The Insolvency (Amendment) Bill, 2020

A Bill for

AN ACT of Parliament to amend the Insolvency Act, 2015

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Insolvency (Amendment) Act, 2020.

2. The Insolvency Act, 2015, hereinafter referred to as the “principal Act” is amended—

(1) In subsection (1) by—

(a) inserting the following new definitions in proper alphabetical sequence—

“board” means the Board of Directors established by section 5 of the Business Registration Service Act;

“business day” means any day other than a Saturday, Sunday, or any day which is a public holiday under the Public Holidays Act;

“Cabinet Secretary” means the Attorney-General;

“dependant”, in relation to a person, means any person who has lived with the bankrupt person for at least three years prior to that person entering an insolvency process and is wholly or partially dependent that person for economic support;

“financially distressed” in reference to a debtor or company at any particular time, means a condition where it appears to be reasonably unlikely that the debtor will be able to pay all debts falling due and payable within the immediately ensuing six months or it appears reasonably likely that the debtor will become insolvent within the immediately ensuing six months;

(b) deleting the word (application) appearing in the definition of the words “liquidation application” and substituting therefor the word “petition”;

(c) deleting the words “in relation to a natural person or a company” appearing in the definition of the words “preferential debts”;

(d) by deleting the definition of the word “property”;

(e) deleting the definition of the words “provable claim” and
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substituting therefor the following new definition—

“provable debt” means a debt that is provable by a creditor in bankruptcy administration or liquidation proceedings;

(f) deleting the definition of the term “retention of title agreement” and substituting therefor the following new definition—

“retention of title agreement” means an agreement for the sale of goods, being an agreement—

(a) that does not constitute a charge on the goods; but
(b) under which, the supplier remains the owner of the goods until the supplier is paid for those goods;

(g) deleting the definition of the term “special resolution” and substituting therefor the following new definition—

“special resolution” has the meaning assigned to it under the Companies Act, 2015; and

(2) in sub section (3) by deleting the words “adopted parents” and substituting therefor the words “adoptive parents”.

3. Section 3 of the principal Act is amended—

(1) in sub section (1) by—

(a) by inserting the words “and financially distressed” immediately after the word “insolvent” wherever it appears in paragraph (b);

(b) by inserting the words “or entered an immediate liquidation” at the end of item (ii) appearing in paragraph (b);

(c) by deleting paragraph (c);

(d) by deleting the words “for adjudging those persons bankrupt and” appearing in paragraph (d);

(e) by deleting paragraph (e);

(2) in sub section (2) by deleting the word “partnership” and substituting therefor the word “partnerships”.

4. Section 4 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following new sub section —

(1) A person acts as an insolvency practitioner in relation to a natural person if the person acts—

(a) as the bankruptcy trustee or interim trustee in respect of
the person’s property; or

(b) as supervisor or provisional supervisor of a voluntary arrangement under Division I of Part IV.

(b) by deleting subsection (2) and substituting therefor the following new sub section —

(2) A person acts as an insolvency practitioner in relation to a company if the person acts as—

(a) the liquidator, provisional liquidator, receiver manager, administrative receiver or administrator of the company; or

(b) a supervisor or provisional supervisor of a voluntary arrangement under Part IX.

5. Section 5 of the principal Act is amended in subsection (1) by inserting the words “and imprisonment for a term not exceeding three (3) years or both” immediately after the words “five million shillings”.

6. Section 6 of the principal Act is amended in subsection (2) by—

(a) deleting paragraph (a) and substituting therefor the following new paragraph—

(a) has been adjudged bankrupt and has not been discharged;

(b) inserting the following new paragraph immediately after paragraph (c)—

(d) his or her insolvency practitioners license has been revoked or rendered invalid under this Act and has not been restored or renewed”.

7. Section 7 of the principal Act by deleting sub section (3)

8. The principal Act is amended by inserting the following new section immediately after section 7—

7A. (1) In carrying out its duties under section 7(2) a recognised professional body will ensure compliance of its members with the Code of Conduct in the Sixth Schedule.

(2) If there is any conflict between any other code of conduct of the recognised professional body and the Code of Conduct...
in the Sixth Schedule, the provisions of the Code of Conduct in the Sixth Schedule prevail.

(3) Each recognised professional body will send a report annually to the Official Receiver by the end of January in each year detailing all reports or complaints it has received in relation to matters covered by the Code of Conduct in the Sixth Schedule, any investigations it has conducted, any actions it has taken and any sanctions it has imposed on its members.

9. Section 9 of the principal Act is amended in subsection (1) by inserting the word “Receiver” immediately after the word “Official”.

10. Section 10 of the principal Act is amended —
   (a) in sub section (1)—
      (i) by deleting the expression “subsection (1)” appearing in the opening statement and substituting therefor the “following expression “section 9”;
      (ii) by inserting the following words at the end of paragraph (d) “or the terms of the Code of Conduct in the Sixth Schedule”;
   (b) in subsection (2) by—
      (i) deleting the words “this section” and substituting therefor the following expression “section 9”;
      (ii) deleting the words “at the request, or with the consent of the holder of the authorisation” appearing after the words “Official Receiver”.
   (c) in subsection (3) by deleting the words “(otherwise than at the request or with the consent of its holder)” appearing after the words “an authorisation”;
   (d) in subsection (4) by deleting the words “an appeal within which” appearing after the words “the period within which”.

11. Section 11 of the principal Act is amended by deleting the word “refusal” appearing in sub section (2) and substituting therefor the following new word “revocation”.

12. The principal Act is amended by deleting section 13 and substituting therefor the following new section—
Nature of bankruptcy.

13. Bankruptcy occurs when the Court makes an order in respect of a debtor adjudging the debtor bankrupt.

Amendment of section 14 of No. 18 of 2015.

13. Section 14 of the principal Act is amended—
(a) by deleting paragraph (b);
(b) by deleting the expression “Division 3” appearing in paragraph (c) and substituting therefor the expression “Division 2”; and
(c) by deleting the expression “Division 4” appearing in paragraph (c) and substituting therefor the expression “Division 3”.

Amendment of section 15 of No. 18 of 2015.

14. Section 15 of the principal Act is amended—
(a) in subsection (1) by deleting the word “one” appearing immediately after the words “by two or more” in paragraph (a); and
(b) in subsection (3) by deleting the expression (a) or (b) appearing in the opening statement.

Amendment of section 17 of No. 18 of 2015.

15. Section 17 of the principal Act is amended—
(a) in subsection (2)—
(i) by deleting paragraph (b) and substituting therefor the following new paragraph—
(b) the debt, or each of the debts, is for a liquidated amount payable, to the applicant creditor, or one or more of the applicant creditors, immediately and is unsecured;
(ii) by deleting paragraph (c) and substituting therefor the following new paragraph—
(b) the debt, or each of the debts, is a debt that the debtor appears either to be unable to pay or to have no reasonable prospect of being able to pay; and
(b) by deleting sub section (4).

Amendment of section 18 of No. 18 of 2015.

16. Section 18 of the principal Act is amended in subsection (1) by deleting the words “that is a debt” appearing in the opening statement after the words “A debt”.

Amendment of section 20 of No. 18 of 2015.

17. Section 20 of the principal Act is amended—
(a) by deleting sub section (1) and substituting therefor the following new sub section—
(1) The Court may not make a bankruptcy order on a creditor’s
application unless it is satisfied that the debt, or one of the debts, in respect of which the application was made is a debt which, having been payable at the date of the application, has been neither paid nor secured or compounded for.

(b) by deleting sub section (5);

(c) in subsection (6) by deleting the words “and to be proceeded with” appearing after the words “any creditor or debt”.

18. Section 22 of the principal Act is amended in sub section (2) by deleting the word “stay” appearing in paragraph (a) and substituting therefor the following word “staying”.

19. Section 23 of the principal Act is amended in subsection (1) by deleting the word “issued” appearing after the words “has been” and substituting therefor the following word “commenced”.


21. The principal Act is amended by repealing section 28.

22. Section 29 of the principal Act is amended—
(a) in sub section (1)—
(i) in the opening statement by inserting the words “who is subject to a creditor’s application” immediately after the word “debtor”;
(ii) by deleting paragraph (a);
(iii) in paragraph (b) by deleting the words “that Division” and substituting therefor the words “Division 2 of Part IV; or”;
(iv) by inserting the following new paragraph immediately after paragraph (c)—

(d) has applied for entry into the no-asset procedure under Division 3 of Part IV.

(b) in subsection (2) by deleting the words “the bankruptcy trustee”.

23. Section 31 of the principal Act is amended—
(a) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) the debtor owes the other creditor a debt which satisfies the requirements of section 17 by the time of the hearing; and
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(b) by inserting the following new paragraph immediately after paragraph (b)—
(c) the other creditor consents to the substitution.

24. Section 32 of the principal Act is amended by deleting subsection (4) and substituting therefor the following new subsection—

(4) A debtor who makes an application under this section shall publish a notice of the application in such a manner as prescribed in the Regulations.

25. Section 33 of the principal Act is amended by—
(a) By deleting the marginal note and substituting therefor the following new marginal note—
“Bankruptcy Order and appointment of insolvency practitioner by the Court”;
(b) inserting the following new subsection immediately after sub section (3)—

(4) Notwithstanding the power in subsection (2) on the hearing of a debtor’s application, the Court may stay the application if it appears to the Court that it would be more appropriate for the debtor to apply for a summary instalment order under Division 2 of Part IV or for entry to the no-asset procedure in Division 3 of Part IV and the debtor agrees to make such an application within such period as the court orders.

26. Section 34 of the principal Act is amended in sub section (1) by inserting the expression “(2)” immediately after the expression “33” appearing in the opening statement.

27. The principal Act is amended by repealing section 35.

28. Section 36 of the principal Act is amended in sub section (4) by inserting the word “interim” immediately before the word “trustee”.

29. Section 37 of the principal Act is amended in sub section (2) by inserting the words “may be” immediately after the expression “subsection (1)”.

30. Section 38 of the principal Act is amended in sub section (1) by inserting the word “interim” immediately before the word “trustee” appearing in the opening statement.

31. Section 39 of the principal Act is amended—
section 39 of No. 18 of 2015.

(a) in the marginal note by inserting the word “interim” before the word “trustee”;

(b) in subsection (1) by deleting the words “of the debtor may not issue” appearing after the words “A creditor” and substituting therefor the following words “may not commence”; and

(c) in sub section (2) by deleting the word “before” and substituting therefor the word “after”.

Amendment of section 40 of No. 18 of 2015.

32. Section 40 of the principal Act is amended by deleting the expressions “111” and “114”.

Amendment of section 42 of No. 18 of 2015.

33. Section 42 of the principal Act is amended—

(a) in subsection (1) by deleting the words “On making” and substituting therefor with the words “Upon making”; and

(b) by deleting sub section (2).

Amendment of section 43 of No. 18 of 2015.

34. The principal Act is amended by deleting section 43 and substituting therefor the following new sub section—

Petitioner to notify Official Receiver of bankruptcy order.

43. As soon as practicable but in any case within fourteen days after the Court has made a bankruptcy order in respect of a debtor, the petitioner shall forward a copy of the order to the Official Receiver.

Amendment of section 44 of No. 18 of 2015.

35. The principal Act is amended by deleting section 44 and substituting therefor the following new sub section—

Official Receiver to become first bankruptcy trustee.

44. On the making of a bankruptcy order the Official Receiver becomes first bankruptcy trustee of the bankrupt’s estate, unless the court makes an appointment under section 62.

Amendment of section 46 of No. 18 of 2015.

36. Section 46 of the principal Act is amended by deleting the words “and the order can no longer be questioned on the ground that it was invalid or that a prerequisite for making it did not exist” appearing immediately after paragraph (b).

Amendment of section 48 of No. 18 of 2015.

37. Section 48 of the principal Act is amended in sub section (1)—

(a) by deleting the word “order” appearing immediately after the word “bankruptcy” in the opening statement;

(b) by deleting the words “Official Receiver” and substituting therefor the words “bankruptcy trustee” in paragraph (b).
### Amendment of section 48 of No. 18 of 2015.

38. Section 49 of the principal Act is amended—

(a) in sub section (1) by inserting the words “unless the bankrupt has already lodged a statement under section 32” at the beginning of paragraph (b);

(b) by deleting sub section (3).

### Amendment of section 50 of No. 18 of 2015.

39. Section 50 of the principal Act is amended—

(a) in subsection (1) by inserting the words “unless the bankrupt has already lodged a statement under section 32” immediately after the words “may allow”;

(b) by deleting sub section (4) and substituting therefor the following new sub section—

(4) If, after being convicted of an offence under subsection (3), a bankrupt, who without reasonable excuse, continues to fail to comply with the relevant requirement, the bankrupt commits a further offence on each day during which the failure continues and on conviction is liable to a fine not exceeding one hundred thousand shillings for each such offence.

### Amendment of section 51 of No. 18 of 2015.

40. Section 51 of the principal Act is amended in subsection (1) by inserting the word “of” immediately after the word “copy” appearing in paragraph (b).

### Amendment of section 52 of No. 18 of 2015.

41. Section 52 of the principal Act is amended—

(a) in subsection (2) by deleting the words “a notice advertising the time, date and place of the meeting.” appearing immediately after paragraph (c);

(b) in sub section (4)—

(i) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) if the bankrupt is late in lodging the statement or fails to lodge a statement at all — thirty days after the date on which the statements of the bankrupt's financial position should have been lodged; or

(ii) by inserting a new paragraph immediately after paragraph (b)—

(c) if the bankrupt has already provided a statement under section 32 thirty days after the date on which the bankruptcy order was made.

### Amendment of section 54 of No. 18 of 2015.

42. Section 54 of the principal Act is amended by in sub section (1) by inserting the words “or with the notice that the Official
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18 of 2015.

Receiver has decided not to call a first meeting of creditors immediately after the words “meeting of creditors appearing in the opening statement.

43. The principal Act is amended by deleting section 56 and substituting therefor the following new section—

56. (1) When a bankruptcy commences, a creditor shall not begin an execution process in respect of the bankrupt’s property or person for the recovery of a debt provable in the bankruptcy.

(2) If the execution process in respect of the bankrupt’s property or person for the recovery of a debt provable in the bankruptcy has already begun by the time the bankruptcy commences such a creditor may continue with the procedure only with the approval of the Court and subject to such conditions as the Court may specify.

44. Section 59 of the principal Act is amended in sub section (5) by deleting the words “or required to act as” appearing immediately before the words “the bankruptcy trustee”.

45. Section 60 of the principal Act is amended in sub section (4) by deleting the word “becomes” appearing before the words “bankruptcy trustee” and substituting therefor the words “remains as”.

46. Section 61 of the principal Act is amended in sub section (4) by deleting the words “creditor’s committee under section 100” appearing in paragraph (a) and substituting therefor the following words “creditors committee under section 102”.

47. Section 62 of the principal Act is amended—

(a) by deleting subsection (1) and substituting the following new sub section—

(1) If a bankruptcy order is made when there is a supervisor of a voluntary arrangement in relation to the bankrupt under Division 1 of Part IV or a supervisor of a summary instalment order approved in relation to the bankrupt under Division 2 of Part IV, the Court may, if it considers it appropriate to do so on making the order, appoint the supervisor as bankruptcy trustee in respect of the bankrupt’s estate on such terms as the court may decide;
(b) in sub section (2) by inserting the following words “and may
decide not to require the bankrupt to provide some or all of
the information required in cases where the Official Receiver
is the first bankruptcy trustee” immediately after the words
“creditors’ meeting;

c) in subsection (3) by deleting the expression “61(4) and (5)”
and substituting therefor the following new expression “61(3)
and (4)”. 

48. The principal Act is amended by deleting section 63 and
substituting therefor the following new section—

63. (1) A bankruptcy trustee may exercise
any of the powers specified in the First
Schedule.

(2) If, in exercising a power conferred
by this Act, a bankruptcy trustee who is
not the Official Receiver—

(a) disposes of property comprised
in the bankrupt’s estate to an
associate of the bankrupt; or

(b) employs an advocate,

the bankruptcy trustee shall, if there is
a creditors’ committee, give notice to
the committee of that exercise of that
power.

(3) A bankruptcy trustee may use his or
her discretion in administering a
bankrupt’s property, but, in doing so, is
required to have regard to the
resolutions passed by the creditors at
creditors’ meetings.

49. Section 64 of the principal Act is amended in subsection (1) by
inserting the words “who is not the Official Receiver;”
immediately after the words “bankruptcy trustee”.

50. Section 75 of the principal Act is amended in subsection (1) by
deleting the words “creditor’s meeting appearing in paragraph
(b) and substituting therefor the words “creditors’ meeting”.

51. Section 76 of the principal Act is amended—
(a) in subsection (2) by deleting the words “general meeting of
a bankrupt’s creditors” and substituting therefor the words
“creditors’ meeting”;
(b) in subsection (3) by deleting the words “Cabinet Secretary”
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Amendment of section 77 of No. 18 of 2015.

52. Section 77 of the principal Act is amended—
(a) in subsection (1) by deleting the words “ceases hold” and substituting therefor the words “ceases to hold”;

(b) in subsection (2) by deleting the words “meeting of the bankrupt’s creditors” and substituting therefore the words “creditors’ meeting”;

(c) by deleting subsection (3) and substituting therefor the following new sub section—
(3) If the person has been removed from office—
(a) by a creditors’ meeting that has resolved against the bankruptcy trustee’s release;
(b) by the Court; or
(c) has ceased to be authorised as an insolvency practitioner under s75(3), the person is released from such time as the Official Receiver determines, on an application made by that person”;

(d) by deleting sub section (4);

(e) in subsection (9) by deleting the expression “74” and substituting therefor the expression “80”.

Amendment of section 78 of No. 18 of 2015.

53. Section 78 of the principal Act is amended in sub section (6) by inserting the words “after the bankruptcy trustee has given notice under section” immediately before the expression “77(2).”

Amendment of section 80 of No. 18 of 2015.

54. Section 80 of the principal Act is amended—
(a) in subsection (1) by inserting the word “may” immediately after the words “the following persons”;

(b) by deleting subsection (4) and substituting therefor the following new sub section—

(4) If on hearing an application made under subsection (1), the Court is satisfied that the bankrupt’s estate has sustained a loss as a result of misfeasance or a breach of fiduciary or other duty by the bankruptcy trustee in performing that trustee’s functions, the Court shall make either both of the following orders—

(a) an order directing the bankruptcy trustee to pay such amount as compensation in respect of the misfeasance or breach of fiduciary or other duty as the Court considers fair and reasonable;

(b) an order directing the bankruptcy trustee to be disqualified from acting as a bankruptcy trustee for such period as may be...
specified in the order.

