteholders. In either case, any such escrow position or claim shall be permitted to be transferred via DTC on and after the RJ Closing Date and such escrow position or claim shall, to the extent possible after taking commercially reasonable efforts, have a separate CUSIP.
Economic Terms	The Olinda Plan will provide that: (i) Olinda's accelerated guarantee of the Existing 2024 Notes (the "Existing 2024 Notes Guarantee") is exchanged for Olinda's guarantee of the New 2024 Notes issued under the RJ Plan (the "New 2024 Notes Guarantee"); (ii) The New 2024 Notes Guarantee will be a secured guarantee with the same collateral as the Existing 2024 Notes Guarantee; and (iii) all new or amended collateral entitlements and security interests provided for under the Participating Notes Indentures and Non-Participating Notes Indenture (and any other Restructuring Documents) to secure the obligations of Olinda in respect of the New 2024 Notes Guarantee will be granted by Olinda, and Olinda and its Affiliates will grant or cause to be granted all such collateral entitlements and security interests, ensure they are duly created and perfected by the indenture trustee(s) for the New 2024 Notes, and represent valid and enforceable obligations of Olinda and any other members of the Constellation Group in accordance with the Participating Notes Indenture. For the avoidance of doubt, as set forth in the Participating Notes Indenture, until the Olinda Plan is effective, Olinda will not be a guarantor of the New 2024 Notes issued under the RJ Plan and Olinda will continue to be subject to the Existing 2024 Notes Indenture. The Existing 2024 Notes Guarantee will remain an obligation of Olinda and remain in full force and effect for the duration of the Olinda BVI Proceeding, and it will only terminate upon the granting of the New 2024 Notes Guarantee (in accordance with the terms and timings set out in the

	Participating Notes Indenture), and the full consummation of the Olinda Plan. If the RJ Closing Date occurs prior to the consummation of the Olinda BVI Proceeding, the New 2024 Notes will be issued under the Participating Notes Indentures and the Non-Participating Notes Indenture. Olinda shall accede to the necessary documents under the RJ Plan (including, for the avoidance of doubt, the Participating Notes Indenture and the credit agreements relating to the Bradesco Loans) in accordance with the terms and timings set out in the Participating Notes Indenture once the Olinda Plan is effective or the appeal in the Brazilian RJ Proceeding with respect to Olinda is successful and a judicial restructuring plan (*plano de recuperação judicial*) is confirmed by the Brazilian RJ Court, such that Olinda's debts are restructured under the RJ Plan (whichever is sooner). The Olinda Plan will also provide, upon consummation of the Olinda Plan, the discharge of the JPLs and in accordance with the terms of the Participating Notes Indenture, for Olinda's guarantee of the Bradesco Loans (including the New Bradesco Facility) and the Bradesco LC Reimbursement Obligations restructured under the RJ Plan (the "Bradesco Guarantee") and for the Bradesco Guarantee to be secured by the same collateral as the New 2024 Notes Guarantee, in each case consistent with the terms of the RJ Plan Term Sheet and Plan Support Agreement.
Filing Process	(i) Olinda filed an updated insolvency protocol with the Olinda BVI Court allowing Olinda the capacity to pursue a plan of arrangement. The Olinda BVI Court approved the updated insolvency protocol on 25 July 2019. (ii) Olinda shall provide all known stakeholders and interested parties with notice of Olinda's intention to pursue and file the Olinda Plan. Such notice will be provided no fewer than fourteen (14) days prior to the first hearing of the Olinda BVI Court. (iii) Olinda will place advertisements in the BVI, Brazil, India and New York giving notice of the plan of arrangement hearing prior to the hearing date. (iv) Olinda will commence the Olinda BVI Proceeding by filing an application supported by such evidence as is necessary with the Olinda BVI Court seeking approval of the Olinda Plan, which will be attached to such application in substantially final form. (v) At the initial hearing, Olinda will request the Olinda BVI Court to set all necessary requirements for approval of the Olinda Plan and the issuance of the Olinda Final Confirmation Certificate by the BVI Registry of Corporate Affairs. (vi) The JPLs will file an affidavit setting out their views on the proposed restructuring to assist the Olinda BVI Court in reaching its decision. (vii) Olinda shall comply with the directions of the Olinda BVI Court. If a second hearing is required all reasonable efforts