(c) by inserting the following new sub sections immediately after sub section (4)—

(5) If—

(a) the bankruptcy trustee has seized or disposed of property that is not comprised in the bankrupt’s estate; and

(b) at the time of the seizure or disposal, the bankruptcy trustee reasonably believes that that trustee is entitled (whether under an order of the Court or otherwise) to seize or dispose of the property,

that trustee is not liable to anyone for any loss or damage resulting from the seizure or disposal, except in so far as that loss or damage is caused by the negligence of that trustee.

(6) In such a case the bankruptcy trustee has a lien on the property, or the proceeds of its sale, for such of the expenses of the bankruptcy as were incurred in connection with the seizure or disposal.

(7) The power of the Court to make an order under this section does not affect a liability of a bankruptcy trustee that may arise apart from this section.

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**Amendment of section 82 of No. 18 of 2015.**

55. Section 82 of the principal Act is amended by deleting sub section (5) and substituting therefor the following new sub section—

(5) Nothing in this section limits the general effect of section 63 or of the First Schedule.

**Amendment of section 90 of No. 18 of 2015.**

56. Section 90 of the principal Act is amended in subsection (1) by deleting the words “are kept” appearing after the words “ensure that minutes” and inserting the words “are kept”immediately after the words “creditors’meeting”.

**Amendment of section 92 of No. 18 of 2015.**

57. Section 92 of the principal Act is amended—

(a) in sub section (1)—

(i) by deleting the words “or bankrupt’s” appearing in paragraph (c);

(ii) by deleting the words “in the case of a creditor” appearing in paragraph (d);

(iii) by deleting the words “or bankrupt’s” appearing in paragraph (e);
58. Section 93 of the principal Act is amended—
   (a) in sub section (1)—
      (i) by deleting the words “number and” appearing in paragraph (a);
      (ii) by deleting the words “number and” appearing in paragraph (b);
   (b) in sub section 2—
      (i) by deleting paragraph (b) and substituting therefor the following new paragraph—
         (b) if the chairperson of the meeting is not the bankruptcy trustee, the chairperson of the meeting may adjourn the meeting in order for the bankruptcy trustee to admit or reject proofs of debt;
      (ii) by inserting the words “proof of” immediately after the words “a person whose”.

59. Section 94 of the principal Act is amended by deleting sub section (2).

60. Section 95 of the principal Act is amended by inserting the words “and the insolvency regulations” immediately after the expression “sections 96 to 98”.

61. Section 96 of the principal Act is amended by inserting the words “in relation to the unsecured part of that debt” immediately after the words “creditors’ meeting”.

62. Section 97 of the principal Act is amended in sub section (2) by deleting the word “debtor” appearing in paragraph (a) and substituting therefor the following word “bankrupt”.

63. Section 100 of the principal Act is amended by deleting sub section (2).

64. Section 102 of the principal Act is amended—
   (a) by deleting subsection (1) and inserting therefor the following new subsection—
      (1) A creditors’ meeting of a bankrupt may establish a creditors’ committee to perform the functions conferred
on it by or under this Part including the power to agree how a bankruptcy trustee will be remunerated.

(b) by inserting the following new sub sections immediately after section (1)—

(1A) If no creditors’ committee is established the power to agree how the bankruptcy trustee will be remunerated may be exercised by the creditors’ meeting.

(1B) In default of either agreeing how the bankruptcy trustee will be remunerated, the bankruptcy trustee will be entitled to the remuneration which would apply under the insolvency regulations if the Official Receiver were acting as bankruptcy trustee.

(c) in sub section (2) by deleting the words “general meeting of the creditors of a bankrupt” and substituting therefor the following words “creditors’ meeting”.

65. Section 103 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “court”.

66. Section 104 of the principal Act is amended in sub section (1) by inserting the words “prior to the bankrupt’s discharge” immediately after the words “passes to the bankrupt” appearing in paragraph (a).

67. The principal Act is amended by deleting section 108 and inserting the following new section—

108. (1) Where a person is made bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of the bankruptcy estate.

(3) This section applies to the period beginning with the day of the making
of the bankruptcy application and ending with the vesting of the bankrupt's estate in the bankruptcy trustee.

(4) The preceding provisions of this section do not give a remedy against any person—

(a) in respect of any property or payment which he or she received before the commencement of the bankruptcy in good faith, for value and without notice that the bankruptcy application had been made; or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(5) Where after the commencement of the bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed to have been incurred before the commencement of the bankruptcy unless—

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by the bankrupt of property held by the bankrupt on trust for any other person.
68. Section 109 of the principal Act is amended in sub section (1) by deleting the words “payable by” appearing in paragraph (b) and substituting therefor the words “payable to”.

69. The principal Act is amended by repealing section 111.

70. Section 113 of the principal Act is amended in sub section (1) by deleting the expression “or 111”.

71. The principal Act is amended by repealing section 114.

72. The principal Act is amended by repealing section 115.

73. Section 116 of the principal Act is amended —

(a) in the marginal note by deleting the expression “sections 109 and 115” and substituting therefor the expression “section 109”; and

(b) by deleting the expression “sections 109 and 115” and substituting therefor the expression “section 109”.

74. The principal Act is amended by repealing section 117.

75. The principal Act is amended by repealing section 126.

76. The principal Act is amended by repealing section 127.

77. The principal Act is amended by repealing section 128.

78. The principal Act is amended by repealing section 129.

79. The principal Act is amended by repealing section 130.

80. Section 133 of the principal Act is amended in sub section (1) by deleting the expression “131” and substituting therefor the
expression “132”.

81. section 136 of the principal Act is amended in subsection (1) by deleting the word “before” appearing after the words “a bankrupt who” and substituting therefor with the word “after”.

82. The principal Act is amended by repealing Division 13 (Persons jointly adjudged bankrupt”.

83. Section 150 of the principal Act is amended in sub section (3) by inserting the words “any payments received under a pension scheme” immediately after the words “earning power,”.

84. The principal Act is amended by inserting the following new section immediately after section 150—

150A. (1) Where an individual who is adjudged bankrupt has rights under a pension arrangement, the bankruptcy trustee may apply to the court for an order under this section.

(2) If the court is satisfied—

(a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions, and

(b) that the making of any of the relevant contributions (“the excessive contributions”) has unfairly harmed the individual’s creditors, the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.

(3) In subsection (2) “relevant contributions” means contributions to the arrangement or any other pension arrangement—

(a) which the individual has at any time made on his or her own behalf; or

(b) which have at any time been made on his or her behalf.
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(4) The court shall, in determining whether it is satisfied under subsection (2)(b), consider in particular—
(a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the individual’s creditors or any of them, and
(b) whether the total amount of any contributions made by or on behalf of the individual to pension arrangements is an amount which is excessive in view of the individual’s circumstances when those contributions were made.

85. Section 152 of the principal Act is amended in sub section (1) by inserting the words “with the benefit of limited liability” immediately after the words “control of any business” appearing in paragraph (a).

86. Section 156 of the principal Act is amended—
(a) by deleting paragraph (b) and substituting therefor the following new paragraph —
(b) the record of any examination of the bankrupt; and
(b) by deleting paragraph (f).

87. Section 157 of the principal Act is amended by deleting sub section (2).

88. Section 158 of the principal Act is amended in subsection (2) by deleting paragraph (b).

89. Section 159 of the principal Act is amended—
(a) in sub section (1) by deleting the words “as reasonable” appearing in the opening statement and substituting therefor the words “a reasonable”; and
(b) in sub section (4) by deleting the words “reasonable excused” appearing in paragraph (a) and substituting therefor the words “reasonable excuse”.

90. section 168 of the principal Act is amended in subsection (2) by inserting the word “of” immediately after the words “in possession” appearing in paragraph (c).

91. Section 169 of the principal Act is amended in subsection (3) by deleting the words “If person, without reasonable excuse,
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refuses to sign the refusal to sign” and substituting therefor the words “If a person, without reasonable excuse, refuses to sign”.

92. The principal Act is amended by repealing section 170.

93. Section 177 of the principal Act is amended—
(a) by deleting subsection (1) and substituting therefor the following new sub section—
(1) At any time before a bankrupt’s discharge—
(a) the bankruptcy trustee; or
(b) if an ordinary resolution has been passed at a creditors’ meeting seeking the public examination of the bankrupt before the Court—any of the creditors concerned,
may make an application to the Court for an order that the bankrupt be publicly examined before the Court;
(b) in subsection (3) by inserting the word “resolution” immediately after the words “copy of a creditors’ ordinary”.

94. Section 178 of the principal Act is amended in sub section (2) by deleting the words “a notice” immediately after the words “each creditor” appearing in paragraph (b).

95. Section 181 of the principal Act is amended in the marginal note by deleting the words bankruptcy trustee and substituting therefor the word “court”.

96. The principal Act is amended by repealing section 184.

97. Section 185 of the principal Act is amended —
(a) In the marginal note by inserting the word “to” immediately after the word “examination”;
(b) in subsection (1) by inserting the words “limited liability partnership or” immediately before the word “partnership”;
(c) in subsection (2) —
(i) by inserting the words “limited liability partnership or” immediately before the word “partnership” appearing in paragraph (a);
(ii) by inserting the words “limited liability partnership or” immediately before the word “partnership appearing in paragraph (a)(ii)”.

98. Section 190 of the principal Act is amended in subsection (3) by deleting the words “delay in” appearing in paragraph (c) and
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99. The principal Act is amended by deleting section 194 and substituting therefor the following new section—

194. (1) Subject as follows in this section and sections 196 and 197, where an individual is made bankrupt and has at a relevant time (defined in section 196) entered into a transaction with any person at an undervalue, the bankruptcy trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make an order setting aside the transaction and restoring the position to that which would have existed if the company had not entered into the transaction.

(3) For the purposes of this section and sections 196 and 197, an individual enters into a transaction with a person at an undervalue if—

(a) the individual makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the individual to receive no consideration, or

(b) the individual 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 individual.

(4) Where an individual has entered into a transaction with a person who, at the time the transaction, was an associate of the individual (otherwise than by reason only of being an employee of the individual), the transaction is presumed, unless the contrary is shown, to have been at an undervalue.

100. The principal Act is amended by deleting section 195 and substituting therefor the following new section—

195. (1) Subject as follows in this and the
next two sections, where an individual is made bankrupt and has at a relevant time (defined in section 196) given a preference to any person, the bankruptcy trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make an order voiding the act constituted by giving the preference and restoring the position that would have existed if the preference had not been given.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if—

(a) that person is one of the individual's creditors or a surety or guarantor for any of the individual’s debts or other liabilities, and

(b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual’s bankruptcy, will be better than the position the person would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a wish to produce in relation to that person the effect referred to in subsection (3)(b) above.

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of the individual (otherwise than by reason only of being an employee of the individual) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a wish as is mentioned in subsection (4).
(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

Amendment of section 196 of No. 18 of 2015.

101. The principal Act is amended by deleting section 196 and substituting therefor the following new section—

What “relevant time” means in sections 194, 195.

196. (1) Subject as follows, the time at which an individual enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given—

(a) in the case of a transaction at an undervalue, at a time in the period of 5 years ending with the day of the making of the bankruptcy application as a result of which the individual was made bankrupt,

(b) in the case of a preference which is not a transaction at an undervalue and is given to a person who is an associate of the individual (otherwise than by reason only of being his or her employee), at a time in the period of 2 years ending with that day, and

(c) in any other case of a preference which is not a transaction at an undervalue, at a time in the period of 6 months ending with that day.

(2) Where an individual enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraphs (a), (b) or (c) of subsection (1) (not being, in the case of a transaction at an undervalue, a time less than 2 years before the end of the period mentioned in paragraph (a)), that time is not a relevant time for the purposes of sections 194 and 195 unless the individual—

(a) is insolvent at that time, or

(b) becomes insolvent in consequence of
but the requirements of this subsection are presumed to be satisfied, unless the contrary is shown, in relation to any transaction at an undervalue or preference which is entered into by an individual with a person who is an associate of the individual (otherwise than by reason only of being his or her employee).

(3) For the purposes of subsection (2), an individual is insolvent if—

(a) the individual is unable to pay the individual’s debts as they fall due,

or

(b) the value of the individual’s assets is less than the amount of the individual’s liabilities, taking into account contingent and prospective liabilities.

The principal Act is amended by deleting section 197 and substituting therefor the following new section—

197. (1) Without prejudice to the generality of section 194(2) or 195(2), an order under either of those sections with respect to a transaction or preference entered into or given by an individual who is subsequently made bankrupt may (subject as follows)—

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the bankruptcy trustee as part of the bankruptcy estate;

(b) require any property to be so vested if it represents in any person’s hands the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) any security given by the individual;

(d) require any person to pay, in respect of
benefits received by that person from the individual, such sums to the bankruptcy trustee of the bankruptcy estate 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 or by the giving of the preference to be under such new or revived obligations to that person as the court thinks 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 property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the preference; and

(g) provide for the extent to which any person whose property is vested by the order in the bankruptcy trustee of the bankrupt's estate, or on whom obligations are imposed by the order, is to be able to prove in the bankruptcy for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction or the giving of the preference.

(2) An order under section 194 or 195 may affect the property of, or impose any obligation on, any person whether or not that person is the person with whom the individual in question entered into the transaction or, as the case may be, the person to whom the preference was given; but such an order—

(a) shall not detrimentally affect any interest in property which was acquired from a person other than that individual and was acquired in good faith and for value, or detrimentally affect any interest deriving
from such an interest, and
(b) shall not require a person who received a
benefit from the transaction or preference in
good faith and for value to pay a sum to the
bankruptcy trustee of the bankrupt's estate,
except where the person was a party to the
transaction or the payment is to be in respect
of a preference given to that person at a time
when the person was a creditor of that
individual.

(3) Where a person has acquired an interest
in property from a person other than the
individual in question, or has received a
benefit from the transaction or preference,
and at the time of that acquisition or
receipt—

(a) that person had notice of the relevant
surrounding circumstances and of the
relevant proceedings, or

(b) that person was an associate of either the
individual in question or the person with
whom that individual entered into the
transaction or to whom that individual gave
the preference,

then, unless the contrary is shown, it shall be
presumed for the purposes of paragraph (a)
or (as the case may be) paragraph (b) of
subsection (2) that the interest was acquired
or the benefit was received otherwise than in
good faith.

(4) Any sums required to be paid to the
bankruptcy trustee in accordance with an
order under sections 194 or 195 shall be
comprised in the bankrupt's estate.

(5) For the purposes of subsection (3)(a), the
relevant surrounding circumstances are (as
the case may require)—

(a) the fact that the individual in question
entered into the transaction at an undervalue;
or

(b) the circumstances which amounted to the
giving of the preference by the individual in
(6) For the purposes of subsection (3)(a), a person has notice of the relevant proceedings if the person has notice—

(a) of the fact that the bankruptcy application as a result of which the individual in question was made bankrupt has been made or presented;

or

(b) of the fact that the individual in question has been made bankrupt.

103. The principal Act is amended by deleting section 198 and substituting therefor the following new section—

198. (1) This section applies where a person is made bankrupt who is or has been a party to a transaction for, or involving, the provision to that person of credit.

(2) The court may, on the application of the bankruptcy trustee of the bankrupt's estate, make an order with respect to the transaction if the transaction is or was extortionate and was not entered into more than 3 years before the commencement of the bankruptcy.

(3) If, on the hearing of an application made under subsection (2), the Court is satisfied that the transaction is or was extortionate and was entered into within the period referred to in that subsection, it shall make one or more of the following orders:

(a) an order setting aside the whole or part of an obligation created by the transaction;

(b) an order otherwise varying the terms of the transaction or varying the terms on which any security for the purposes of the transaction is held;

(c) an order requiring a person who is or was a party to the transaction to pay to the bankruptcy trustee any amounts paid to that person by the bankrupt in accordance with
the transaction;

(d) an order requiring a person to surrender to the bankruptcy trustee property held by the person as security for the purposes of the transaction;

(e) an order directing accounts to be taken between specified persons.

(4) For the purposes of this section a transaction is extortionate if, having regard to the risk accepted by the person providing the credit—

(a) the terms of it 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 the credit, or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(5) A transaction with respect to which an application is made under subsection (2) is, in the absence of evidence to the contrary, presumed to be or to have been extortionate.

(6) Any sums or property required to be paid or surrendered to the trustee in accordance with an order under this section shall be comprised in the bankrupt's estate.

104. The principal Act is amended by repealing section 199.

105. The principal Act is amended by repealing section 200.

106. The principal Act is amended by repealing section 201.


108. The principal Act is amended by repealing section 203.
109. The principal Act is amended by repealing section 204.

110. The principal Act is amended by repealing section 205.

111. The principal Act is amended by repealing section 206.

112. The principal Act is amended by repealing section 207.

113. The principal Act is amended by repealing section 208.

114. The principal Act is amended by repealing section 209.

115. The principal Act is amended by repealing section 210.

116. The principal Act is amended by repealing section 211.

117. The principal Act is amended by repealing section 212.

118. The principal Act is amended by repealing section 213.

119. The principal Act is amended by repealing section 214.

120. The principal is amended by deleting section 215 and substituting therefor the following new section—

Application of Part XA.

215. The provisions of Part XA apply to creditors’ claims against a bankrupt’s estate.

121. The principal Act is amended by repealing section 216.
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216 of No. 18 of 2015.

Repeal of section 217 of No. 18 of 2015.

122. The principal Act is amended by repealing section 217.

Repeal of section 218 of No. 18 of 2015.

123. The principal Act is amended by repealing section 218.

Repeal of section 219 of No. 18 of 2015.

124. The principal Act is amended by repealing section 219.

Repeal of section 220 of No. 18 of 2015.

125. The principal Act is amended by repealing section 220.

Repeal of section 221 of No. 18 of 2015.

126. The principal Act is amended by repealing section 221.

Repeal of section 222 of No. 18 of 2015.

127. The principal Act is amended by repealing section 222.

Repeal of section 223 of No. 18 of 2015.

128. The principal Act is amended by repealing section 223.

Repeal of section 224 of No. 18 of 2015.

129. The principal Act is amended by repealing section 224.

Repeal of section 225 of No. 18 of 2015.

130. The principal Act is amended by repealing section 225.

Repeal of section 226 of No. 18 of 2015.

131. The principal Act is amended by repealing section 226.

Repeal of section 227 of No. 18 of 2015.

132. The principal Act is amended by repealing section 227.

Repeal of section 228 of No. 18 of 2015.

133. The principal Act is amended by repealing section 228.

134. The principal Act is amended by repealing section 229.
229 of No. 18 of 2015.

Repeal of section 230 of No. 18 of 2015.

135. The principal Act is amended by repealing section 230.

Repeal of section 231 of No. 18 of 2015.

136. The principal Act is amended by repealing section 231.

Repeal of section 232 of No. 18 of 2015.

137. The principal Act is amended by repealing section 232.

Repeal of section 223 of No. 18 of 2015.

138. The principal Act is amended by repealing section 233.

Repeal of section 234 of No. 18 of 2015.

139. The principal Act is amended by repealing section 234.

Repeal of section 235 of No. 18 of 2015.

140. The principal Act is amended by repealing section 235.

Repeal of section 236 of No. 18 of 2015.

141. The principal Act is amended by repealing section 236.

Repeal of section 237 of No. 18 of 2015.

142. The principal Act is amended by repealing section 237.

Repeal of section 238 of No. 18 of 2015.

143. The principal Act is amended by repealing section 238.

Repeal of section 239 of No. 18 of 2015.

144. The principal Act is amended by repealing section 239.

Repeal of section 240 of No. 18 of 2015.

145. The principal Act is amended by repealing section 240.

Repeal of section 241 of No. 18 of 2015.

146. The principal Act is amended by repealing section 241.

Repeal of section 242 of No. 18 of 2015.

147. The principal Act is amended by repealing section 242.
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<td>148.</td>
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<td>151.</td>
<td>The principal Act is amended by deleting section 246 and substituting therefor the following new section—&lt;br&gt;<strong>246.</strong> The provisions of Part XB apply to the distribution of a bankrupt’s estate.</td>
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<td>152.</td>
<td>Section 247 of the principal Act is amended—&lt;br&gt;(a) in sub section (2) by deleting the word “also” appearing before the words “rank equally”;&lt;br&gt;(b) by deleting sub section (3);&lt;br&gt;(c) by deleting sub section (4);&lt;br&gt;(d) by deleting sub section (5);&lt;br&gt;(e) by deleting sub section (6); and&lt;br&gt;(f) by deleting sub section (7).</td>
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<td>153.</td>
<td>Section 248 of the principal Act is amended—&lt;br&gt;(a) by deleting sub section (2) and substituting therefor the following new sub section—&lt;br&gt;<strong>(2)</strong> Those debts rank in priority after the debts required to be paid in accordance with section 247(2) and any interest payable on those debts according to the provisions of Part XA.&lt;br&gt;(b) by deleting sub section (3).</td>
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<td>154.</td>
<td>The principal Act is amended by deleting section 252 and substituting therefor the following new section—&lt;br&gt;<strong>252.</strong> The provisions of Part XB apply to any dividend which the bankruptcy trustee may declare.</td>
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| 155.  | Section 253 of the principal Act is amended—
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(a) in subsection (3) by deleting the words “under section 252(1)” and substituting therefor the words “of a divided and distribution of the bankrupt’s estate under Part XB”;

(b) by deleting sub section (4).

Amendment of section 254 of No. 18 of 2015.

156. Section 254 of the principal Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note “automatic discharge of bankrupt;

(b) in sub section (1) deleting the words “bankrupt lodge a statement of the bankrupt’s financial position in accordance with section 50” and substituting therefor the words “commencement of the bankruptcy”.

Amendment of section 265 of No. 18 of 2015.

157. Section 265 of the principal Act is amended in sub section (3) by inserting the words “which has subsequently been quashed.”

Amendment of section 268 of No. 18 of 2015.

158. Section 268 of the principal Act is amended by inserting the word “the” immediately before the word “course”.

159. Section 271 of the principal Act is amended by inserting the word “by” immediately after word the word “kept”.

Amendment of section 272 of No. 18 of 2015.

160. Section 272 of the principal Act is amended in sub section (2) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) a voluntary arrangement under Division 1 of Part IV has been approved.

Repeal of section 273 of No. 18 of 2015.

161. The principal Act is amended by repealing section 273.

Repeal of Division 24 of No. 18 of 2015.

162. The principal Act is amended by repealing Division 24 of Part III.(Composition During Bankruptcy)

Amendment of section 290 of No. 18 of 2015.

163. Section 290 of the principal Act is amended in subsection (1) by deleting the words “two months” appearing in paragraph (a)(i) and substituting therefor the words “three years”.

Amendment of section 294 of No. 18 of 2015.

164. Section 294 of the principal Act is amended in sub section (2) by inserting the word “charges” immediately after the word “pledges”.

Amendment of section 301 of

165. Section 301 of the principal Act is amended in sub section (1)
Amendment of section 302 of No. 18 of 2015.

166. Section 302 of the principal Act is amended in sub section (1)—
(a) by deleting the word “undue” appearing in paragraph (c);
(b) by deleting paragraph (d) and substituting therefore the following—
(d) before the bankrupt obtains a discharge from bankruptcy—
(i) obtains credit of one hundred thousand shillings or more; or
(ii) incurs a liability to any person of one hundred thousand shillings or more for the purpose of obtaining credit for another person.

Amendment of section 305 of No. 18 of 2015.

167. Section 305 of the principal Act is amended—
(a) in sub section (1)—
(i) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) a landlord or other person to whom rent is payable by the debtor may exercise a right of forfeiture in relation to premises let to the debtor for a failure of the debtor to comply with a term of the tenancy or exercise a right of distress—
(i) only with the approval of the Court; and
(ii) if in giving approval the Court has imposed conditions—only if those conditions are complied with;

(ii) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) any action, execution or other legal process against the property or person of the debtor may be commenced or continued—
(i) only with the approval of the Court; and
(ii) if in giving approval the Court has imposed conditions—only if those conditions are complied with.

(b) by deleting sub section (2).

Amendment of section 307 of No. 18 of 2015.

168. Section 307 of the principal Act is amended—
(a) in sub section (1) by deleting the word “in” appearing in paragraph (c);
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(b) in sub section (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) a statement of the debtor’s financial affairs containing—

(i) such particulars of the debtor’s liabilities and assets as may be prescribed by the insolvency regulations for the purposes of this section; and

(ii) such other information as may be so prescribed.

(c) in sub section (5) by deleting the words “application of” appearing immediately after the words “application made by”.

169. Section 308 of the principal Act is amended—

(a) in sub section (2) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) a statement of the debtor’s financial affairs containing—

(i) such particulars of the debtor’s liabilities and assets as may be prescribed by the insolvency regulations for the purposes of this section; and

(ii) such other information as may be so prescribed.

(b) in sub section (4) by inserting the word “or” immediately after paragraph (a).

170. Section 310 of the principal Act is amended in sub section (2) by inserting the words “or the provisional supervisor” immediately after the words “their number”.

171. Section 311 of the principal Act is amended—

(a) by deleting sub section (2) and substituting therefor the following new paragraph —

(2) The debtor’s proposal (including any modifications) is approved if it is supported by a three-quarters majority in number of the creditors of each group of creditors present (either in person or by proxy) at the meeting of creditors.

(b) in sub section (3) by inserting the words “both secured and unsecured” at the end of paragraph (a)(i).

(c) by deleting sub section (4);

(d) by deleting sub section (5);

(e) by deleting sub section (6);
(f) by deleting sub section (7);

(g) by deleting sub section (8); and

(h) by deleting sub section (9).

172. Section 312 of the principal Act is amended—
(a) in sub section (1) by deleting the words “on the day after the date on which it is approved by the Court by order made under section 311(7)(a) or on such later date as may be specified in the order” appearing immediately after the words “arrangement by the debtor” and substituting therefor the words “on the date it was approved by the creditors under section 311(2)” immediately after the words “arrangement by the debtor”; and

(b) in sub section (4) by deleting the expression (ii) appearing in paragraph (a).

173. Section 313 of the principal Act is amended in sub section (1) by deleting the words “the Court has approved a debtor’s proposal in accordance with section 311(7)(a)” appearing in the opening statement and substituting therefore the words “the creditors have approved a debtor’s proposal under section 311(2)”.

174. Section 314 of the principal Act is amended in sub section (3) by deleting the expression “309(10) appearing in paragraph (a) and substituting therefor the expression 310(10).

175. Section 315 of the principal Act is amended—
(a) in sub section (1) by deleting the expression “or 319”;

(b) in sub section (2) by deleting the expression “or 319.

176. The principal Act is amended in Part V by repealing sub division 2.

177. Section 321 of the principal Act is amended in sub section (2) by deleting paragraph (b).

178. Section 322 of the principal Act is amended in sub section (1) by deleting the expression “or 319(1).
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179. Section 334 of the principal Act is amended—
(a) in sub section (1) by inserting the word “order” immediately after the words “summary installment”; and
(b) in sub section (2) by deleting the word “installments” and substituting therefor the word “installment”.

180. Section 342 of the principal Act is amended in sub section (2) by deleting paragraph (a) and substituting therefor the following new paragraph—
(a) in a case to which subsection (1)(a) applies, that, before obtaining the relevant credit, the credit provider was informed that the defendant was subject to a summary instalment order.

181. Section 345 of the principal Act is amended—
(a) in sub section (1) —
(i) by inserting the words “in the previous five years” at the end of paragraph (a);
(ii) by inserting the words “in the previous five years” at the end of paragraph (b);
(b) in sub section (2) by deleting the expression “Part II” and substituting therefor the expression “Part III” in paragraph (b).

182. Section 350 of the principal Act is amended in sub section (2) by deleting the expression “Part XI” and substituting therefor the expression “Part XII”.

183. Section 378 of the principal Act is amended—
(a) in sub section (1) by deleting the words “(for example, by cancelling an irregular transaction)”;
(b) by deleting sub section (2);
(c) in sub section (3) by deleting the words “give approval for the purpose of sub section (2)(a)” and substituting therefor the words “make an order under Division 19 of Part III”.

184. Section 383 of the principal Act is amended in sub section (1) by deleting the word “meeting” appearing in the definition of the words “liquidation committee meeting”.

185. Section 384 of the principal Act is amended in sub section (1) by inserting the word “one” immediately before the word “hundred”.

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186. Section 386 of the principal Act is amended—
(a) in sub section (2) by deleting the expression “Division 4 Part XVI of” appearing in paragraph (a);
(b) in sub section (3) by deleting the words “in accordance with section 472(1) to (3) of” appearing in paragraph (b) and substituting therefor the words “that the company will be able to continue to carry on business as a going concern under”.

187. Section 391 of the principal Act is amended in paragraph (b) by inserting the word “bankruptcy” before the word “trustee”.

188. Section 393 of the principal Act is amended by deleting subsection (5) and substituting therefor the following sub section—
(5) For the purposes of this section the holder of a qualifying floating charge in respect of a company's property has the same meaning as in section 534.

189. Section 400 of the principal Act is amended in subsection (3) by deleting the words “this Act” and substituting therefor the words “the Companies Act, 2015”.

190. Section 402 of the principal Act is amended in subsection (1) by inserting the word “as” immediately after the words “As soon” appearing in the opening statement.

191. Section 403 of the principal Act is amended in subsection (2) by deleting the word “contributory” appearing in paragraph (a) and substituting therefor the word “liquidator”.

192. Section 406 of the principal Act is amended—
(a) in subsection (4) by deleting the expression “(3)” and substituting therefor the expression “(2)(b)”; 
(b) in subsection (7) by deleting the word “commit” and substituting therefor the word “commits”.

193. Section 409 of the principal Act is amended in subsection (5) by deleting the words “made by any of the creditors” appearing after the words “application to Court”.

194. Section 413 of the principal Act is amended in subsection (5) by deleting the words “without reasonable excuse”.

195. Section 414 of the principal Act is amended—
(a) in subsection (1) by inserting the word “as” immediately after
the words “As soon”;

(b) in sub section (5) by deleting the words “two hundred thousand” and substituting therefor the words “one million”;

(c) in sub section (6) by deleting the word “twenty” and substituting therefor the word “fifty”;

(d) in sub section (9) by deleting the words “without reasonable excuse” appearing after the words “A liquidator who”.

196. Section 415 of the principal Act is amended in sub section (1) by deleting the word “are” appearing in paragraph (a) and substituting therefor the word “is”.

197. Section 417 of the principal Act is amended in sub section (5) by deleting the expression “(1)” and substituting therefor the expression “(2)”.

198. Section 418 of the principal Act is amended —

(a) in sub section (1) by inserting the words “limited liability” immediately before the words “partnership to which” appearing in paragraph (a);

(b) in sub section (5) by inserting the words “limited liability” immediately after the words “benefit from, that” appearing in paragraph (b).

199. Section 424 of the principal Act is amended—

(a) in sub section (1) (i) by deleting the expression “section 761 of” and the words (requirement as to minimum share capital” appearing in paragraph (b)(i);

(ii) by deleting paragraph (d);

(iii) by deleting paragraph (f);

(b) in sub section (2) by deleting the expression “425(6)” and substituting therefor the expression “425(5)”.

200. Section 425 of the principal Act is amended—

(a) in sub section (1) by inserting the word “by” immediately after the words “may be made” appearing in the opening statement;

(b) by deleting sub section (6).

201. Section 427 of the principal Act is amended—

(a) in sub section (2) by deleting the words “have been mortgaged” and substituting therefor the words “are subject
**Amendment of section 430 of No. 18 of 2015.**

202. Section 430 of the principal Act is amended by deleting the word “sequestration”.

**Amendment of section 431 of No. 18 of 2015.**

203. Section 431 of the principal Act is amended in sub section (2) by deleting the expression “534” and substituting therefor the expression “533”.

**Amendment of section 432 of No. 18 of 2015.**

204. Section 432 of the principal Act is amended by inserting the following new subsections immediately after subsection (1)—

(1A) Within thirty days after the date of the liquidation order, the liquidator shall, subject to subsection (3)—

(a) publish a notice advertising the order—

(i) once in the Kenya Gazette; and

(ii) once in a newspaper of nation-wide circulation in Kenya; or

(b) if the Court directs that the order be advertised in some other publication—publish such a notice in that other publication.

(1B) If an appeal against the order has been lodged, the Court may order the liquidator not to advertise the liquidation order, but only if it is satisfied that there are compelling reasons for doing so.

**Insertion of new section 432A.**

205. The principal Act is amended by inserting the following new section immediately after section 432—

432A. On appointment of a liquidator, all the powers of the directors cease, except so far as the liquidator or the court sanctions their continuance.

**Amendment of section 435 of No. 18 of 2015.**

206. Section 435 of the principal Act is amended in sub section (4) by inserting the words “about his or her” immediately before the word “conduct” appearing in paragraph (c).

**Amendment of section 436 of No. 18 of 2015.**

207. Section 436 of the principal Act is amended in sub section (2) by deleting the expression “434” and substituting therefor the expression “435”.

**Amendment of section 441 of No. 18 of 2015.**

208. Section 441 of the principal Act is amended in subsection (3) by—

(a) deleting the expression “437(2)” appearing in paragraph (a)
and substituting therefor the expression “438(2)”;  
(b) deleting the expression “437(5)(a)” appearing in paragraph (b) and substituting therefor the expression “438(5)(a)”;

209. Section 445 of the principal Act is amended in sub section (3)—  
(a) by deleting the words “or continue” appearing before the words “any legal proceedings” and substituting therefor the words “in the liquidator’s official name”;  
(b) by deleting the words “or continue” appearing before the words “for the purpose”;

210. Section 446 of the principal Act is amended in sub section (2) by deleting the expression “471” appearing in paragraph (b) and substituting therefor the expression “470”.

211. Section 447 of the principal Act is amended in sub section (5) by deleting the word “commit” and substituting therefor the word “commits”.

212. The principal Act is amended by repealing section 451.

213. Section 462 of the principal Act is amended—  
(a) by deleting sub section (2) and substituting therefor the following new sub section—  
(2) The liquidator may exercise any of the powers specified in the Third Schedule.  
(b) by deleting sub section (3).  
(c) in sub section (4) by deleting paragraph (c).

214. Section 463 of the principal Act is amended in sub section (3) by deleting the expression “471” appearing in paragraph (b) and substituting therefor the following expression “470”.

215. Section 464 of the principal Act is amended by deleting sub section (1) and substituting therefor the following new sub section—  
(1) If a company is being liquidated by the Court, the liquidator may exercise any of the powers specified in the Third Schedule.

216. Section 467 of the principal Act is amended in sub section (6) by deleting the expression “463” appearing in paragraph (b) and substituting therefor the following expression “414”.

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217. Section 470 of the principal Act is amended in sub section (5) by inserting the word “an” immediately before the word “application”.

218. Section 471 of the principal Act is amended by inserting the following new sub sections immediately after sub section (2)

- (3) The provisions of Part XA apply to creditors’ claims against a company that is in liquidation.
- (4) The provisions of Part XB apply to the distribution of the assets of a company that is in liquidation.

219. Section 472 of the principal Act is amended in sub section (3) by inserting the word “of” immediately before the words “money paid”.

220. Section 474 of the principal Act is amended—

(a) in sub section (4) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) a compromise or arrangement agreed under the Companies Act, 2015.

(b) by deleting sub section (5) and substituting therefor the following new sub section—

(5) Subsection (2) also does not apply to a company if—

(a) the liquidator, administrator or provisional liquidator applies to the Court for an order under this subsection on the ground that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits; or

(b) a holder of a floating charge applies to the court on the grounds that the effect of subsection (2) unfairly harms its interests; and

(c) as a result of such an application, the Court orders that subsection (2) is not to apply or is to apply subject to whatever conditions the court thinks just.

221. Section 476 of the principal Act is amended in sub section (1) by deleting the word “the” appearing before the words “giving such notice”;

(b) by deleting the word “exercised” appearing before the words “rights of ownership” and substituting therefor the word “exercises”.