	to be made to obtain such hearing as soon as possible. (viii) Immediately upon receipt of the final sealed order from the Olinda BVI Court approving the Olinda Plan, the final sealed order will be shared with the Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders. If the Olinda BVI Court order approves the Olinda Plan without change, the director of Olinda will pass the necessary corporate approvals to confirm and approve the Olinda Plan. If the Olinda BVI Court order approves the Olinda Plan but requires or includes any changes to such plan, the Olinda director shall not approve the Olinda Plan without the prior express written consent of the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders; (ix) The JPLs have obtained the sanction of the Olinda BVI Court to act as the Olinda FRs (as defined below) and shall apply for chapter 15 relief in the U.S. Bankruptcy Court with respect to the Olinda BVI Proceeding; (x) The JPLs, in their capacity as the Olinda FRs, will file the U.S. Enforcement Filing with respect to Olinda; and (xi) Olinda will make any necessary filings with the BVI Registry of Corporate Affairs to obtain the Olinda Final Confirmation Certificate.
Timeline for Approval of the Plan, Confirmation and Consummation	The Constellation Group will implement the Olinda BVI Restructuring in accordance with the following Milestones: (i) within seven (7) Business Days (for the avoidance of doubt, Business Days shall not include weekends or public holidays in the BVI) of the approval of this Term Sheet by the Required Consenting 2024 Noteholders, Bradesco, Required Consenting Lenders and the JPLs (the "Olinda Term Sheet Approval"), draft documents for the Olinda BVI Proceeding and Olinda Plan will be provided to counsel for each of the Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders; (ii) within twenty (20) Business Days of the Olinda Term Sheet Approval, all relevant corporate approvals required in connection with the Olinda Plan (pursuant to the terms thereof), including, without limitation, approval of the Olinda Plan and commencement of the Olinda BVI Proceeding in accordance with the terms hereunder by the Olinda board of directors, will be obtained; (iii) within twenty (20) Business Days of the Olinda Term Sheet Approval (a) all documents necessary for the Olinda BVI Proceeding and Olinda Plan shall be in final form in accordance with this Term Sheet and (b) Olinda shall commence the Olinda BVI Proceeding and file the Olinda Plan in such form with the Olinda BVI Court (the "Olinda BVI Filing Date"); (iv) within ten (10) Business Days following the Olinda BVI

	Filing Date (the "Olinda Chapter 15 Filing Date"), the Olinda FRs will file the Olinda Chapter 15 Filing (each, as defined below) with the U.S. Bankruptcy Court; (v) following the Olinda BVI Filing Date, the first hearing on the application for approval of the Olinda Plan shall be held on the date set by the Olinda BVI Court; (vi) within three (3) Business Days of the Olinda director resolution approving the Olinda Plan and the Olinda Plan having been executed by all necessary parties, Olinda shall file the Articles of Arrangement with the BVI Registry of Corporate Affairs. The BVI Registry of Corporate Affairs shall thereafter issue the certificate confirming that the Olinda Plan has been registered and the Plan shall become effective (the "Olinda Confirmation Date"); (vii) within seven (7) Business Days following the Olinda Confirmation Date (the "U.S. Enforcement Order Filing Date"), the Olinda FRs will file all necessary filings needed to obtain the U.S. Enforcement Order (as defined below); (viii) on or before 31 December 2019, the consummation of the Olinda Plan, including the satisfaction of all conditions precedent thereto, will have taken place (the "Olinda Plan Outside Date"); (ix) immediately following the Olinda Confirmation Date and the discharge of the JPLs and in accordance with, and subject to, the terms and timings set out in the Participating Notes Indenture, Olinda shall accede to the Participating Notes Indenture, and shall pledge the agreed security by the earlier of (i) the date set forth in the Participating Notes Indenture and (ii) the date set by the Olinda BVI Court; and (x) if, by the Olinda Plan Outside Date, (x) the Olinda Plan is not approved by the Olinda BVI Court or (y) the final sealed order approving the Olinda Plan is not in form and substance reasonably satisfactory to the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders (including, without limitation, if such Olinda Plan includes dissent rights) such that the director of Olinda has not been expressly authorized by the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders to confirm and approve the Olinda Plan, in each case other than as a result of the action or inaction of any party other than the Term Sheet Parties, the Term Sheet Parties' rights shall be returned to the *status quo ante* as of the date immediately preceding the Olinda BVI Filing Date, as if the Olinda Plan had not been filed, voted on or approved by the Olinda BVI Court in the first instance. Any termination of the Plan Support Agreement that occurs prior to the occurrence of the RJ Closing Date (as defined in the Plan Support Agreement) shall, without any further required action or notice, result in the automatic termination of the Term Sheet and all Term Sheet Parties' respective obligations with respect to Olinda, the Olinda Restructuring, the Olinda BVI Proceeding, the Olinda Plan and any Chapter 15

	Proceeding in respect of Olinda. For the avoidance of doubt, except as explicitly set forth in this Term Sheet, the terms of the Participating Notes Indentures and the Non-Participating Notes Indenture, including the obligations of members of the Constellation Group to provide the New 2024 Notes Guarantee and grant and ensure the perfection and validity of all collateral entitlements and security interests, shall not be altered or deemed altered in any respect by this Term Sheet.
Other Conditions Precedent and Other Terms	The terms of the Olinda Plan will include, as conditions precedent to effectiveness and consummation of the Restructuring Transaction(s) to be implemented thereunder: (i) the occurrence of the RJ Closing Date in the Brazilian RJ Proceeding; (ii) the entry by the U.S. Bankruptcy Court of the U.S. Enforcement Order (as defined below) on or before the Olinda Plan Outside Date; and (iii) the Olinda Plan and the final sealed order approving the Olinda Plan each shall be in form and substance reasonably satisfactory to the Required Consenting 2024 Noteholders, Bradesco, the Required Consenting Lenders and the JPLs, and the director of Olinda shall not be authorized to confirm and approve the Olinda Plan pursuant to the final sealed order without the consent of the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders. If the Olinda Plan is not consummated on or before the Olinda Plan Outside Date, the Olinda Plan, and any votes submitted with respect to the Olinda Plan, shall be immediately and automatically, without any further action or notice, deemed null and void *ab initio*, and the Consenting Stakeholders will be able to exercise any and all rights and remedies they may have against Olinda, unless the Required Consenting 2024 Noteholders, Bradesco and the Required Consenting Lenders agree otherwise. The Olinda Plan will expressly authorize the Consenting 2024 Noteholders, Bradesco and Consenting Lenders (as applicable) to exercise any and all rights and remedies they may have under each of the Restructuring Documents with respect to Olinda, including, without limitation, the Plan Support Agreement, in accordance with the terms of each Restructuring Document, without requiring further approval of the Olinda BVI Court and subject only to the terms of the relevant Restructuring Document.
Fees	All outstanding amounts then due and owing to the Professional Advisors incurred prior to the RJ Closing will be paid at RJ Closing. The fees and expenses related to the Olinda BVI Proceeding of all legal and financial advisors to (i) the Required Consenting 2024 Noteholders, (ii) the Existing 2024 Notes Indenture Trustee, (iii) Bradesco and (iv) the Required Consenting Lenders (in accordance with the terms set forth in the Credit Agreements) will be paid on a current basis, within five (5) Business Days of the receipt by the Company of any invoice until the later of (i) the consummation of the Olinda Plan, (ii) completion of an agreed alternative transaction to address the Existing 2024 Notes

	Guarantee and any related obligations, and (iii) the perfection of all new or amended collateral entitlements.
JPL fees and release	The Constellation Group will pay the fees and expenses of the JPLs arising from the discharge of their duties. By authorizing the director to approve the finalized Olinda Plan, the Term Sheet Parties agree to, upon discharge of the JPLs by the Olinda BVI Court following the consummation of the Olinda Plan in a manner consistent with this Term Sheet, irrevocably release and hold harmless and not bring any action, claim, complaint or litigation against the JPLs, their employees and/or advisors in any jurisdiction with regard to any matter arising from or incidental to the provisional liquidation of Olinda, the Olinda Plan or any associated actions, documentation or agreements, subject to customary exceptions for fraud, gross negligence and wilful misconduct.
U.S. PROCESS	
Recognition of Olinda FRs and Olinda BVI Proceeding	The JPLs filed an application (the "Olinda FR Application") with the Olinda BVI Court seeking authorization for the JPLs to act as "foreign representatives" for the Olinda BVI Proceeding (in such capacity, the "Olinda FRs"), which was sanctioned by the Olinda BVI Court on 25 July 2019. In accordance with step (vii) of the *Timeline for Approval of the Plan, Confirmation and Consummation* section above, the Olinda FRs will seek recognition from the U.S. Bankruptcy Court of the Olinda BVI Proceeding as the "foreign main proceeding" or "foreign nonmain proceeding" (both as defined in section 1502 of the Bankruptcy Code) of Olinda (the "Olinda Chapter 15 Filing").
Full Force and Effect Relief	On or before the U.S. Enforcement Order Filing Date, the Olinda FRs shall file a motion seeking an order from the U.S. Bankruptcy Court recognizing, enforcing and giving full force and effect to the terms of the Olinda Plan within the territorial jurisdiction of the U.S. as a matter of U.S. law (the "U.S. Enforcement Order").
BRAZIL PROCESS	
Brazilian RJ Proceeding	Consistent with the Plan Support Agreement and the RJ Plan Term Sheet, the Constellation Group shall continue to seek implementation of the RJ Plan with respect to the Filing Entities. The RJ Closing Date will not be conditioned on or subject to the consummation of the Olinda BVI Proceeding or the effectiveness of the Olinda Plan. Olinda shall be authorized to continue to pursue an appeal of the June 4 Order; *provided*, *however*, that in the event the prosecution or continuation of an appeal of the June 4 Order or non-withdrawal of Olinda from the Brazilian RJ Proceeding would interfere with or delay the Olinda Restructuring or cause, exacerbate or frustrate the progress or consummation of the Olinda Restructuring pursuant to the Olinda Plan or the Olinda BVI Proceeding, or cause any other similar issues with the Olinda BVI Court (*e.g.*, issues that hinder, delay or prevent the Olinda BVI Court from agreeing to accept jurisdiction over the Olinda Restructuring or the Olinda BVI Proceeding, or hearing the Olinda Plan), Olinda agrees that it shall cease its pursuit of such appeal and timely take