222. Section 484 of the principal Act is amended—

(a) by deleting sub section (1) and substituting therefor the following new sub section—
(1) On the liquidation of a company (whether by the Court or voluntarily), the liquidator may, in accordance with this section, make any payment that the company has, before the commencement of the liquidation, decided to make under the Companies Act, 2015 to employees or former employees on cessation or transfer of business.

(b) in sub section (2) by deleting the words “as is referred to in section 210 of” and substituting therefor the following words “employees or former employees on cessation or transfer of business under”.

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223. Section 485 of the principal Act is amended—
(a) in sub section (2) by deleting the word “commit” and substituting therefor the word “commits”;

(b) in sub section (3) by deleting the word “commit” and substituting therefor the word “commits”.

Amendment of section 485 of No. 18 of 2015.

224. Section 496 of the principal Act is amended in sub section (3) by deleting the words “in the case of an application under section 495(7)” appearing in paragraph (b) and substituting therefor the words “under section 495(4)”.

Amendment of section 496 of No. 18 of 2015.

225. Section 497 of the principal Act is amended in sub section (3) by inserting the word “the” immediately after the word “including”.

Amendment of section 497 of No. 18 of 2015.

226. Section 498 of the principal Act is amended—
(a) in sub section (2) by deleting the words “twelve months” appearing in the opening statement and substituting therefor the words “three years”;

(b) in sub section (4) —

(i) by inserting the word “an” immediately after the word “commits” appearing in the opening statement; and

(ii) by deleting the words “twelve months” appearing in paragraph (a) and substituting therefor the words “three years”;

(c) by deleting sub section (10).

Amendment of section 498 of No. 18 of 2015.

227. Section 499 of the principal Act is amended by deleting sub section (6).

Amendment of section 499 of No. 18 of 2015.

228. Section 500 of the principal Act is amended by deleting sub section (8).
229. Section 501 of the principal Act is amended —
(a) in sub section (3) by deleting the expression (1) and substituting therefor the expression (2);
(b) by deleting sub section (4).

230. Section 502 of the principal Act is amended by deleting sub section (6).

231. Section 503 of the principal Act is amended by deleting sub section (5).

232. Section 506 of the principal Act is amended—
(a) in sub section (2) by inserting the following new paragraph immediately after paragraph (a)—
(aa) a company enters insolvent administration if, at the time the administration commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration;
(b) in sub section (3) by inserting the words “or entering insolvent administration” immediately after the words “insolvent liquidation”;
(c) in sub section (5) by inserting the words “or entering insolvent administration” immediately after the words “insolvent liquidation”;
(d) in sub section (6) by inserting the words “or entering insolvent administration” immediately after the words “insolvent liquidation”;
(e) by inserting a new sub section immediately after sub section (6)—
(6A) For the purposes of this section, the facts which the respondent ought to have known and the steps the respondent ought to have taken are those which would have been known or taken by a reasonably diligent person having both—
(a) the general knowledge, skill and experience which may reasonably be expected of a person carrying out the same functions as were carried out by the respondent, and
(b) the general knowledge, skill and experience that the respondent had.

233. Section 508 of the principal Act is amended in sub section (3)
by inserting the words “limited liability” immediately before the word partnership appearing in paragraph (b).

Amendment of section 509 of No. 18 of 2015.

Section 509 of the principal Act is amended in sub section (2) by deleting the expression “Part X of” appearing in paragraph (b).

Amendment of section 510 of No. 18 of 2015.

Section 510 of the principal Act is amended in sub section (8) by deleting the expression “Part XXX of”.

Amendment of section 511 of No. 18 of 2015.

Section 511 of the principal Act is amended in sub section (1)
(a) by deleting the expression “510(4)” and substituting therefor the expression “510(7)”; and
(b) by deleting the expression “Part XXX of”.

Amendment of section 514 of No. 18 of 2015.

Section 514 of the principal Act is amended in sub section (7) by deleting the expression “(3)”.

Insertion of new Part VIIA in No. 18 of 2015.

The principal Act is amended by inserting the following Part Immediately after Part VII—

Part VIIA-RECEIVERSHIP

Division I- Receivers and Managers Generally

519A. In this Part, “administrative receiver”, has the same meaning as that in section 690 and any receiver who satisfies the definition in section 690 will be an administrative receiver regardless of any other description or label used to describe or identify the receiver.

519B. A body corporate is not qualified for appointment as receiver of the property of a company, and any body corporate which purports to act as such a receiver commits an offence and on conviction is liable to a fine not exceeding one million shillings

519C. Where an application is made to the court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being liquidated by the court, the Official Receiver may be appointed.

519D. (1) The appointment of a person as a receiver or manager of a company's property under powers contained in an instrument—
(a) is of no effect unless it is accepted by
that person before the end of the business day next following that on which the instrument of appointment is received by him or her or on his or her behalf, and
(b) subject to this, is deemed to be made at the time at which the instrument of appointment is so received.

(2) This section applies to the appointment of two or more persons as joint receivers or managers of a company’s property under powers contained in an instrument.

**Liability for invalid appointment.**

519E. Where the appointment of a person as the receiver or manager of a company’s property under powers contained in an instrument is discovered to be invalid (whether by virtue of the invalidity of the instrument or otherwise), the court may order the person by whom or on whose behalf the appointment was made to indemnify the person appointed against any liability which arises solely by reason of the invalidity of the appointment.

**Application to court for directions.**

519F. (1) A receiver or manager of the property of a company appointed under powers contained in an instrument, or the persons by whom or on whose behalf a receiver or manager has been so appointed, may apply to the court for directions in relation to any particular matter arising in connection with the performance of the functions of the receiver or manager.

(2) On such an application, the court may give such directions, or may make such order declaring the rights of persons before the court or otherwise, as it thinks just.

**Liability for contracts.**

519G. (1) A receiver or manager appointed under powers contained in an instrument (other than an administrative receiver) is, to the same extent as if he or she had been appointed by order of the court—

(a) personally liable on any contract entered into by him or her in the performance of his or her functions (except in so far as the contract otherwise provides) and on any contract of employment adopted by him or her in the performance of those functions,
and
(b) entitled in respect of that liability to indemnity out of the assets.

(2) For the purposes of subsection (1)(a), the receiver or manager is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after the appointment.

(3) Subsection (1) does not limit any right to indemnity which the receiver or manager would have apart from it, nor limit his or her liability on contracts entered into without authority, nor confer any right to indemnity in respect of that liability.

(4) Where at any time the receiver or manager so appointed vacates office—
(a) his or her remuneration and any expenses properly incurred, and
(b) any indemnity to which he or she is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his or her custody or under his or her control at that time in priority to any charge or other security held by the person by or on whose behalf he or she was appointed.

519H. (1) Every receiver or manager of a company's property, including an administrative receiver, who has been appointed under powers contained in an instrument shall lodge with the Registrar for registration the requisite accounts of his or her receipts and payments.

(2) The accounts shall be lodged within one month (or such longer period as the Registrar may allow) after the expiration of 12 months from the date of the appointment and for every subsequent period of 6 months, and also within one month after he or she ceases to act as receiver or manager.

(3) The requisite accounts shall be an abstract showing—
(a) receipts and payments during the relevant period of 12 or 6 months, or
(b) where the receiver or manager ceases to
act, receipts and payments during the period from the end of the period of 12 or 6 months to which the last preceding abstract related (or, if no preceding abstract has been lodged under this section, from the date of appointment) up to the date of the appointment ceasing, and the aggregate amount of receipts and payments during all preceding periods since appointment.

(4) A receiver or manager who makes default in complying with this section is liable to a fine not exceeding one million shillings.

(5) If, after being convicted of an offence under subsection (4), a receiver and manager continues to fail to lodge the requisite accounts with the Registrar, the receiver and manager commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

519L (1) Where a receiver or manager of the property of a company has been appointed—

(a) the receiver or manager shall forthwith lodge a notice of his or her appointment with the Official Receiver; and

(b) every invoice, order for goods or services, business letter or order form (whether in hard copy, electronic or any other form) issued by or on behalf of the company or the receiver or manager or the liquidator of the company; and all the company's websites, must contain a statement that a receiver or manager has been appointed.

(2) If default is made in complying with this section, the company and any of the following persons, who knowingly and wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, is liable to a fine not exceeding one million shillings.

519J. (1) The following applies, in the case of a company, where a receiver is appointed on behalf
of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being liquidated, its preferential debts (within the meaning given to that expression by the Second Schedule) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

**Division 2 - Administrative Receivers**

519K. (1) The powers conferred on the administrative receiver of a company by the debentures by virtue of which he or she was appointed are deemed to include (except in so far as they are inconsistent with any of the provisions of those debentures) the powers specified in the Fourth Schedule.

(2) In the application of the Fourth Schedule to the administrative receiver of a company references to the property of the company are to the property of which he or she is or, but for the appointment of some other person as the receiver of part of the company's property, would be the receiver or manager.

(3) A person dealing with the administrative receiver in good faith and for value is not concerned to inquire whether the receiver is acting within his or her powers.

519L. (1) Where, on an application by the administrative receiver, the court is satisfied that the disposal (with or without other assets) of any relevant property which is subject to a security would be likely to promote a more advantageous realisation of the company's assets than would otherwise be effected, the court may by order authorise the administrative receiver to dispose of the property as if it were not subject to the security.
(2) Subsection (1) does not apply in the case of any security held by the person by or on whose behalf the administrative receiver was appointed, or of any security to which a security so held has priority.

(3) It shall be a condition of an order under this section that—

(a) the net proceeds of the disposal; and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property in the open market by a willing vendor, such sums as may be required to make good the deficiency, shall be applied towards discharging the sums secured by the security.

(4) Where a condition imposed in pursuance of subsection (3) relates to two or more securities, 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 securities in the order of their priorities.

(5) A copy of any court order under this section shall, within 14 days of the making of the order, be lodged by the administrative receiver with the Registrar.

(6) If the administrative receiver without reasonable excuse fails to comply with subsection (5), he or she is liable to a fine not exceeding one million shillings.

(7) If, after being convicted of an offence under subsection (6), an administrative receiver continues to fail to lodge the court order, the administrative receiver commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

519M. (1) The administrative receiver of a company—

(a) is deemed to be the company's agent, unless and until the company goes
into liquidation;

(b) is personally liable on any contract entered into by him or her in the carrying out of his or her functions (except in so far as the contract otherwise provides) and, to the extent of any qualifying liability, on any contract of employment adopted by him or her in the carrying out of those functions; and

(c) is entitled in respect of that liability to an indemnity out of the assets of the company.

(2) For the purposes of subsection (1)(b) the administrative receiver is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days after appointment.

(3) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—
   (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme;
   
   (b) it is incurred while the administrative receiver is in office; and

   (c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(4) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(5) For the purposes of subsections (3) and (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 (as the case may be)
salary in respect of services rendered in that period, and

(b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(6) This section does not limit any right to indemnity which the administrative receiver would have apart from it, nor limit his or her liability on contracts entered into or adopted without authority, nor confer any right to indemnity in respect of that liability.

**Vacation of office.**

519N. (1) An administrative receiver of a company may at any time be removed from office by order of the court (but not otherwise) and may resign from office by giving notice of resignation to such persons as may be prescribed.

(2) An administrative receiver shall vacate office if he or she ceases to be qualified to act as an insolvency practitioner.

(3) Where at any time an administrative receiver vacates office—

(a) his or her remuneration and any expenses properly incurred; and

(b) any indemnity to which he or she is entitled out of the assets of the company,

shall be charged on and paid out of any property of the company which is in his or her custody or under his or her control at that time in priority to any security held by the person by or on whose behalf he or she was appointed.

(4) Where an administrative receiver vacates office otherwise than by death, he or she shall, within 14 days after the vacation of office, lodge a notice to that effect to the Registrar.

(5) If an administrative receiver without reasonable excuse fails to comply with
subsection (4), he or she is liable to a fine not exceeding one million shillings.

(6) If, after being convicted of an offence under subsection (5), an administrative receiver continues to fail to lodge the requisite notice with the Registrar, the administrative receiver commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

5190. (1) Where an administrative receiver is appointed, he or she shall—
(a) forthwith send to the company, the Registrar and the Official Receiver a notice of the appointment;
(b) publish a notice of the appointment—
(i) once in the Gazette;
(ii) once in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and
(iii) on the company’s website (if any); and
(c) within 28 days after appointment, unless the court otherwise directs, send such a notice to all the creditors of the company (so far as he or she is aware of their addresses).

(2) This section and the next do not apply in relation to the appointment of an administrative receiver to act—
(a) with an existing administrative receiver; or
(b) in place of an administrative receiver dying or ceasing to act, except that, where they apply to an administrative receiver who dies or ceases to act before they have been fully complied with, the references in this section and the next to the administrative receiver include (subject to the next subsection) his or her successor and any continuing administrative receiver.

(3) If the company is being liquidated, this section and the next apply notwithstanding that
the administrative receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If an administrative receiver without reasonable excuse fails to comply with this section, he or she is liable to a fine not exceeding one million shillings.

(5) If, after being convicted of an offence under subsection (4), an administrative receiver continues to fail to comply with the section, the administrative receiver commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

519P. (1) Where an administrative receiver is appointed, he or she shall forthwith require some or all of the persons mentioned below to make out and submit to him or her a statement in the prescribed form as to the affairs of the company.

(2) A statement submitted under this section shall be verified by a statutory declaration by the persons required to submit it and shall show—

(a) particulars of the company's assets, debts and liabilities;
(b) the names and addresses of its creditors;
(c) the securities held by them respectively;
(d) the dates when the securities were respectively given; and
(e) such further or other information as may be prescribed.

(3) The persons referred to in subsection (1) are—

(a) those who are or have been officers of the company;
(b) those who have taken part in the company's formation at any time within one year before the date of the appointment of the administrative receiver;
(c) those who are in the company's employment, or have been in its employment within that year, and are in the administrative receiver's opinion capable of giving the information required;
(d) those who are or have been within that year officers of or in the employment of a
company which is, or within that year was, an officer of the company.

(4) Where any persons are required under this section to submit a statement of affairs to the administrative receiver, they shall do so (subject to the next subsection) before the end of the period of 21 days beginning with the day after that on which the notice of the requirement is given to them by the administrative receiver.

(5) The administrative receiver, if he or she thinks fit, may—
(a) at any time release a person from an obligation imposed under subsection (1) or (2), or
(b) either when giving notice under subsection (4) or subsequently, extend the period so mentioned;
and where the administrative receiver has refused to exercise a power conferred by this subsection, the court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he or she is liable to a fine not exceeding one million shillings.

(7) If, after being convicted of an offence under subsection (6), a person continues to fail to comply with the subsection, the person commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

519Q. (1) Where an administrative receiver is appointed, he or she shall, within 3 months (or such longer period as the court may allow) after his or her appointment, send to the Registrar, to any trustees for secured creditors of the company and (so far as he or she is aware of their addresses) to all such creditors a report as to the following matters, namely—
(a) the events leading up to the appointment, so far as he or she is aware of them;
(b) the disposal or proposed disposal of any property of the company and the carrying on or proposed carrying on of any business of the company;
(c) the amounts of principal and interest payable to the debenture holders by whom or on whose behalf he or she was appointed and the amounts payable to preferential creditors; and

(d) the amount (if any) likely to be available for the payment of other creditors.

(2) The administrative receiver shall also, within 3 months (or such longer period as the court may allow) after appointment, either—

(a) send a copy of the report (so far as he or she is aware of their addresses) to all unsecured creditors of the company; or

(b) publish a notice in the Gazette, in at least two newspapers circulating in the area in which the company has its principal place of business in Kenya; and on the company’s website (if any) stating an address to which unsecured creditors of the company should write for copies of the report to be sent to them free of charge, and (in either case), unless the court orders otherwise, lay a copy of the report before a meeting of the company’s unsecured creditors called for that purpose on not less than 14 days’ notice.

(3) Where the company has gone or goes into liquidation, the administrative receiver—

(a) shall, within 7 days after compliance with subsection (1) or, if later, the appointment of the liquidator, send a copy of the report to the liquidator; and

(b) where he or she does so within the time limited for compliance with subsection (2), is not required to comply with that subsection.

(4) A report under this section shall include a summary of the statement of affairs made out and submitted to the administrative receiver under section 519P and of his or her comments (if any) upon it.

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(5) Nothing in this section is to be taken as requiring any such report to include any information the disclosure of which would seriously prejudice the carrying out by the administrative receiver of his or her functions.

(6) Section 519O (2) applies for the purposes of this section also.

(7) If an administrative receiver without reasonable excuse fails to comply with this section, he or she is liable to a fine not exceeding one million shillings.

(8) If, after being convicted of an offence under subsection (7), an administrative receiver continues to fail to comply with the section, the administrative receiver commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding fifty thousand shillings for each such offence.

519R. (1) Where a meeting of the company’s unsecured creditors has been called under section 519Q(2) the company’s unsecured creditors may, in accordance with the Regulations, establish a creditors’ committee to exercise the functions conferred on it by or under this Act.

(2) If such a committee is established, the committee may, on giving not less than 7 days’ notice, require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him or her of his or her functions as it may reasonably require.

519S. (1) The appointment of an administrative receiver automatically ends at the end of twelve months from and including the date on which it took effect.

(2) Despite subsection (1) —

(a) on the application of an administrative receiver, the Court may by order extend the administrative receiver’s term of office for a specified period; and

(b) an administrative receiver’s term of office may be extended by written consent.
by the holder of the floating charge under which the appointment was made for a specified period not exceeding six months.

(3) An order of the Court made under subsection (2)(a)—
(a) may be made in respect of an administrative receiver whose term of office has already been extended; but
(b) may not be made after the administrative receiver’s term of office has ended.

(3) As soon as practicable after an order is made under (2)(a), the administrative receiver shall lodge a copy of the order with the Registrar for registration.

(4) An administrative receiver’s term of office—
(a) may be extended by consent only once;
(b) may not be extended by consent after it has been extended by an order of the Court; and
(c) may not be extended by consent after it has ended.

(5) As soon as practicable after an administrative receiver’s term of office is extended by consent, the administrative receiver shall—
(a) lodge a notice of the extension with the Court; and
(b) lodge a copy of the notice with the Registrar for registration.

(6) An administrative receiver who, without reasonable excuse, fails to comply with subsection (3) or (5) commits an offence and on conviction is liable to a fine not exceeding two hundred thousand shillings for each such offence.