	all steps reasonably necessary to withdraw itself from the Brazilian RJ Proceeding.
OTHER TERMS	
Ticking Fee	The Constellation Group will be required to pay compensatory interest (the "Ticking Fee") on the Participating 2024 Notes if (i) the New 2024 Notes Guarantee is not delivered by December 31, 2019; or (ii) Olinda fails to meet the milestones set forth in clauses (i), (iii), (iv), (vi), and (ix) of the section herein titled "*Timeline for Approval of the Plan, Confirmation and Consummation*" (the "Ticking Fee Milestones"). The Ticking Fee will be payable in kind at the rate of (as applicable): (i) to the extent the New 2024 Notes Guarantee is effective between January 1, 2020 and June 30, 2020, an amount equal to the greater of (x) $3.5 million and (y) twenty-five (25) basis points *per annum* calculated retroactively from RJ Closing until the New 2024 Notes Guarantee is effective; or (ii) to the extent the New 2024 Notes Guarantee is not effective by June 30, 2022, $12 million. In each case, the Ticking Fee will accrue on a daily basis and be payable on such dates and in such manner as set forth in the applicable Participating Notes Indenture with respect to other interest payments. No Ticking Fee will be payable if (i) the New 2024 Notes Guarantee is effective by December 31, 2019, (ii) the failure to deliver the New 2024 Notes Guarantee by December 31, 2019 is caused by any objection, challenge or enforcement action taken by the 2024 Noteholders (the "Noteholder Action"), if the Noteholder Action is initiated before December 31, 2019, or (iii) the Consenting Noteholders fail to vote in support of (or take such other actions reasonably necessary to indicate their consent for) the Olinda Plan or other Olinda Restructuring that is consistent with the "Economic Terms" section of this Term Sheet upon written request from the Company and 15 Business Days' notice (or, if such period is not possible, as early as practicably possible, and no fewer than 1 Business Day's notice). For the avoidance of doubt, a failure by Olinda to otherwise comply with this Term Sheet or failure to provide new Olinda guarantees and pledges of security by a date certain shall not result in an event of default under the Participating Notes Indentures or the Bradesco Loans.
Conflicts	Solely with respect to the Olinda Restructuring: (i) in the case of any inconsistency between this Term Sheet and the RJ Plan Term Sheet, including, without limitation, in interpreting the Plan Support Agreement, finalizing the terms of any Restructuring Document or implementing the Restructuring Transactions with respect to Olinda, this Term Sheet shall govern; and (ii) in the case of any inconsistency between this Term Sheet, the Olinda Plan, and the Plan Support Agreement, the Olinda Plan shall govern.
Governing Law	This Term Sheet will be governed by New York law.
Submission to Jurisdiction	The Term Sheet Parties may bring lawsuits or seek injunctive relief to enforce this Term Sheet either under Chapter 15 in the U.S. and/or with the Olinda BVI Court.

SCHEDULE 6

THE 2019 INSOLVENCY PROTOCOL

Case Number :BVIHCOM2018/0211

FILED
HIGH COURT
TERRITORY OF
THE VIRGIN ISLANDS

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
CLAIM NO. BVI HC (COM) 2018/0211
IN THE MATTER OF THE INSOLVENCY ACT 2003

Submitted Date:09/08/2019 16:30

Filed Date:12/08/2019 08:30

Fees Paid:72.59

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

ORDER

Before: **the Honourable Justice Adderley**

Dated: 25 **July 2019**

Entered: 12 August **2019**

UPON the application of Olinda Star Ltd (in Provisional Liquidation) (**"Olinda Star"**) by its application dated 18 July 2019 (the "**Application**") requesting that Olinda Star and Paul Pretlove of Kalo (BVI) Limited and Eleanor Fisher of Kalo (Cayman) Limited as Joint Provisional Liquidators (the "**JPLs**") have permission of this Court to enter into a new protocol

AND UPON the Court noting that Olinda Star had been excluded from the Brazilian RJ proceedings

AND UPON the Court noting that each of Olinda Star, Constellation Overseas Ltd, Alpha Star Equities Ltd, Gold Star Equities Ltd, Lone Star Offshore Ltd, Snover International Inc were subject to the appointment of JPLs in the British Virgin Islands pursuant to the Court Order dated 19 December 2018 made by the Honorable Justice Adderley (the **"Order"**)

AND UPON the Court noting that, on 21 December 2018, Olinda Star and the JPLs entered into a protocol with the Company, which was approved by this Honourable Court and accordingly formed part of the Order

AND UPON the Court approving an order, on 4 June 2019, to extend the validity of the Originating Application for Olinda Star for a period of three months, in accordance with s.168 of the Insolvency Act, 2003

AND UPON the court noting that the restructuring efforts are continuing and Olinda Star will seek to pursue a restructuring, for the benefit of all of the Olinda Star's stakeholders, under the laws of the British Virgin Islands for which the new protocol is required

AND UPON reading the Third Affidavit of Michael Pearson and exhibit thereto

IT IS ORDERED that:

1 the protocol entered into on 21 December 2018 between the Applicant, Olinda Star, and the JPLs be cancelled;

2 Olinda Star and JPLs have permission of this Court to enter into a new protocol, as attached, which forms part of this Order;

3 the first hearing in the restructuring of the Company as commenced in the British Virgin Islands ("BVI") be listed for the first available date after 15 September 2019; and

4 the costs be costs in the provisional liquidation.

By the Registrar (Dep)

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM No. BVI HC (COM) 2018/0211
BETWEEN:

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

ORDER

Ogier
Ritter House
Wickham's Cay II
PO Box 3170
Road Town, Tortola
British Virgin Islands
Tel: +1 (284) 852 7300
Ref: BRL/CARGR 174287.00001
Legal Practitioners for the Applicant

Insolvency Protocol in respect of Olinda Star Ltd

Olinda Star Ltd (the "**Company**") (acting through its director) and Eleanor Fisher of Kalo (Cayman) Limited and Paul Pretlove of Kalo (BVI) Limited, as joint provisional liquidators (the "**JPLs**" and together with the Company, the "**Parties**") of the Company enter into this Insolvency Protocol Agreement (the "**Protocol**") as follows:

Preliminary Statement

The purpose of this Protocol is to ensure the just, efficient, orderly and expeditious administration of the Company's provisional liquidation proceedings in the British Virgin Islands (the "**Proceedings**"), to avoid duplication of work and conflict between the JPLs and the director and management of the Company, and to facilitate the function of the Proceedings in support of the Company's restructuring, initially progressed in a centralised forum in Brazil through a judicially-supervised Brazilian *recuperacao judicial* ("**Brazilian RJ Proceeding**") but now intended to be progressed in the BVI.

The Proceedings

A. On 6 December 2018 (the "**RJ Petition Date**"), the Company along with certain of its affiliates (the "**RJ Debtors**") filed a petition in Brazil commencing their procedurally joint Brazilian RJ Proceeding. The Company is part of a global oil and gas enterprise (the "**Constellation Group**" or the "**Group**"). The Group elected to commence its centralised restructuring in Brazil because Brazil has historically been and presently is the operational centre of the Group's business.

B. In order to achieve a globally coordinated, centralised and holistic restructuring, the Company commenced complementary restructuring proceedings in the BVI. Specifically, on 7 December 2018, the Company filed an Originating Application and Ordinary Application in the BVI Commercial Court (the "**BVI Court**") seeking the appointment of JPLs to the Company pursuant to s.170 of the BVI Insolvency Act, 2003.

C. By way of an Order dated 19 December 2018, the BVI Court appointed the JPLs to the Company (the "**BVI Appointment Order**").

D. On 4 June 2019, the BVI Court extended the validity of the BVI Appointment Order for a period of three months.

E. In support of the Company's Brazilian RJ Proceeding, the Company appointed a foreign representative and commenced a proceeding under chapter 15 of the U.S. Bankruptcy Code seeking U.S. court recognition of the Brazilian RJ Proceeding as its foreign main proceeding, or in the alternative, as a foreign non-main proceeding (the "**Chapter 15 Proceeding**").

F. On 4 June 2019, the Brazilian Court of Appeals issued its clarification (the "**Clarification**") with respect to their 22 April 2019 decision which affirmed the earlier decision of the Brazilian RJ Court holding that the Company should be excluded from the Brazilian RJ Proceeding for lack of jurisdiction.

G. The Company filed an appeal of the Brazilian Court of Appeal's decision to the Superior Court of Justice (the "**Brazilian Appeal**"). It is understood by the JPLs that the appeal process to the Senior Court of Justice in Brazil is a lengthy process.

H. In an effort to facilitate the Company's global restructuring, the Company will carry out its restructuring in the BVI utilising the laws and procedures of the BVI. It is currently envisaged that the Company's restructuring will be effected by either a Scheme of Arrangement or a Plan of Arrangement (the "**Intended BVI Restructuring**"). However, should the Company be re-instated to the Brazilian RJ Proceeding and allowed to proceed to restructure its debts in Brazil along with its fellow RJ Debtors before the Intended BVI Restructuring sanctioned in the BVI, then the Company may seek to terminate its Intended BVI Restructuring in order to proceed expeditiously and most efficiently with the Group's restructuring in Brazil.

I. The JPLs further intend to seek permission from this Court to serve as foreign representatives of the Proceedings and to obtain chapter 15 recognition of the same in the United States (the "**Intended Ch. 15 Proceeding**").

J. In order to ensure that the Proceedings are conducted efficiently and, as intended, provide needed support to the Intended BVI Restructuring, the JPLs and the Company wish to enter into the terms of this Protocol.

NOW THEREFORE, subject to the powers already afforded to the JPLs under the Appointment Order and for so long as the JPLs remain appointed as provisional liquidators, the JPLs and the Company (acting by its director(s)) hereby agree the following:

(1) The Company (acting by its director, or those granted powers-of-attorney by the director for the management of the Company, such persons "**Authorised Managers**") shall continue to provide such information as is reasonably requested by the JPLs, including without limitation, reasonable requests for explanations or information as to:

(a) The actions or decisions taken by the Company;

(b) The proposed terms of the incurrence of any new indebtedness or borrowing of money by the Company whether pursuant to loan arrangements with financing institutions, bank or otherwise, and the granting of the security in respect of the same, and the guaranteeing of any indebtedness or borrowings of affiliates, which in each case will be subject to the oversight of the BVI Court;

(c) The proposed sale or disposal of any assets of the Company; and

(d) Further actions by or on behalf of the Company in the Brazilian RJ Proceeding, including actions with respect to the Brazilian Appeal.