(7) If, after being convicted of an offence under subsection (9), an administrative receiver continues to fail to lodge the required copy, the administrative receiver commits a further offence on each day on which the failure continues and on conviction is liable to a fine not exceeding twenty
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thousand shillings for each such offence.

239. Section 524 of the principal Act is amended by inserting the words “and as set out in the Fourth Schedule” immediately after the words “as is reasonably practicable”.

240. Section 525 of the Principal Act is amended by deleting the word “or” appearing before the word “appointed”

241. Section 528 of the principal Act is amended in sub section (2) by deleting the expression “(1)(a)” and substituting therefor the expression “(1)”. 

242. Section 529 of the principal Act is amended by deleting subsection (2).

243. Section 532 of the principal Act is amended—

(a) in sub section (2) by inserting the following new paragraphs immediately after paragraph (a)—

(aa) any person who has appointed an administrative receiver of the company;

(ab) any person who is or may be entitled to appoint and administrative receiver of the company; and

(b) by inserting the following new subsection immediately after subsection (4)—

(5) In the case of an application by one or more creditors of the company, the Court may substitute another creditor or creditors for the creditor or creditors making the application if—

(a) the applicant creditor or creditors have not proceeded with due diligence, or at the hearing of the application offer no evidence; and

(b) the substituted creditor or creditors consent to the substitution.

244. Section 533 of the principal Act is amended —

(a) in sub section (1) by deleting the expression “426” appearing in paragraph (e) and substituting therefor the following new expression “427”;

(b) in sub section (3) —

(i) by inserting the word “practitioner” immediately after the word “insolvency” in paragraph (b);

(ii) by deleting the word “either” appearing in paragraph (c) and substituting therefor the word “both”.

245. Section 534 of the principal Act is amended in sub section (2) by inserting a new paragraph immediately after paragraph (b)—
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(c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by section 690.

246. Section 535 of the principal Act is amended in sub section (1) by inserting the words “or the holder of the prior floating charge has consented in writing to the making of the appointment” immediately after the words “of that section”.

247. Section 536 of the principal Act is amended—
(a) in the marginal note by deleting the words “not enforceable” and substituting therefor the following word “unenforceable”;
(b) by renumbering the current provision as sub section (1);
(c) by inserting the following new sub section immediately after sub section (1) —
(2) A person may not be appointed as administrator under section 534 if an administrative receiver of the company is in office or a provisional liquidator has been appointed over the company.

248. Section 543 of the principal Act is amended in sub section (1) by deleting the words “Division 2 of Part IX ends on a date when no voluntary arrangement is in force in respect of the company” and substituting therefor the following words “Part IXA ends”.

249. Section 545 of the principal Act is amended—
(a) in sub section (1) by inserting the words “or to appoint an administrative receiver” immediately after the expression “section 534”;
(b) in sub section (3) by inserting the words “but the seven day notice period need not be satisfied if the person who received the notice has consented in writing to the making of the appointment” immediately after the words “to be made” appearing in paragraph (c).

250. Section 547 of the principal Act is amended in sub section (1) by deleting the expression “545(4)” appearing in paragraph (a) and substituting therefor the expression “545(3)”.

251. Section 553 of the principal Act is amended in sub section (2) by inserting the word “purportedly” immediately after the words “indemnify the person”.

252. The principal Act is amended by inserting the following new section immediately after section 557—
Dismissal of an administrative application where an administrative receiver is in office

557A. (1) Where there is an administrative receiver of a company the court must dismiss an administration application in respect of the company unless—

(a) the person by or on behalf of whom the receiver was appointed consents to the making of the administration order;

(b) the court thinks that the security by virtue of which the receiver was appointed would be liable to be released or discharged under sections 682 to 684 (transaction at undervalue and preference) if an administration order were made; or

(c) the court thinks that the security by virtue of which the receiver was appointed would be avoided under section 687 (invalid floating charge) if an administration order were made.

(2) Sub-paragraph (1) applies whether the administrative receiver is appointed before or after the making of the administration application.

253. Section 557B of the principal Act is amended

1) Any person, member of a company or a contributory who claims to have been, or to be adversely affected by the appointment of an administrator or any conduct of assignment, may apply to the Court for the grant of an injunction.

2) An application under this section shall be served upon the administrator.

3) (i) Upon hearing of the application under subsection (1) and before granting the injunction, or an interim injunction, the Court shall require the Applicant to deposit a security of an amount and in such manner and form, as the Court shall direct.

   (ii) Where an applicant has failed or refused to deposit the security, the Court shall stay the application.

   (iii) Paragraphs (i) and (ii) shall not apply to applications commenced by the Official Receiver or the Attorney General.

4) In making a determination of the amount to be deposited as security under subsection (2), the Court shall take the following into consideration:
i. The purpose of the injunction sought.

ii. The effect of the injunction towards the achievement of the objectives of administration.

iii. Costs of the administration.

iv. The value of the security under which the administrator is appointed.

v. Whether or not there is a likelihood of substantial damage/loss to be suffered by the Company or the Applicant.

vi. Whether the appointment of the administrator was procedural and valid.

vii. Any other circumstance that Court deems fit.

5) If the purpose of the application for an injunction made under this section fails, the court shall make an order for the security to form part of the assets of the company.

6) Unless the court orders otherwise, an administrator shall continue to act as such during the hearing of the application under this section.

254. Section 558 of the principal Act is amended—

(a) by deleting the marginal note and substituting therefor the following new marginal note “Administration order, liquidation order and applications for liquidation order;

(b) by deleting sub section (1) and substituting therefor the following new sub section—

(1) On the making of an administration order in respect of a company—

(a) a petition for the liquidation of the company may not be made; and

(b) any pending petition for liquidation is stayed while the company is under administration.

(c) in sub section (2) by deleting the expression “425” and substituting therefor the following expression “426”;

(d) in sub section (3) by deleting the expression “425” and substituting therefor the following expression “426”.

255. The principal Act is amended by inserting the following new section immediately after section 558—

558A. (1) When an administration order takes effect in respect of a company any administrative receiver of the company shall vacate office.

(2) Where a company is in administration,
any receiver of part of the company's property shall vacate office if the administrator requires the receiver to vacate office.

(3) Where an administrative receiver or receiver vacates office under subsection (1) or (2)—

(a) the receiver’s remuneration shall be charged on and paid out of any property of the company which was in the custody or under the control of the receiver immediately before he or she vacated office, and

(b) he or she need not take any further steps under section 519J.

(4) In the application of subsection (3)(a)—

(a) “remuneration” includes expenses properly incurred and any indemnity to which the administrative receiver or receiver is entitled out of the assets of the company,

(b) the charge imposed takes priority over security held by the person by whom or on whose behalf the administrative receiver or receiver was appointed, and

(c) the provision for payment is subject to section 560.

256. Section 559 of the principal Act is amended —
(a) in the marginal note by deleting the word “order”;

(b) in sub section (2) by deleting the expression “425” and substituting therefor the following expression “426”;

(c) in sub section (3) by deleting the expression “425” and substituting therefor the following expression “426”.

257. Section 560 of the principal Act is amended—
(a) in the marginal note by deleting the word “order”;
(b) in sub section (2) by inserting the words “or refusing” immediately after the words “in giving”;
(c) by inserting the following new sub section immediately after sub section (2) —

(3) While a company is under administration an administrative receiver may not be appointed.

258. The principal Act is amended by inserting the following new section immediately after section 560—

560A. When considering whether to provide its approval under section 560, or whether to impose terms as a condition for refusing approval, the court may in particular take into consideration, where appropriate, the following factors—

(a) if granting approval to the applicant is unlikely to impede the achievement of the statutory purpose of the administration, approval should normally be given;

(b) in other cases the court has to carry out a balancing exercise, balancing the legitimate interests of the applicant and the legitimate interests of the other creditors of the company;

(c) in carrying out the balancing exercise importance is normally to be given to the proprietary interests of the applicant;

(d) it will normally be a sufficient ground for the grant of approval if significant loss would be caused to the applicant by a refusal; and

(e) the conduct of the parties.

259. Section 561 of the principal Act is amended—

(a) by deleting sub section (2);

(b) in sub section (3) by inserting the word “the” immediately after the words “copy of” appearing in the opening statement;
(c) in sub section (4) —

(j) by deleting the words “hire purchase agreement” appearing in paragraph (d) and substituting therefor the words “credit purchase transaction”;

(ii) by deleting the words “and diligence” appearing after the word “distress” in paragraph (f);

(iv) by deleting paragraph (g);

(v) by deleting paragraph (h);

(d) by deleting sub section (6) and substituting therefor the following new sub section—

(6) This section does not prevent or require the approval of the Court for—

(a) an application being made for the liquidation of the company under section 426 (or the Court from making a liquidation order in respect of such an application);

(b) the appointment of an administrator under section 534;

(c) the appointment of an administrative receiver of the company;

(d) the carrying out by an administrative receiver of his or her functions.

260. Section 565 of the principal Act is amended in sub section (1) by deleting the words “financial position” and substituting therefor the word “affairs”.

261. Section 566 of the principal Act is amended

(a) in the marginal note by deleting the words “for achieving the purpose of the administration” appearing at the end;

(b) in sub section (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) a proposal for a compromise or arrangement to be sanctioned under the Companies Act, 2015;

(c) in subsection (7) by deleting the words “five hundred thousand” and substituting therefor the words “two million”.

262. Section 568 of the principal Act is amended in sub section (1) by deleting the expression “566(4)(b) and substituting therefor the expression “566(4)(a)”. 

65
263. Section 570 of the principal Act is amended by deleting the marginal note and substituting therefor the following new marginal note—
“Consideration of Administrator’s proposal”.

264. Section 572 of the principal Act is amended in sub section (2)(d) —
(a) by deleting the word “declaring” and substituting therefor the word “on”;
(b) by deleting the words “to be”.

265. Section 575 of the principal Act is amended —
(a) by deleting the marginal note and substituting therefor the following new marginal note—
“conduct of creditor’s meeting”;
(b) in subsection (1) by inserting the words “which may be physical, virtual or hybrid” immediately after the words “at a creditor’s meeting”.

266. Section 576 of the principal Act is amended—
(a) by renumbering the existing provision as sub section (1);
(b) by inserting the following new sub section immediately after sub section (1)—
(2) The administrator may not dispose of, hire out or sell property of the company to any person connected with the company without first obtaining the consent of—
(a) a creditors’ meeting; or
(b) the Court.

267. Section 582 of the principal Act is amended in sub section (2) by inserting the words “or if the distribution is made by virtue of section 474” immediately after the words “approval of court”.

268. Section 588 of the principal Act is amended
(a) in sub section (1) by inserting the words “(other than a floating charge)” immediately after the words “subject to a security”; and
(b) in sub section (6) by inserting the word “thousand”
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immediately after the words “two hundred”.

269. Section 590 of the principal Act is amended in sub section (2) by deleting paragraph (c) and substituting therefor the following new paragraph —

(c) a proposal for a compromise or arrangement to be sanctioned under the Companies Act, 2015;

270. Section 591 of the principal Act is amended —

(a) in sub section (1) —

(i) by deleting the words “detrimentally affect” appearing in paragraph (a) and substituting therefor the words “unfairly harm”;

(ii) by deleting the words “detrimentally affect” appearing in paragraph (b) and substituting therefor the words “unfairly harm”;

(b) in sub section (6) by deleting paragraph (b) and substituting therefor the following new paragraph —

(b) a compromise or arrangement sanctioned under the Companies Act, 2015;

271. Section 594 of the principal Act is amended—

(a) in subsection (1) by deleting the words “for a specified period” appearing in paragraph (b) and substituting therefor the following words “of creditor for a period”;

(b) by inserting the following new sub sections immediately after subsection (1)—

1A) An application under subsection 1(a) shall be accompanied by an affidavit in support of the application stating the grounds and evidence upon which the application is made.

1B) An application under subsection (1) shall be served upon the Official Receiver, who shall be an interested party in the proceedings.

1C) Upon receipt of the application for extension of an administrator’s term, and before the application is heard, the Official Receiver may—

(a) file a reply to the application; or

(b) at the hearing of the application, make representations to the Court on the issues raised in that application.
(c) by inserting the following new subsection immediately after sub section (2)—

(2A) An order of the Court may be made under subsection (1)(a) only if the Court is satisfied—

(a) that the company is unable or unlikely to pay its debts; and

(b) that the extension is reasonably likely to achieve an objective of administration.

272. Section 598 of the principal Act is amended in sub section (1) by deleting the expression “425” and substituting therefor the expression “426”.

273. Section 599 of the principal Act is amended in sub section (4) by inserting the word “after” immediately after the word “practicable”.

274. Section 608 of the principal Act is amended by deleting the words “appoint replacement administrator” and substituting therefor the word “replace administrator”.

275. Section 609 of the principal Act is amended by deleting the words “appoint replacement administrator” and substituting therefor the word “replace administrator”.

276. Section 610 of the principal Act is amended by deleting the words “appoint replacement administrator” and substituting therefor the word “replace administrator”.

277. Section 611 of the principal Act is amended by deleting the word “certain” appearing in the marginal note.

278. Section 615 of the principal Act is amended—

(a) by deleting the words “payable of company’s property and to have priority over holders of floating charges.” appearing in the marginal note.

(b) in sub section (3) by deleting the word “is” appearing in the opening statement and substituting therefor the word “are”;

(c) in sub section (4) by inserting the words “including a loan or other credit or finance facility for the benefit of the company provided that such loan or facility is necessary for the continuation of any business of the company,” immediately after the words “arising out of a contract”;
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(d) in sub section (6) by deleting paragraph (d).

279. Section 621 of the principal Act is amended by inserting the word “an” immediately after the word “Part to”.

280. Section 622 of the principal Act is amended in sub section (2) by deleting the word “period” appearing after the word “time”.

281. The principal Act is amended by inserting the following new sections immediately after section 623—

623A. (1) If while a company is under administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the administrator, may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned in subsection (1) are to be liable to make such contributions (if any) to the company’s assets as the court thinks proper.

(3) The persons specified in an application made under subsection (2) are entitled to be served with a copy of the application and to appear and be heard as respondents at the hearing of the application.

(4) If the Court makes an order against a person under subsection (2), it may also make an order disqualifying the person from—

(a) being or acting as a director of a company or a partner of a limited liability partnership;
(b) being or acting as a liquidator, provisional liquidator or administrator of a company or limited liability partnership;
(c) being or acting as a supervisor of a voluntary arrangement approved by the company or a limited liability partnership; or
(d) in any way, whether directly or indirectly, being concerned in the promotion, formation or management of a company or limited liability partnership,

for such period, not exceeding fifteen years, as may be specified in the order.

623B. 1) This section applies—
(a) to a company that is under insolvent administration; and
(b) to a person who, at a time before the company entered administration, was an officer of the company.

(2) For the purposes of this section—
(a) a company is in insolvent liquidation if, at the time the liquidation commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the liquidation;

(b) a company enters insolvent administration if, at the time the administration commences, its assets are insufficient for the payment of its debts and other liabilities and the expenses of the administration.

(3) If, in the course of the administration of a company, it appears to the administrator that a person to whom this section applies knew or ought to have known that there was no reasonable prospect that the company would avoid being placed in insolvent liquidation or entering insolvent administration, the administrator may make an application to the Court for an order under subsection (5).

(4) The Court may hear an application made under subsection (3) only if the person
in respect of whom the application was made has been served with a copy of the application.

(5) On the hearing of an application made under subsection (3), the Court may make an order declaring the respondent to be liable to make such contribution (if any) to the company’s assets as the Court considers appropriate, but only if it is satisfied that, at the relevant time, the respondent knew or ought to have known that there was no reasonable prospect that the company would avoid being placed in insolvent liquidation or entering insolvent administration.

(6) However, the Court may not make such an order if satisfied that the respondent took such steps to avoid potential loss to the company’s creditors as the respondent ought reasonably to have taken, assuming that the respondent knew that there was no reasonable prospect of the company avoiding going into solvent liquidation or entering insolvent administration.

(7) For the purposes of this section, the facts which the respondent ought to have known and the steps the respondent ought to have taken are those which would have been known or taken by a reasonably diligent person having both—

(a) the general knowledge, skill and experience which may reasonably be expected of a person carrying out the same functions as were carried out by the respondent; and

(b) the general knowledge, skill and experience that the respondent had.

(8) Nothing in this section affects the operation of section 623A.

(9) If the Court makes an order against a
person under subsection (5), it may also
make an order disqualifying the person from—

(a) being or acting as a director of a
company or limited liability
partnership;

(b) being or acting as a liquidator,
provisional liquidator or
administrator of a company or
limited liability partnership;

(c) being or acting as a supervisor of a
voluntary arrangement
approved by the company or
limited liability partnership; or

(d) in any way, whether directly or
indirectly, being concerned in the
promotion, formation or
management of a company or
limited liability partnership,
for such period, not exceeding fifteen years,
as may be specified in the order.

Proceedings under section 623A or
623B. Section 507 applies for the purposes
of an application under section 623A or
623B as it applies for the purposes of an
application under section 505 but as if the
reference in subsection (1) of section 507 to
the liquidator was a reference to the
administrator.

282. Part IX of the principal Act is amended by deleting the
sub heading titled “Division 1- Proposals for voluntary
arrangements”.

283. Section 624 of the principal Act is amended —
(a) by deleting the words Division 1
(b) in the definition of supervisor by inserting the words “under
section 630” immediately after the words “voluntary
arrangement” and by deleting the words “appointed under
section 626 or 627;

(c) by inserting the following definition in proper sequence—
“provisional supervisor”, in relation to a proposal, means
the person designated as referred to in sections 626 and 627.

284. Section 625 of the principal Act is amended in subsection (3) by inserting the words “or act as a provisional supervisor” immediately after the words “voluntary arrangement”.

285. Section 628 of the principal Act is amended—

(a) in subsection (1) by deleting the words “or that proposal” and substituting therefor the words “or without”;

(b) in sub section (2) by inserting the words “or the provisional supervisor,” immediately after the words “of their number”.

286. Section 629 of the principal Act is amended—

(a) in sub section (1) by deleting the word “directors”;

(b) by deleting sub section (2) and substituting therefor the following new sub section—

(2) The proposal (including any modifications) is approved if—

(a) it is approved—

(i) by a majority the members of the company present (either in person or by proxy) at the meeting of the company; and

(ii) by a three-quarters majority in value of the members of each group of creditors present (either in person or by proxy) at the meeting of creditors; or

(b) if, despite not being not approved by a majority of the members referred to in paragraph (a)(i), it is approved by a three-quarters majority in value of the members of each of the groups of creditors referred to in paragraph (a)(ii),

(c) in sub section (3) by inserting the words “both secured and unsecured” after the words “proof of debt” appearing in paragraph (a)(i);

(d) by deleting sub section (4);

(e) by deleting sub section (5);

(f) by deleting sub section (6);

(g) by deleting sub section (7); and

(h) by deleting sub section (8).
Amendment of section 630 of No. 18 of 2015.

287. Section 630 of the principal Act is amended by deleting sub section and substituting therefor the following sub section—
(1) A proposal (with or without modifications) takes effect as a voluntary arrangement by the company on the date it was approved by the creditors under section 629(2).

Amendment of section 631 of No. 18 of 2015.

288. Section 631 of the principal Act is amended—
(a) in sub section (2) by deleting the word “detrimentally” appearing in paragraph (a) and substituting therefor the word “unfairly”;
(b) in sub section (3) by deleting the expression “628(6) appearing in sub section (3) and substituting therefor the expression “628(9)”;
(c) in sub section (4) by deleting the expression “(2)(b)” and substituting therefor the expression “(3)(b)” and deleting the word “detrimentally and subsstituting therefor the word “unfairly”.

Amendment of section 633 of No. 18 of 2015.

289. Section 633 of the principal Act is amended in subsection (3) by deleting the expression (subsection (1) and substituting therefor the expression “subsection (2)”.

Amendment of section 634 of No. 18 of 2015.

290. Section 634 of the principal Act is amended—
(a) in sub section (1) by inserting the words “section 645” immediately after the words “moratorium under” in paragraph (a);
(b) in subsection (2) by deleting the words “Director of Public Prosecutions” wherever it appears and substituting therefor the words “Official Receiver”;
(c) in sub section (3) by deleting—
(i) the expression “Part XXX of”; and
(ii) the words “Director of Public Prosecutions” and substituting therefor the words “Official Receiver”;
(d) in sub section (4) by deleting—
(i) the expression “Part XXX of”;
(ii) the words “Director of Public Prosecutions” and substituting therefor the words “Official Receiver”;
(e) in subsection (7) by deleting the words “Director of Public Prosecutions” wherever it appears and substituting therefor
the words “Official Receiver”;

291. Section 640 of the principal Act is amended in sub section (1)—
(a) by deleting items (i) and (ii) appearing in paragraph (c);
(b) by deleting the expression “630(7)(a) appearing in paragraph (g) and substituting therefor the expression 2630(5)(a)”; and
(c) by deleting the words “under the repealed companies Act” appearing in paragraph (h).

292. The principal Act is amended by repealing section 642.

293. Section 643 of the principal Act is amended—
(a) by deleting sub section (1);
(b) In sub section (2) by deleting the word “supervise” appearing in paragraph (b) and substituting therefor the words “report on”;
(c) In sub section (7) by deleting the word “it”.

294. Section 645 of the principal Act is amended—
(a) by deleting sub section (30 and substituting therefor the following new sub section —

(4) If either of those meetings has not first been held within thirty days from and including the day on which the moratorium takes effect, the moratorium ends at the end of the required period unless the moratorium period is extended under section 669.

(b) by deleting sub section (4).

295. Section 647 of the principal Act is amended in sub section (1) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) give a notice to the effect that the moratorium has taken effect to any creditor of the company who has applied for a liquidation order against the company before the coming into effect of the moratorium.

296. Section 648 of the principal Act is amended in sub section (1) by deleting the words “of whose claim that supervisor is aware”
appearing in paragraph (b) and substituting therefor the words “who has applied for a liquidation order against the company before the coming into effect of the moratorium”.

297. Section 649 of the principal Act is amended —
   (a) in sub section (1)—
       (i) by inserting the word “of” immediately after the word “liquidation” appearing in paragraph (a);
       (ii) by inserting the following new paragraph immediately after paragraph (f)—
           (fa) an administrative receiver of the company may not be appointed;
   (b) in sub section (4) by deleting the expression “424” appearing in paragraph (a) and substituting therefor the expression “426”.

298. Section 651 of the principal Act is amended by deleting the words “enforcement of”.

299. Section 657 of the principal Act is amended —
   (a) in sub section (2) by deleting the words “to which this section applies” and substituting therefor the words “that is subject to a security”; and
   (b) in sub section (3) by deleting the words “to which this section applies” and substituting therefor the words “in the possession of the company under a credit purchase transaction”.

300. Section 659 of the principal Act is amended by deleting sub section (5).

301. Section 662 of the principal Act is amended in sub section (1) by deleting the expression “(3)” and substituting therefor the expression “(2)”.

302. Section 664 of the principal Act is amended in sub section (2) by inserting the words “or the provisional supervisor,” immediately after the words “one of their number”.

303. Section 665 of the principal Act is amended —
   (a) by deleting sub section (2) and substituting therefor the following new sub section—
       (2) The proposal (including any modifications) is approved
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if—
(a) it is approved—
(i) by a majority the members of the company present (either in person or by proxy) at the meeting of the company; and
(ii) by a three-quarters majority in value of the members of each group of creditors present (either in person or by proxy) at the meeting of creditors; or
(b) if, despite not being approved by a majority of the members referred to in paragraph (a)(i), it is approved by a three-quarters majority in value of the members of each of the groups of creditors referred to in paragraph (a)(ii).

304. Section 666 of the principal Act is amended in sub section (1) by deleting the words “day after the date on which it is approved by the Court by order made under section 665(7)(a) or on such later date as may be specified in the order” and substituting therefor the words “date it was approved by the creditors under section 665(2)”.

305. Section 667 of the principal Act is amended—
(a) in sub section (2) by deleting the word “detrimentally” and substituting therefor the word “unfairly”;
(b) in sub section (3) by deleting the expression “664(10)” in paragraph (a) and substituting therefor the expression “664(9)”;
(c) in sub section (4) by deleting the word “detrimentally” and substituting therefor the word “unfairly”.

306. Section 674 of the principal Act is amended in sub section (2)—
(a) by inserting the word “unfairly” immediately after the word
“detrimental” in paragraph (a); and

(b) by inserting the word “unfairly” immediately after the word “detrimental” in paragraph (b);

307. Section 682 of the principal Act is amended by inserting the following new subsection immediately after subsection (6)—

(7) Where a company has entered into a transaction with a person who, at the time the transaction, was a person connected with the company, (otherwise than by reason only of being an employee of the individual), the transaction is presumed, unless the contrary is shown, to have been at an undervalue and that it is also presumed that the circumstances provided for in subsection (6)(a) and (b) were not satisfied.

308. The principal Act is amended by inserting the following new Parts immediately after Part X—

PART XA PROCESSING OF CREDITORS’ CLAIMS IN BANKRUPTCY, IN LIQUIDATION OR UNDER ADMINISTRATION

690A. (1) This Part applies to bankruptcy, liquidation and administration and the definitions in this Part apply to bankruptcy, liquidation and administration proceedings unless otherwise stated.

(2) “Debt”, in relation to bankruptcy, liquidation and administration, means a debt or liability that the bankrupt or company—

(a) owes at the relevant date; or

(b) may become subject to after the relevant date by reason of any obligation incurred before that date;

(c) any interest provable as mentioned in section 690W.

(3) A fine, penalty or other order made by a court ordering the payment of money that has been made following a conviction of a bankrupt—

(a) is not a provable debt; and
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(b) is not discharged when the bankrupt is discharged from bankruptcy.

(4) “dividend”, in relation to a members' voluntary liquidation, includes a distribution; “provable debt” has the meaning given in section 690B; and “relevant date” means—

(a) in the case of a bankruptcy, the date of the bankruptcy order;

(b) in the case of a company under administration which was not immediately preceded by a liquidation, the date on which the company entered administration;

(c) in the case of a company under administration which was immediately preceded by a liquidation, the date on which the company went into liquidation;

(d) in the case of a liquidation which was not immediately preceded by an administration, the date on which the company went into liquidation; and

(e) in the case of a liquidation which was immediately preceded by an administration, the date on which the company entered administration.

(5) For the purposes of any provision of the Act or the insolvency regulations any liability in tort is a debt provable in the bankruptcy, liquidation or administration, if either—

(a) the cause of action has accrued at the relevant date; or

(b) all the elements necessary to establish the cause of action exist at that date except for actionable damage.

(6) For the purposes of references in any
provision of the Act or the insolvency regulations to a debt or liability, it is immaterial whether the debt or liability is present or future, whether it is certain or contingent, or whether its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion; and references in any such provision to owing a debt are to be read accordingly.

(7) In any provision of the Act or the insolvency regulations about bankruptcy, liquidation or administration, except in so far as the context otherwise requires, “liability” means (subject to subsection (5)) a liability to pay money or money’s worth, including any liability under an enactment, a liability for breach of trust, any liability in contract, tort or bailment, and any liability arising out of an obligation to make restitution.

690B. (1) Subject to section 690A, all claims by creditors are provable as debts against the bankrupt or company, whether they are present or future, certain or contingent, ascertained or sounding only in damages.

(2) Nothing in this section prejudices any enactment or rule of law under which a particular kind of debt is not provable, whether on grounds of public policy or otherwise.

690C. (1) A creditor wishing to recover a debt must submit a proof to the office-holder (bankruptcy trustee, liquidator or administrator as the case may be) unless—

(a) this section or an order of the court provides otherwise; or

(b) it is a members' voluntary liquidation in which case the creditor is not required to submit a proof unless the liquidator requires one to be submitted.
(2) A creditor is deemed to have proved—

(a) in a liquidation immediately preceded by an administration, where the creditor has already proved in the administration; or

(b) in an administration immediately preceded by a liquidation, where the creditor has already proved in the liquidation.

690D. (1) A proof must be in Form 5 of the insolvency regulations and must—

(a) be made out by, or under the direction of, the creditor and authenticated by the creditor or a person authorised on the creditor's behalf;

(b) state the creditor's name and address;

(c) if the creditor is a company, identify the company;

(d) state the total amount of the creditor's claim as at the relevant date, less any payments made after that date in relation to the claim, any deduction under section 690T and any adjustment by way of set-off in accordance with sections 690X, 690Y and 690Z;

(e) contain particulars of how and when the debt was incurred by the bankrupt or company;

(f) contain particulars of any security held, the date on which it was given and the value which the creditor puts on it;

(g) provide details of any credit purchase transaction in relation to goods to which the debt relates;
(h) provide details of any document by reference to which the debt can be substantiated;

(i) be dated and authenticated; and

(j) state the name, postal address and authority of the person authenticating the proof (if someone other than the creditor).

(2) The office-holder may call for the creditor to produce any document or other evidence which the office-holder considers is necessary to substantiate the whole or any part of a claim.

Costs of proving. 690E. (1) Each creditor bears the cost of proving for that creditor’s own debt, including costs incurred in providing documents or evidence under section 690D;

(2) Unless the court orders otherwise, costs incurred by the office-holder in estimating the value of a debt under section 690N are payable out of the assets as an expense of the bankruptcy, liquidation or administration.

Allowing inspection of proofs. 690F. The office-holder must, so long as proofs delivered to the office-holder are in the possession of the office-holder, allow them to be inspected, at all reasonable times on any business day, by the following—

(a) a creditor who has delivered a proof (unless the proof has been wholly rejected for purposes of dividend or otherwise, or withdrawn);

(b) a member or contributory of the company or, in the case of a bankruptcy, the bankrupt; and

(c) a person acting on behalf of any of the above.
Admission and rejection of proofs for dividend.

**690G.** (1) The office-holder may admit or reject a proof for dividend (in whole or in part).

(2) If the office-holder rejects a proof in whole or in part, the office-holder must deliver to the creditor a statement of the office-holder's reasons for doing so, as soon as reasonably practicable.

Appeal against decision on proof.

**690H.** (1) If a creditor is dissatisfied with the office-holder's decision under section 690G in relation to the creditor's own proof (including a decision whether the debt is preferential), the creditor may apply to the court for the decision to be reversed or varied.

(2) The application must be made within 21 days of the creditor receiving the statement delivered under section 690G(2).

(3) A member, a contributory, any other creditor or, in a bankruptcy, the bankrupt, if dissatisfied with the office-holder's decision admitting, or rejecting the whole or any part of, a proof or agreeing to revalue a creditor's security under section 690O, may make such an application within 21 days of becoming aware of the office-holder's decision.

Office-holder not liable for costs under section 690H.

**690I.** (1) The official receiver is not personally liable for costs incurred by any person in respect of an application under section 690H.

(2) An office-holder other than the Official Receiver is not personally liable for costs incurred by any person in respect of an application under section 690H unless the court orders otherwise.

Withdrawing or variation of proof.

**690J.** (1) A creditor may withdraw a proof at any time by delivering a written notice to the office-holder.
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(2) The amount claimed by a creditor's proof may be varied at any time by agreement between the creditor and the office-holder.

Exclusion of proof by the court.

690K. (1) The court may exclude a proof or reduce the amount claimed—

(a) on the office-holder's application, where the office-holder thinks that the proof has been improperly admitted, or ought to be reduced; or

(b) on the application of a creditor, a member, a contributory or a bankrupt, if the office-holder declines to interfere in the matter.

Debts to rank equally.

690L. Debts other than preferential debts (under the Second Schedule) rank equally between themselves and, after the preferential debts, must be paid in full unless the assets are insufficient for meeting them, in which case they abate in equal proportions between themselves.

Division of unsold assets.

690M. (1) This section applies to any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(2) The office-holder may with the required permission divide the property in its existing form among the creditors according to its estimated value.

(3) The required permission is—

(a) the permission of the creditors' committee in a bankruptcy or administration or, if there is no creditors' committee, the creditors; and

(b) the permission of the liquidation committee in a liquidation, or, if there is no liquidation committee, the creditors (without prejudice to
provisions of the Act about disclaimer).

**Estimate of value of debt.**

690N. (1) The office-holder must estimate the value of a debt that does not have a certain value because it is subject to a contingency or for any other reason.

(2) The office-holder may revise such an estimate by reference to a change of circumstances or to information becoming available to the office-holder.

(3) The office-holder must inform the creditor of the office-holder's estimate and any revision.

**Secured creditor: value of security.**

690O. (1) A secured creditor may, with the agreement of the office-holder or the permission of the court, at any time alter the value which that creditor has put upon a security in a proof.

(2) Subsection (3) applies where a secured creditor—

(a) being the applicant for the administration order or the appointer of the administrator, has in the application or the notice of appointment put a value on the security;

(b) being the applicant in winding-up or bankruptcy proceedings, has put a value on the security in the application; or

(c) has voted in respect of the unsecured balance of the debt.

(3) Where this subsection applies—

(a) the secured creditor may re-value the security only with the agreement of the office-holder or the permission of the court; and
(b) where the revaluation was by agreement, the office-holder must deliver a notice of the revaluation to the creditors within seven days after the office-holder's agreement.

690P. (1) If a secured creditor fails to disclose a security in a proof, the secured creditor must surrender that security for the general benefit of creditors, unless the court, on application by the secured creditor, relieves the secured creditor from the effect of this section on the grounds that the omission was inadvertent or the result of honest mistake.

(2) If the court grants that relief, it may require or allow the creditor's proof to be amended, on such terms as may be just.

690Q. (1) The office-holder may at any time deliver a notice to a creditor whose debt is secured that the office-holder proposes, at the expiration of 28 days from the date of the notice, to redeem the security at the value put upon it in the creditor's proof.

(2) The creditor then has 21 days (or such longer period as the office-holder may allow) in which to alter the value of the security in accordance with section 690O.

(3) If the creditor alters the value of the security with the permission of the office-holder or the court then the office-holder may only redeem at the new value.

(4) If the office-holder redeems the security the cost of transferring it is payable as an expense out of the insolvent estate.

(5) A creditor whose debt is secured may at any time deliver a notice to the office-holder requiring the office-holder to elect whether or not to redeem the security at the value then placed on it.
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(6) The office-holder then has three months in which to redeem the security or elect not to redeem the security.

Secured creditor: test of security’s value.

690R. (1) If the office-holder is dissatisfied with the value which a secured creditor puts on a security in the creditor’s proof the office-holder may require any property comprised in the security to be offered for sale.

(2) The terms of sale will be as agreed between the office-holder and the secured creditor, or as the court may direct.

(3) If the sale is by auction, the office-holder on behalf of the company or the insolvent estate and the creditor may bid.

(4) This section does not apply if the value of the security has been altered with the court’s permission.

Realisation or surrender of security by creditor.

690S. (1) If a creditor who has valued a security subsequently realises the security (whether or not at the instance of the office-holder)—

(a) the net amount realised must be treated in all respects (including in relation to any valuation in a proof) as an amended valuation made by the creditor; and

(b) the creditor may prove for the balance of the creditor’s debt.

(2) A creditor who voluntarily surrenders a security may prove for the whole of the creditor’s debt as if it were unsecured.

Discounts.

690T. All trade and other discounts (except a discount for immediate or early settlement) which would have been available to the company or the debtor but for the insolvency proceedings must be deducted from the claim.

Debts in foreign currency.

690U. (1) A proof for a debt incurred or
payable in a foreign currency must state the amount of the debt in that currency.

(2) The office-holder must convert all such debts into Kenyan Shillings at a single rate for each currency determined by the office-holder by reference to the exchange rates prevailing on the relevant date.

(3) On the next occasion when the office-holder communicates with the creditors the office-holder must advise them of any rate so determined.

(4) A creditor who considers that the rate determined by the office-holder is unreasonable may apply to the court.

(5) If on hearing the application the court finds that the rate is unreasonable it may itself determine the rate.

Payments of a periodical nature.

690V. (1) In the case of rent and other payments of a periodical nature, the creditor may prove for any amounts due and unpaid up to the relevant date.

(2) Where at that date any payment was accruing due, the creditor may prove for so much as would have been due at that date, if accruing from day to day.

Interest.

690W. (1) Where a debt proved in insolvency proceedings bears interest, that interest is provable as part of the debt except in so far as it is payable in respect of any period after the relevant date.

(2) In the circumstances set out below the creditor's claim may include interest on the debt for periods before the relevant date although not previously reserved or agreed.

(3) If the debt is due by virtue of a written instrument and payable at a certain time, interest may be claimed for the period from
that time to the relevant date.