(2) The Company shall be permitted, subject to the JPLs' oversight and monitoring and unless otherwise ordered by the Court, to operate their businesses in the ordinary course, including the ordinary course operation of cash management systems and bank accounts.

(3) To facilitate communication between the Company and the JPLs, and to ensure the JPLs are adequately informed as to the ongoing activities and decisions of the Company, the officers and directors (or their authorised representatives, including Authorised Managers) of the Company shall include the JPLs in any board meetings of the Company and shall supply the JPLs with copies of any draft written resolutions and shall meet in person or by telephone or videoconference or by whatever means is most appropriate on a weekly

basis, or at such other intervals as the JPLs require, to address matters such as budgeting, cash expenditures, cash management, ordinary course transactions and all other matters reasonably necessary to keep the JPLs informed as their appointment and duties require.

(4) The directors and/or the Authorised Managers shall obtain the JPLs' prior approval of the exercise of the directors' powers outside of the ordinary course of business. In the event that the JPLs and the directors and/or the Authorised Managers cannot agree upon a proposed non-ordinary course action, the JPLs and the directors have liberty to apply to this Court for directions.

(5) The Parties acknowledge that the Company is engaged with its affiliates in a global restructuring that includes the Intended BVI Restructuring, that the Proceedings were commenced in support of that global restructuring, and that the Intended BVI Restructuring will function to further support that holistic global restructuring. To facilitate the role of the Proceedings and the Intended BVI Restructuring and to ensure that they provide needed support thereto, the JPLs will seek where possible (in accordance with their duties to Company creditors) to exercise their duties accordingly.

(6) The Company has previously granted to the Brazilian law firm of Galdino & Coelho Advogados ("**G&C**") a power-of-attorney to act on its behalf in the course of the Brazilian RJ Proceeding, and such power remains in place. So long as the Company remains a party to the Brazilian RJ Proceeding, G&C routinely enters filings with the Brazilian RJ Court including motions for relief on behalf of the Company. As many of these filings are routine and/or minor and some must be entered at short notice, it is not feasible for G&C on behalf of the Company to obtain permission from the JPLs, and in some case to give

advance notice to the JPLs, of any expected filing. Nevertheless, the Parties recognize the importance of keeping the Company and the JPLs equally apprised of and involved in important steps in the Brazilian Appeal and Brazilian RJ Proceeding, including filings made on behalf of the Company. The Parties expect that G&C will provide routine informational updates on the development of the Brazilian RJ Proceeding and the Brazilian Appeal to the Company and to the JPLs in tandem, and that any such updates or other information about progress in the Brazilian RJ Proceeding that is provided to the Company will also be readily provided to the JPLs. The Parties also understand that the JPLs may have questions about the Brazilian restructuring process, the Brazilian RJ Proceeding and the Brazilian Appeal, and the Company will direct its counsels, including G&C, to readily address any such queries.

(7) Because the Intended BVI Restructuring is inextricably bound to the restructuring in the Brazilian RJ Proceeding, the Parties expect that G&C will continue to provide, in a timely manner, to the Company and the JPLs English translations of drafts of the RJ Plan as it is being developed, as well as materials in support of the RJ Plan such as valuation reports, liquidation analyses, and other schedules and reports.

(8) The Parties expect that White & Case LLP, in its capacity as U.S. counsel to the JPLs, will timely provide to the Company and the JPLs regular updates as to the progress of the Chapter 15 Proceeding for as long as the Company remains in the current Chapter 15 Proceeding.

(9) The JPLs shall give notice to the Company of all proceedings in the BVI Court and shall not object to the Company attending and seeking to be heard at any hearings before the BVI Court.

(10) The Company shall give notice to the JPLs of all proceedings in the BVI Court and shall not object to the JPLs attending and seeking to be heard at any hearings before the BVI Court.

(11) The JPLs may communicate and/or consult with any of the Company's creditors, as and when and in the manner they believe it is appropriate to do so, following consultation with and consent of the directors of the Company, such consent not to be unreasonably withheld or delayed.

(12) The JPLs shall consult and obtain the consent of the Company (such consent not to be unreasonably withheld) prior to the appointment of any additional professional advisors.

(13) The JPLs may, as they deem necessary and subject to any ruling of the BVI Court apply for directions or sanction from the BVI Court in relation to any matter. For the avoidance of doubt, this right is without prejudice to the right of the Company to be put on notice of any such application and the right to be heard and, where necessary, object to the directions sought.