(4) If the debt is due otherwise, interest may only be claimed if demand for payment of the debt was made in writing by or on behalf of the creditor, and notice was delivered that interest would be payable from the date of the demand to the date of the payment, before—

(a) the relevant date, in respect of administration or liquidation; or

(b) the filing of the bankruptcy application.

(5) Interest under subsection (4) may only be claimed for the period from the date of the demand to the relevant date or date of filing of the bankruptcy application and, for the purposes of the Act and the insolvency regulations, must be charged at a rate not exceeding that mentioned in subsection (6).

(6) The rate of interest to be claimed under subsections (3) and (4) is six per centum.

(7) In an administration—

(a) any surplus remaining after payment of the debts proved must, before being applied for any other purpose, be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the relevant date;

(b) all interest payable under sub-subsection (a) ranks equally whether or not the debts on which it is payable rank equally; and

(c) the rate of interest payable under sub-subsection (a) is whichever is the greater of the rate specified under subsection (6) and the rate applicable to the debt apart from the bankruptcy, liquidation or
Bankruptcy: mutual dealings and set-off.

690X. (1) This section applies in a bankruptcy where, before the bankruptcy, there have been mutual dealings between the bankrupt and a creditor proving or claiming to prove for a debt in the bankruptcy.

(2) An account must be taken of what is due from the bankrupt and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the liquidation.

(4) If there is a balance owed to the bankrupt then that must be paid to the bankruptcy trustee as part of the assets.

(5) However if all or part of the balance owed to the bankrupt results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under section 690QQ) if and when that debt becomes due and payable.

(6) In this section—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the bankrupt and a creditor proving or claiming to prove for a debt in the bankruptcy but a creditor may not claim the benefit of a set-off against an amount due from the bankrupt if, at the time when the credit was given to the bankrupt, the creditor knew or had reason to know that the bankrupt was insolvent.
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(7) A creditor of the bankrupt who claims a set-off shall declare in the creditor’s proof of debt that, at the time when the creditor gave the bankrupt credit, the creditor did not know and had no reason to know that the bankrupt was insolvent.

(8) A sum must be treated as being due to or from the bankrupt for the purposes of subsection (2) whether—

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

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

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

(9) For the purposes of this section—

(a) section 690N applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

(b) sections 690P to 690R apply to sums due to the company which—

(i) are payable in a currency other than Kenyan Shillings;

(ii) are of a periodical nature, or

(iii) bear interest; and

(c) section 690QQ applies to a sum due to or from the company which is payable in the future.

690Y. (1) This section applies in a liquidation where, before the company goes into liquidation, there have been mutual dealings between the company and a creditor of the

Liquidation: mutual dealings and set-off.
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company proving or claiming to prove for a debt in the liquidation.

(2) An account must be taken of what is due from the company and the creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the liquidation.

(4) If there is a balance owed to the company then that must be paid to the liquidator as part of the assets.

(5) However if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under section 690QQ) if and when that debt becomes due and payable.

(6) In this section—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving or claiming to prove for a debt in the liquidation but does not include any of the following—

(a) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) a meeting of the company’s creditors has been called under section 406, or

(ii) an application for the liquidation
of the company was pending;

(b) a debt arising out of an obligation where—

(i) the liquidation was immediately preceded by an administration, and

(ii) at the time the obligation was incurred the creditor had notice that an application for an administration order was pending or a person had delivered notice of intention to appoint an administrator; and

(c) a debt arising out of an obligation incurred during an administration which immediately preceded the liquidation;

(d) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—

(i) after the company went into liquidation;

(ii) at a time when the creditor had notice that a meeting of the company’s creditors had been called under section 406;

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

(iv) where the liquidation was immediately preceded by an administration at a time when the creditor had notice that an application for an administration order was pending or a person had delivered notice of intention to appoint an administrator; or

(v) during an administration which immediately preceded the liquidation.

(7) A sum must be treated as being due to or from the company for the purposes of subsection (2) whether—

(a) it is payable at present or in the future;
(b) the obligation by virtue of which it is payable is certain or contingent; or

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

(8) For the purposes of this section—

(a) section 690N applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

(b) sections 690U to 690W apply to sums due to the company which—

(k) are payable in a currency other than Kenyan Shillings;

(ii) are of a periodical nature; or

(iii) bear interest; and

(c) section 690QQ applies to a sum due to or from the company which is payable in the future.

690Z. (1) This section applies in an administration where the administrator intends to make a distribution and has delivered a notice under section 690DD.

(2) An account must be taken as at the date of the notice of what is due from the company and a creditor to each other in respect of their mutual dealings and the sums due from the one must be set off against the sums due from the other.

(3) If there is a balance owed to the creditor then only that balance is provable in the administration.

(4) If there is a balance owed to the company that must be paid to the administrator as part of the assets.
(5) However if all or part of the balance owed to the company results from a contingent or prospective debt owed by the creditor then the balance (or that part of it which results from the contingent or prospective debt) must be paid in full (without being discounted under section 690QQ) if and when that debt becomes due and payable.

(6) In this section—

“obligation” means an obligation however arising, whether by virtue of an agreement, rule of law or otherwise; and

“mutual dealings” means mutual credits, mutual debts or other mutual dealings between the company and a creditor proving or claiming to prove for a debt in the administration but does not include any of the following—

(a) a debt arising out of an obligation incurred after the company entered administration;

(b) a debt arising out of an obligation incurred at a time when the creditor had notice that—

(i) an application for an administration order was pending, or

(ii) any person had delivered notice of intention to appoint an administrator;

(c) a debt arising out of an obligation where—

(i) the administration was immediately preceded by a liquidation, and

(ii) at the time when the obligation was incurred the creditor had notice that a meeting of the company’s creditors had been called under section 406 or that a winding-up application was pending;
(d) a debt arising out of an obligation incurred during a liquidation which immediately preceded the administration; or

(e) a debt which has been acquired by a creditor by assignment or otherwise, under an agreement between the creditor and another party where that agreement was entered into—

(i) after the company entered administration;

(ii) at a time when the creditor had notice that an application for an administration order was pending;

(iii) at a time when the creditor had notice that any person had given notice of intention to appoint an administrator;

(iv) where the administration was immediately preceded by a liquidation, at a time when the creditor had notice that a meeting of the company’s creditors had been called under section 406 or that a winding-up application was pending; or

(v) during a liquidation which immediately preceded the administration.

(7) A sum must be treated as being due to or from the company for the purposes of subsection (2) whether—

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

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

(c) its amount is fixed or liquidated, or is capable of being ascertained by fixed rules or as a matter of opinion.
(8) For the purposes of this section—
(a) section 690N applies to an obligation which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value;

(b) sections 690U to 690W apply to sums due to the company which—

(i) are payable in a currency other than Kenyan Shillings;

(ii) are of a periodical nature, or

(iii) bear interest; and

(c) section 690QQ applies to a sum due to or from the company which is payable in the future.

PART XB DISTRIBUTIONS TO CREDITORS IN BANKRUPTCY, IN LIQUIDATION OR UNDER ADMINISTRATION

690AA. (1) This Part applies where the office-holder makes, or proposes to make, a distribution to any class of creditors other than secured creditors.

(2) Where the distribution is to a particular class of creditors of a company under administration, a reference in this Chapter to creditors is a reference to that class of creditors only.

690BB. Whenever a bankruptcy trustee or a liquidator in a creditors' voluntary liquidation or a liquidation by the court has sufficient funds in hand for the purpose the bankruptcy trustee or liquidator must, while retaining such sums as may be necessary for the expenses of the bankruptcy or the liquidation, declare and distribute dividends among the creditors in respect of the debts which they have proved.

690CC. (1) Subject to subsections (2) and (4)
where the office-holder intends to declare a first dividend or distribution the office-holder must gazette a notice containing—

(a) a statement that the office-holder intends to declare a first dividend or distribution;

(b) the date by which and place to which proofs must be delivered; and

(c) in the case of a members’ voluntary liquidation, where the dividend or distribution is to be a sole or final distribution, a statement that the distribution may be made without regard to the claim of any person in respect of a debt not proved.

(2) Where the intended dividend is only to preferential creditors the office-holder need only gazette a notice if the office-holder thinks fit.

(3) The office-holder may in addition advertise such a notice in such other manner (if any) as the office-holder thinks fit.

**690DD.** (1) The office-holder must deliver a notice of the intention to make a distribution to creditors or declare a dividend—

(a) to the creditors of a company under administration; and

(b) to all creditors in a liquidation or a bankruptcy who have not proved.

(2) Where the intended dividend is only for preferential creditors, the office-holder is only required to deliver such a notice to the preferential creditors.

(3) Where the office-holder intends to declare a dividend to unsecured creditors in an administration or winding-up the notice must
also state the value of the prescribed portion under section 474 unless there is no prescribed portion or the court has made an order under section 474(5).

690EE. A notice under section 690DD must contain the following—

(a) a statement that the office-holder intends to make a distribution to creditors or declare a dividend (as the case may be) within the period of two months from the last date for proving;

(b) a statement whether the proposed distribution or dividend is interim or final;

(c) the last date by which proofs may be delivered which must be—

(i) the same date for all creditors who prove, and

(ii) not less than 21 days from the date of notice;

(d) a statement of the place to which proofs must be delivered; and

(e) in the case of a members’ voluntary liquidation, where the distribution is to be a sole or final distribution, a statement that the distribution may be made without regard to the claim of any person in respect of a debt not proved.

690FF. (1) The office-holder must within 14 days of the last date for proving set out in the notice under section 690CC—

(a) admit or reject (in whole or in part) proofs delivered to the office-holder; or

(b) make such provision in relation to them as the office-holder thinks fit.
(2) The office-holder is not obliged to deal with a proof delivered after the last date for proving, but the office-holder may do so if the office-holder thinks fit.

(3) In the declaration of a dividend a payment must not be made more than once in respect of the same debt.

690GG. (1) The office-holder may postpone or cancel the dividend in the period of two months from the last date for proving if an application is made to the court for the office-holder’s decision on a proof to be reversed or varied, or for a proof to be excluded, or for a reduction of the amount claimed.

(2) The office-holder may postpone a dividend if the office-holder considers that due to the nature of the affairs of the person to whom the proceedings relate there is real complexity in admitting or rejecting proofs of claims submitted.

(3) Where the dividend is postponed or cancelled a new notice under section 690DD will be required if the dividend is paid subsequently.

690HH. (1) The office-holder must declare the dividend in the two-month period referred to in section 690GG in accordance with the notice of intention to declare a dividend unless the office-holder has had cause to postpone or cancel the dividend.

(2) The office-holder must not declare a dividend so long as there is pending an application to the court to reverse or vary a decision of the office-holder on a proof, or to exclude a proof or to reduce the amount claimed unless the court gives permission.

(3) If the court gives such permission, the office-holder must make such provision in
Notice of declaration of a dividend

690II. (1) Where the office-holder declares a dividend the office-holder must deliver notice of that fact to all creditors who have proved for their debts (subject to subsection (5)).

(2) The notice declaring a dividend may be delivered at the same time as the dividend is distributed.

(3) The notice must include the following in relation to the insolvency proceedings—

(a) the amounts raised from the sale of assets, indicating (so far as practicable) amounts raised by the sale of particular assets;

(b) the payments made by the office-holder in carrying out the office-holder's functions;

(c) the provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes;

(d) the total amount to be distributed and the rate of dividend; and

(e) whether, and if so when, any further dividend is expected to be declared.

(4) In an administration, a creditors' voluntary winding-up or a liquidation by the court, where the administrator or liquidator intends to make a distribution to unsecured creditors, the notice must also state the value of the prescribed portion under section 474 unless there is no prescribed portion or the court has made an order under section 474(5).

(5) Where the office-holder declares a dividend for preferential creditors only, the notice under subsection (1) need only be delivered to those preferential creditors who
have proved for their debts.

690JJ. (1) When the bankruptcy trustee or liquidator has realised all the assets or so much of them as he or she can, in the opinion of the bankruptcy trustee or liquidator, be realised without needlessly prolonging the bankruptcy or liquidation, he or she must deliver a notice either—

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

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

(2) The notice must contain the particulars required by sections 690EE, 690KK or 690LL as the case may be and must require claims against the assets to be established by a date set out in the notice.

690KK. (1) This section applies in bankruptcy, liquidation and administration.

(2) If the office-holder delivers notice to creditors that the office-holder is unable to declare any dividend or (as the case may be) any further dividend, the notice must contain a statement to the effect either—

(a) that no funds have been realised; or

(b) that the funds realised have already been distributed or used or allocated for paying the expenses of the insolvency proceedings.

(3) The information required by subsection (2) may be included in a progress report.

690LL. 1) Where it is intended that the distribution is to be a sole or final dividend, after the date specified as the last date for proving in the notice under section 690DD, the office-holder—
(a) in a bankruptcy or liquidation, must pay any outstanding expenses of the bankruptcy or liquidation out of the assets;

(b) in an administration, must—

(i) pay any outstanding expenses of a liquidation or provisional liquidation that immediately preceded the administration,

(ii) pay any items payable in accordance with section 615,

(iii) pay any amount outstanding (including debts or liabilities and the administrator’s own remuneration and expenses) which would, if the administrator were to cease to be the administrator of the company, be payable out of the property of which the administrator had custody or control in accordance with section 615, and

(iv) declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved; or

(c) in a members’ voluntary liquidation may, and in every other case must, declare and distribute that dividend without regard to the claim of any person in respect of a debt not already proved.

(2) The court may, on the application of any person, postpone the date specified in the notice.

690MM. In a bankruptcy, liquidation or administration, in the calculation and distribution of a dividend the office-holder must make provision for—
(a) any debts which are the subject of claims which have not yet been determined; and

(b) disputed proofs and claims.

690NN. (1) A creditor is not entitled to disturb the payment of any dividend or making of any distribution because—

(a) the amount claimed in the creditor's proof is increased after payment of the dividend;

(b) the creditor did not prove for a debt before the declaration of the dividend; or

(c) in a members' voluntary liquidation, the creditor did not prove for a debt before the last date for proving or increases the claim in proof after that date.

(2) However the creditor is entitled to be paid a dividend or receive a distribution which the creditor has failed to receive out of any money for the time being available for the payment of a further dividend or making a further distribution.

(3) Such a dividend must be paid or distribution made before that money is applied to the payment of any further dividend or making of any further distribution.

(4) If, after a creditor's proof has been admitted, the proof is withdrawn or excluded, or the amount of it is reduced, the creditor is liable to repay to the office-holder, for the credit of the insolvency proceedings, any amount overpaid by way of dividend.

69000. (1) The following applies where a creditor alters the value of a security after a dividend has been declared.
(2) If the alteration reduces the creditor's unsecured claim ranking for dividend, the creditor must as soon as reasonably practicable repay to the office-holder, for the credit of the administration or of the insolvent estate, any amount received by the creditor as dividend in excess of that to which the creditor would be entitled, having regard to the alteration of the value of the security.

(3) If the alteration increases the creditor's unsecured claim, the creditor is entitled to receive from the office-holder, out of any money for the time being available for the payment of a further dividend, before any such further dividend is paid, any dividend or dividends which the creditor has failed to receive, having regard to the alteration of the value of the security.

(4) The creditor is not entitled to disturb any dividend declared (whether or not distributed) before the date of the alteration.

690PP. If a creditor contravenes any provision of the Act or the insolvency regulations relating to the valuation of securities, the court may, on the application of the office-holder, order that the creditor be wholly or partly disqualified from participation in any dividend.

690QQ. (1) Where a creditor has proved for a debt of which payment is not due at the date of the declaration of a dividend, the creditor is entitled to the dividend equally with other creditors, but subject as follows.

(2) For the purpose of dividend (and no other purpose) the amount of the creditor's admitted proof must be discounted by applying the following formula—

$$X_{1.05^n}$$
where—
(a) “X” is the value of the admitted proof; and
(b) “n” is the period beginning with the relevant date and ending with the date on which the payment of the creditor's debt would otherwise be due, expressed in years (part of a year being expressed as a decimal fraction of a year).

Non-payment of dividend 690RR. (1) No action lies against the office-holder for payment of a dividend.

(2) However, if the office-holder refuses to pay a dividend the court may, if it thinks just, order the office-holder to pay it and also to pay, out of the office-holder's own money—
(a) interest on the dividend, at the rate of six per centum per annum, from the time when it was withheld; and
(b) the costs of the proceedings in which the order to pay is made.

309. Section 700 of the principal Act is amended by inserting the following new section 700A immediately after section 700

Prosecutorial powers. 700A. The Director of Public Prosecutions may, in accordance with the Office of the Director of Public Prosecutions Act, 2013 and this section:
(a) By a notice in the Kenya Gazette delegate to the Official Receiver prosecutorial powers for the purposes of prosecuting offences under this Act, or;
(b) By a notice in the Kenya Gazette appoint special prosecutors to prosecute offences under this Act;

310. Section 701 of the principal act is amended—
(a) by deleting the marginal note and substituting therefor the following new marginal note—
“Powers of the Official Receiver to enforce the Act”;
(b) by deleting subsection (1) and substituting therefor the
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following new subsection—
(1) The Board shall, as and when necessary, and on such terms as approved, appoint suitably qualified persons to the positions of—
(a) Official Receiver; and
(b) one or more Deputy Official Receivers.

(c) in subsection (4) by deleting the words “seven years” and substituting therefor the following words “five years”;

(d) in subsection (5) by inserting the words “and has demonstrable knowledge, skills and experience in insolvency” at the end of the subsection.

(e) in sub section (6)—
(i) by deleting the words “or has entered into a deed of composition under Division 24 of Part III” in paragraph (a)(i); and

(ii) by inserting the word “an” immediately after the words “convicted of” in paragraph (b).

311. Section 704 of the principal Act is amended in subsection (1) by deleting the words “Cabinet Secretary and substituting therefor the word “Board”.

312. Section 708 of the principal Act is amended—
(a) by deleting sub section (1) and substituting therefor the following new subsection—
(1) The Official Receiver shall, with the approval of the Board, establish an account, to be called the “Insolvency Services Account”.

(b) by inserting the following new sub sections immediately after sub section (4)—
(5) The Official Receiver shall retain interest earned from investments under sub section (4) at a rate to be determined by the regulations for purposes of enabling the Official Receiver to carry out more efficiently the provisions of the Act.