(14) The BVI Court shall have exclusive jurisdiction over the remuneration of the JPLs and the JPLs shall seek approval of their remuneration from the BVI Court as necessary. The JPLs shall open a bank account (the "**Olinda Restructuring Account**"), and shall deposit

an initial USD $300,000 from the funds currently in the Restructuring Account held for the benefit of the Company, Constellation Overseas Ltd, Lone Star Offshore Ltd, Gold Star Equities Ltd, Snover International Inc and Alpha Star Equities Ltd (the "**Funds**"). The Funds are intended to facilitate the payment of the BVI restructuring costs, fees, disbursements and such other expenses as the JPLs shall be required to settle from time to time during the course of the Proceedings. Additionally, (i) the Company shall make such further payments to the Olinda Restructuring Account as are necessary for the continued efficacy of the provisional liquidation, (ii) upon discharge of the provisional liquidations of Constellation Overseas Ltd, Lone Star Offshore Ltd, Gold Star Equities Ltd, Snover International Inc and Alpha Star Equities Ltd the JPLs shall transfer any remaining sums from the Restructuring Account to the Olinda Restructuring Account.

(15) The JPLs acknowledge that in the course of performance of their duties they will have access to and be provided with trade secrets and other confidential material ("**Confidential Information**"). The JPLs agree to keep such Confidential Information confidential and shall not, without the approval of the Court or agreement of the Company (or as otherwise required by law), reveal, divulge or in any other manner authorise the access to or publish Confidential Information, to any person, entity or company, nor use the Confidential Information for any other purpose that is not directly related to their role as JPLs of the Company. Notwithstanding the foregoing, the JPLs may disclose Confidential Information on a need-to-know basis to their Representatives ("**Representatives**" of the JPLs means their and Kalo's employees, directors, officers, agents, associates, colleagues, and advisors, including lawyers, accountants, auditors and consultants).

(16) This Protocol shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, representatives, heirs, executors, administrators, liquidators, trustees, and receivers, receiver managers, or custodians appointed.

(17) This Protocol may not be waived, amended or modified except in writing by all parties and subject to the approval and authorisation of the BVI Court.

(18) Each party represents and warrants to the other that its execution, delivery, and performance of this Protocol are within the power and authority of such party and have been duly authorised by such party (except that it is acknowledged that approval of the BVI Court is required).

(19) This Protocol may be signed in any number of counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument, and may be signed by PDF signature, which shall be deemed to constitute an original signature.

(20) The parties hereto are hereby authorised to take such actions and execute such documents as may be necessary and appropriate to implement and effectuate the terms of this Protocol.

(21) This Protocol shall be deemed effective upon its approval by the BVI Court. This Protocol shall have no binding or enforceable legal effect until approved by BVI Court.

IN WITNESS WHEREOF the parties hereto have caused this Protocol to be executed either individually or by their respective attorneys or representatives hereunto authorised.

JOINT PROVISIONAL LIQUIDATORS

By: _____

Eleanor Fisher as joint provisional liquidator and without personal liability

By: _____

Paul Pretlove as joint provisional liquidator and without personal liability

Mr. Michael Pearson, on behalf of Olinda Star Ltd in his capacity as a director

By:_____

Name: Michael Pearson

Title: Director

Date:

SCHEDULE 7

THE NOTICE

NOTICE OF COURT CONVENED MEETING

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS

COMMERCIAL DIVISION

CLAIM NO: BVIHC (COM) 2018/0211

IN THE MATTER OF SECTION 179A OF THE BVI BUSINESS COMPANIES ACT, 2004

AND

IN THE MATTER OF OLINDA STAR LTD (IN PROVISIONAL LIQUIDATION)

Terms used in this Notice have the same meanings as in the scheme circular (the **Scheme**) relating to the proposed scheme of arrangement between Olinda Star Ltd (in Provisional Liquidation) (the **Company** or **Olinda**) and the Scheme Creditors (as defined therein) under section 179A of the BVI Business Companies Act, 2004 (the **Act**).

NOTICE IS HEREBY GIVEN that, by an order dated 20 December 2019 (the **Order**) made in the above matter, the Eastern Caribbean Supreme Court of the Territory of the British Virgin Islands (the **BVI Court**) has directed a meeting (the **Court Convened Meeting**) to be convened between the Company and the Scheme Creditors for the purpose of considering and, if thought fit, approving (with or without modification) a scheme of arrangement (the **Scheme of Arrangement**) pursuant to section 179A of the Act proposed by the Company and to be made between the Company and the Scheme Creditors and that such Court Convened Meeting will be held at the offices of White & Case, 1221 6th Avenue, New York, 10020, United States of America at 13:00 on 14 January 2020.

All Scheme Creditors are requested to attend the Court Convened Meeting either in person, by an authorised representative (if a corporation), or by proxy.

To be approved, the Scheme of Arrangement must be approved by a majority in number representing 75% in value of the creditors or class of creditors present and voting either in person or by proxy at the meeting. At the Court Convened Meeting the following resolution will be proposed:

"*THAT the Scheme of Arrangement proposed by the Company, particulars of which are set out in the Scheme, a copy of which has been tabled at this Court Convened Meeting, be approved subject to any modification, addition or condition which the Eastern Caribbean Supreme Court of the Territory of the British Virgin Islands may think fit to approve or impose which would not directly or indirectly have a material adverse effect on the rights of the Scheme Creditors.*"

A copy of the Scheme of Arrangement and a copy of the Scheme explaining the effect of the Scheme of Arrangement are incorporated into the composite document of which this notice forms part. A copy of such document has been made available to the Scheme Creditors through the DTC's Legal Notice System (in respect of

the Existing 2024 Notes); and uploaded by the Scheme Company to the website at https://theconstellation.com/enu/s-2005-enu.html.

Voting Record Time

Entitlement to attend and vote at the Court Convened Meeting and the number of votes attributable to an individual Scheme Creditor will be as set out in the Scheme.

Voting Procedures

Scheme Creditors may vote in person, by a duly authorised representative or by proxy at the Court Convened Meeting in accordance with the voting instructions more particularly set out in the Scheme. A Scheme Creditor that has a beneficial or contingent interest as a Noteholder in relation to the Existing 2024 Notes who wishes to vote at the Court Convened Meeting is requested to liaise with the Scheme Administrator in accordance with the instructions contained in the Voting and Proxy Forms and, in any event, so as to be received by **13.00 (New York time) on 13 January 2020** (the **Submission Deadline**).

A Scheme Creditor on whose behalf a duly completed Voting and Proxy Form is submitted before the Submission Deadline may still attend the Court Convened Meeting in person. If a Scheme Creditor intends to attend the Court Convened Meeting, it may amend its voting instructions provided in a previously submitted Voting and Proxy Form by submitting a new validly completed Voting and Proxy Forms to the Chairman of the Court Convened Meeting before the start of the Court Convened Meeting.

The Trustee is a Scheme Creditor for the purpose of the Scheme. However, under the terms of the voting rights set out in the Scheme it will be considered not to have any votes vote at the Court Convened Meeting.

Any Scheme Creditor who wishes to be represented in person at the Court Convened Meeting (or its proxy) will be required to register its attendance at the Court Convened Meeting prior to its commencement. Registration will commence at 11am on 14 January 2020. A passport will be required as proof of personal identity to attend the Court Convened Meeting and, in the case of a corporation, evidence of corporate authority (for example, a valid power of attorney and/or board minutes). Each proxy must bring to the Court Convened Meeting a copy of the Voting and Proxy Form of the Scheme Creditor having been duly completed authorising him or her to act as proxy on behalf of the Scheme Creditor and evidence of personal identity.

If appropriate personal identification is not produced, that person will only be permitted to attend and vote at the Court Convened Meeting at the discretion of the Chairman of the Court Convened Meeting.

Chairman of the Court Convened Meeting

By the said Order, the BVI Court has appointed Eleanor Fisher, to act as the Chairman of the Court Convened Meeting and has directed the Chairman of the Court Convened Meeting to report the result thereof to the BVI Court.

If the requisite majority of Scheme Creditors approve the Scheme of Arrangement at the Court Convened Meeting, the BVI Court will hold a hearing to consider whether to sanction the Scheme of Arrangement ("**Scheme Sanction Hearing**"). Scheme Creditors are entitled (but not obliged) to attend the Scheme Sanction Hearing, through legal counsel, to support or oppose the sanction of the Scheme of Arrangement. The Scheme Sanction Hearing is expected to take place shortly after the Court Convened Meeting at such date and time as the Scheme Administrator or Company may notify to Scheme Creditors.

A Scheme will be legally binding on the Scheme Creditors, including both those voting against the Scheme and those not voting) if:

(a) a majority in number representing 75% in value of the creditors or class of creditors present and voting whether in person or by proxy at the Court Convened Meeting agrees to the Scheme of Arrangement;

(b) the BVI Court sanctions the Scheme at the Scheme Sanction Hearing; and

(c) an office copy of the BVI Court order sanctioning the Scheme is filed with the BVI Registrar of Companies.

For further information please contact the [Scheme Administrator] using the contact details below:

Eleanor Fisher acting as joint provisional liquidator of the Company pursuant to the 2019 Insolvency Protocol

Address: EY Cayman Ltd., 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman, KY1-1106, Cayman Islands

Telephone: +1 345 949 8444

Email: eleanor.fisher@ky.ey.com (please reference "Olinda Scheme" in the subject line)

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
BRITISH VIRGIN ISLANDS
COMMERCIAL DIVISION
CLAIM No. BVI HC (COM) 2018/0211

IN THE MATTER OF OLINDA STAR LTD. (IN PROVISIONAL LIQUIDATION)
AND IN THE MATTER OF SECTION 179A OF THE BVI BUSINESS COMPANIES ACT, 2004

BETWEEN:

OLINDA STAR LTD
(in Provisional Liquidation)

Applicant

ORDER

Ogier
Ritter House
Wickham's Cay II
PO Box 3170
Road Town, Tortola
British Virgin Islands
Tel: +1 (284) 852 7300
Ref: BRL/CARGR 174287.00001
Legal Practitioners for the Applicant