(6) The Cabinet Secretary may make regulations prescribing how the funds under subsection (5) shall be utilized.

313. Section 709 of the principal Act is amended in subsection (1) by inserting the words “at the expiry of three years from the date of declaration of the last dividends” immediately after the words “The Official Receiver shall”. 
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314. The principal Act is amended by inserting the following sections immediately after section 719 under Part XIII—

719A. (1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if—

(a) that person makes a gift to the other person or otherwise enters into a transaction with the other on terms that provide for the person to receive no consideration;

(b) that person enters into a transaction with the other 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 that person.

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for—

(a) restoring the position to what it would have been if the transaction had not been entered into; and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by that person for the purpose—

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against that person; or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which that other person is making or may make.

(4) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable
of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as “the debtor”.

719B. (1) An application for an order under section 719A shall not be made in relation to a transaction except—

(a) in a case where the debtor has been made bankrupt or is a body corporate which is being liquidated or is under administration, by the official receiver, by the bankruptcy trustee of the bankrupt's estate or the liquidator or administrator of the body corporate or (with the leave of the court) by a victim of the transaction;

(b) in a case where a victim of the transaction is bound by a voluntary arrangement approved under Division 1 of Part IV or Part IX of this Act, by the supervisor of the voluntary arrangement or by any person who (whether or not so bound) is such a victim; or

(c) in any other case, by a victim of the transaction.

(2) An application made under any of the paragraphs of subsection (1) is to be treated as made on behalf of every victim of the transaction.

719C. (1) Without prejudice to the generality of section 719A, an order made under that section with respect to a transaction may (subject as follows)—

(a) require any property transferred as part of the transaction to be vested in any person, either absolutely or for the benefit of all the persons on whose behalf the application for the order is treated as made;

(b) require any property to be so vested
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if it represents, in any person’s hands,
the application either of the proceeds
of sale of property so transferred or
of money so transferred;

(c) release or discharge (in whole or in
part) any security given by the
debtor;

(d) require any person to pay to any
other person in respect of benefits
received from the debtor such sums
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 as the court thinks
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 property and for such
security or charge to have the same
priority as a security or charge
released or discharged (in whole or in
part) under the transaction.

(2) An order under section 719A may affect the
property of, or impose any obligation on, any
person whether or not that person is the person
with whom the debtor entered into the
transaction; but such an order—

(a) shall not detrimentally affect any
interest in property which was
acquired from a person other than the
debtor and was acquired in good faith,
for value and without notice of the
relevant circumstances, or
detrimentally affect any interest
deriving from such an interest; and
(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless that person was a party to the transaction.

(3) For the purposes of this section the relevant circumstances in relation to a transaction are the circumstances by virtue of which an order under section 719A may be made in respect of the transaction.

315. Section 722 of the principal Act is amended in sub section (2) by inserting the word “to” immediately after the words “process relating”.

316. Section 726 of the principal Act is amended—
(a) in sub section (2)—
(i) by deleting paragraph (b);
(ii) by inserting the words “the person is a bankrupt and” immediately before the words “a voluntary arrangement” in paragraph (c);
(b) in sub section (3) by deleting paragraph (b)

317. Section 729 of the principal Act is amended by deleting sub section (3) and substituting therefor the following sub section—

(3) The provisions of the Companies Act, 2015 on the service of documents on and by companies shall apply to a document that is required or permitted by or under this Act to be served on or by, or given to or by a company.

318. Section 734 of the principal Act is amended in sub section (3) by deleting the expression “736” and substituting therefor the expression “735”.

319. The First Schedule to the principal Act is amended—
(a) by deleting the headings under Parts 1-3; and
(b) in paragraph (3) by deleting the words “subject to such stipulations as to security or otherwise as the creditors’ committee or the Court thinks fit.”
320. The Second Schedule to the principal Act is amended by deleting the references and substituting therefor the following references—
“(SS. 175, 247, 375, & 471, 519J & 582)"

321. The Third Schedule to the principal Act is amended—
(a) by deleting the headings under Parts 1-3; and
(b) in paragraph (10) by deleting the word “sequestration” wherever it appears.

322. The Fourth Schedule to the principal Act is amended—
(a) by adding the following expression in the references “519K;
(b) by adding the following words in the title “and administrative receivers”;
(c) in paragraph (1) by adding the words “or administrative receiver” immediately after the words “the administrator”;
(d) by deleting paragraph (4) and substituting therefor the following paragraph —
(4) Power to appoint an advocate solicitor or accountant or other professionally qualified person to assist the administrator or administrative receiver in the performance of the functions of the administrator or administrative receiver;
(e) in paragraph 11 by inserting the words “or administrative receiver” immediately after the words “the administrator”;
(f) in paragraph 13—
(i) by inserting the words “functions of the” immediately after the words “performance of the”;
(ii) by deleting the words “administrator’s functions” and substituting therefor the words “or administrative receiver”.

323. The Fifth Schedule to the principal Act is amended—
(a) In paragraph (4) by deleting item (e); and
(b) In paragraph (10) by deleting the word “Sixth” appearing in the marginal note and substituting therefor the word “Fifth”

324. The principal Act is amended by inserting the following new Schedule immediately after the Fifth Schedule—
SIXTH SCHEDULE (s.7A)

CODE OF ETHICS
REGULATION OF INSOLVENCY PRACTITIONERS IN KENYA

This Code is intended to assist insolvency practitioners meet the obligations expected of them by providing professional and ethical guidance.

PART A
Definitions and Scope

1. Unless otherwise stated the following definitions apply:

“Act” means the Insolvency Act 2015;

“close or immediate family” means a spouse (including persons living together as man and wife where there is no legal marriage), dependent, parent, brother, sister, child or sibling;

“entity” includes a corporate body;

“fundamental principles” means the fundamental principles set out at Part B of this Code;

“individual within the practice” means the insolvency practitioner, any principals in the practice and any employees within the practice;

“insolvency practitioner” has the same meaning as under the Act;

“insolvency practitioner appointment” means formal appointment in terms of the provisions of the Act;

“insolvency practitioner’s team” means any person under the control of the insolvency practitioner in the carrying out of his or her functions;

“practice” means the organisation in which the insolvency practitioner practises;

“principal” in respect of a partnership, means a partner or any person who is held out to be a partner; in respect of a sole practitioner, that person; and
“professional body” means a professional body to which the insolvency practitioner belongs.

2. This Code applies to all insolvency practitioners. Insolvency practitioners should take steps to ensure that this Code is applied in all professional work relating to an insolvency appointment, and to any professional work that may lead to such an insolvency appointment. Although an insolvency appointment will be of the insolvency practitioner personally rather than his or her practice, he or she should ensure that the standards set out in this Code are applied to all members of the insolvency team.

3. This Code and the spirit that underlies it governs the conduct of insolvency practitioners. Failure to observe the Code may or may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an insolvency practitioner.

PART B
Fundamental Principles

4. An insolvency practitioner is required to comply with the fundamental principles set out in this Part.

Integrity

5. An insolvency practitioner shall be straightforward and honest in all professional and business relationships.

Objectivity

6. An insolvency practitioner shall not allow bias, conflict of interest or undue influence of others to override professional or business judgment.

Professional competence and due care

7. An insolvency practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques, including international best practices. An insolvency practitioner shall act diligently and in accordance with applicable technical and professional standards when providing professional services.

Confidentiality

8. An insolvency practitioner shall respect the confidentiality of information acquired as a result of professional and business relationships and shall not disclose any such information to
third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships shall not be used for the personal advantage of the insolvency practitioner or third parties.

Professional behaviour
9. An insolvency practitioner shall comply with relevant laws and regulations and shall avoid any action that discredits the profession. Insolvency practitioners shall conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

PART C
Framework Approach
10. The framework approach is a method that insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an insolvency practitioner to-

(a) take reasonable steps to identify any threats to compliance with the fundamental principles;

(b) evaluate any such threats; and

(c) respond in an appropriate manner to those threats.

Included in this Code are examples of threats and possible safeguards. These examples are illustrative and should not be considered as an exhaustive list of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles, or to specify the safeguards that may be available.

Identification of threats to the fundamental principles
11. An insolvency practitioner shall take reasonable steps to identify the existence of any threats to compliance with the fundamental principles that arise during the course of his or her professional work.

12. An insolvency practitioner shall take particular care to identify the existence of threats which exist prior to, or at the time of, taking an insolvency practitioner appointment or which, at that stage, may reasonably be expected to arise during the course of such an insolvency practitioner appointment. The
insolvency practitioner shall take these threats into account when deciding whether to accept an insolvency practitioner appointment.

13. In identifying the existence of any threats, an insolvency practitioner shall have regard to relationships whereby the practice is held out as being part of a national or an international association. Threats may fall into one or more of five categories—

- (a) Self-interest threats: which may occur as a result of the financial or other interests of a practice or an insolvency practitioner, or of a close or immediate family member of an individual within the practice;

- (b) Self-review threats: which may occur when a previous judgment made by an individual within the practice needs to be re-evaluated by the insolvency practitioner;

- (c) Advocacy threats: which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;

- (d) Familiarity threats: which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and

- (e) Intimidation threats: which may occur when an insolvency practitioner may be deterred from acting objectively by threats, actual or perceived.

The following paragraphs provide examples of the possible threats that an insolvency practitioner may face.

Self-interest threats
14. Examples of circumstances that may create self-interest threats for an insolvency practitioner include—

- (a) an individual within the practice having an interest in a creditor or potential creditor with a claim that requires subjective adjudication;

- (b) concerns about the possibility of damaging a business relationship; or
(c) concerns about potential future employment.

Self-review threats.

15. Examples of circumstances that may create self-review threats include—
   (a) the acceptance of an insolvency practitioner appointment in respect of an entity where an individual within the practice has recently been employed by or seconded to that entity; or
   
   (b) an insolvency practitioner or the practice having carried out professional work of any description, including sequential insolvency practitioner appointments, for that entity.

Advocacy Threats
16. Examples of circumstances that may create advocacy threats include—
   (a) acting in an advisory capacity for a creditor of an entity; or
   
   (b) acting as an advocate for a client in litigation or dispute with an entity.

Familiarity Threats
17. Examples of circumstances that may create familiarity threats include—
   (a) an individual within the practice having a close relationship with any individual having a financial interest in the insolvent entity;
   
   (b) an individual within the practice having a close relationship with a potential purchaser of an insolvent’s assets and/or business.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

Intimidation Threats
18. Examples of circumstances that may create intimidation threats include—
   (a) The threat of dismissal or replacement being used to—
      (i) apply pressure not to follow relevant laws and regulations made thereunder, this Code, any other applicable guidelines, technical or professional standards;
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(ii) exert influence over an insolvency practitioner appointment where the insolvency practitioner is an employee rather than a principal of the practice;

(b) being threatened with litigation; or
(c) the threat of a complaint being made to the insolvency practitioner’s professional body.

Evaluation of threats

19. An insolvency practitioner shall take reasonable steps to evaluate any threats to compliance with the fundamental principles that he or she has identified.

20. In particular, an insolvency practitioner shall consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.

Possible safeguards

21. Having identified and evaluated a threat to the fundamental principles an insolvency practitioner shall consider whether there are any safeguards that may be available to reduce the threat to an acceptable level.

22. The relevant safeguards will vary depending on the circumstances. Generally, safeguards fall into two broad categories:

(a) firstly, safeguards created by the profession, legislation or regulation; and

(b) secondly, safeguards in the work environment.

23. In the insolvency context safeguards in the work environment can include safeguards specific to an insolvency practitioner appointment. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged. Some examples include:

(a) leadership that stresses the importance of compliance with the fundamental principles;
(b) policies and procedures to implement and monitor quality control of engagements;
(c) documented policies regarding the identification
of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level;

(d) documented internal policies and procedures requiring compliance with the fundamental principles;

(e) policies and procedures to consider the fundamental principles before the acceptance of an insolvency practitioner appointment;

(f) policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties;

(g) policies and procedures to prohibit individuals who are not members of the insolvency practitioner’s team from inappropriately influencing the outcome of an insolvency practitioner appointment;

(h) timely communication of a practice’s policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures;

(i) designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguards system;

(j) a disciplinary mechanism to promote compliance with policies and procedures;

(k) published policies and procedures to encourage and empower individuals within the practice to communicate to senior levels within the practice and/or the insolvency practitioner any issue relating to compliance with the fundamental principles that concerns them.

PART D
Specific Application of this Code
Insolvency practitioner appointments

24. The practice of insolvency is principally governed by statute and secondary legislation, and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, an insolvency practitioner must comply with such provisions. In relation to his
or her conduct, an insolvency practitioner must also comply with directions from any relevant authority, including the Court, to the extent that such directions are not inconsistent with statute, secondary legislation or this Code.

25. In addition to the obligations imposed upon him or her by paragraph 24 of this Code, an insolvency practitioner shall comply with such other duties or obligations that he or she may be under.

26. Before agreeing to accept any insolvency practitioner appointment (including a joint appointment), an insolvency practitioner shall consider whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest, or by any significant professional or personal relationships.

27. In considering whether objectivity or integrity may be threatened, an insolvency practitioner shall identify and evaluate any professional or personal relationship that may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships shall then be considered, together with the introduction of any possible safeguards. Generally, it will be inappropriate for an insolvency practitioner to accept an insolvency practitioner appointment where a threat to the fundamental principles exists, or may reasonably be expected to arise, during the course of the insolvency practitioner appointment, unless-

(a) disclosure is made, prior to the insolvency practitioner appointment, of the existence of such a threat to the Court or to the creditors on whose behalf the insolvency practitioner would be appointed to act and no objection is made to the insolvency practitioner being appointed; and

(b) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

28. The following safeguards may be considered-

(a) involving and/or consulting another insolvency
practitioner from within the practice to review the work done;
(b) consulting an independent third party, such as a committee of creditors, a professional body or another insolvency practitioner;
(c) involving another insolvency practitioner to perform part of the work, which may include another insolvency practitioner taking a joint appointment where the conflict arises during the course of the insolvency practitioner appointment;
(d) obtaining legal advice from a legal practitioner with appropriate experience and expertise;
(e) changing the members of the insolvency practitioner’s team;
(f) the use of separate insolvency practitioners and/or staff;
(g) procedures to prevent access to information by the use of information barriers (e.g. strict physical separation of such teams, confidential and secure data filing);
(h) clear guidelines for individuals within the practice on issues of security and confidentiality;
(i) the use of confidentiality agreements signed by individuals within the practice;
(j) regular review of the application of safeguards by a senior individual within the practice not involved with the insolvency practitioner appointment;
(k) terminating the financial or business relationship that gives rise to the threat; or
(l) seeking directions from the Court.

29. As regards joint appointments, where an insolvency practitioner is specifically precluded by this Code from accepting an insolvency practitioner appointment as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the insolvency practitioner appointment appropriate.

30. In deciding whether to take an insolvency practitioner appointment in circumstances where a threat to the fundamental principles has been identified, the insolvency practitioner shall consider whether the interests of those on whose behalf he or she would be appointed to act would best be served by the
appointment of another insolvency practitioner who did not face the same threat and, if so, whether any such appropriately qualified and experienced other insolvency practitioner is likely to be available to be appointed.

31. An insolvency practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an insolvency practitioner shall conclude that it is not appropriate to accept an insolvency practitioner appointment.

32. Following acceptance, any threats shall continue to be kept under appropriate review and an insolvency practitioner shall be mindful that other threats may come to light or arise. There may be occasions when the insolvency practitioner is no longer in compliance with these guidelines because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the insolvency practitioner has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In deciding whether to continue an insolvency practitioner appointment, the insolvency practitioner may take into account the wishes of the creditors who, after full disclosure has been made, have the right to retain or replace the insolvency practitioner.

33. In all cases an insolvency practitioner will need to exercise his or her judgment to determine how best to deal with an identified threat. In exercising his or her judgment, an insolvency practitioner shall consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by factors such as the significance of the threat, the nature of the work and the structure of the practice.

Conflicts of interest

34. An insolvency practitioner shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles.

35. Examples of where a conflict of interest may arise are where-
(a) an insolvency practitioner has to deal with claims between the separate and conflicting interests of entities over whom he or she is appointed;
(b) there is a succession of or sequential insolvency practitioner appointments; or
(c) a significant relationship has existed with the entity or someone connected with the entity.
36. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.

Practice mergers
37. Where practices merge, they shall be treated as one for the purposes of assessing threats to the fundamental principles.

38. At the time of the merger-
(a) existing insolvency practitioner appointments shall be reviewed and any threats identified; and
(b) principals and employees of the merged practice become subject to common ethical constraints in relation to accepting new insolvency practitioner appointments to clients of either of the former practices.

39. However, existing insolvency practitioner appointments that are rendered in apparent breach of this Code by a merger need not be determined automatically, provided that a considered review of the situation by the practice discloses no obvious and immediate ethical conflict.

40. Where an individual within the practice has, in any former practice, undertaken work upon the affairs of an entity in a capacity that is incompatible with an insolvency practitioner appointment of the new practice, the individual shall not work or be employed on that assignment.

Professional competence and due care
41. Prior to accepting an insolvency practitioner appointment the insolvency practitioner shall ensure that he or she is satisfied that the following matters have been considered-
(a) knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;
(b) an appropriate understanding of the nature of the entity’s business, the complexity of its operations,
the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;
(c) knowledge of relevant industries or subject matters;
(d) experience with relevant regulatory or reporting requirements;
(e) assignment of sufficient staff with the necessary competencies;
(f) use of experts where necessary.
(g) compliance with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

42. The fundamental principle of professional competence and due care requires that an insolvency practitioner should only accept an insolvency practitioner appointment when the insolvency practitioner has sufficient expertise.

43. A self-interest threat to the fundamental principle of professional competence and due care is created if the insolvency practitioner, or the insolvency practitioner’s team, does not possess or cannot acquire the competencies necessary to carry out the insolvency practitioner appointment. Expertise will include appropriate training, technical knowledge, knowledge of the entity and the business with which the entity is concerned.

Professional and personal relationships
44. The environment in which insolvency practitioners work, and the relationships formed in their professional and personal lives, can lead to threats to the fundamental principle of objectivity. In particular, the principle of objectivity may be threatened if any individual within the practice, the close or immediate family of an individual within the practice or the practice itself, has or has had a professional or personal relationship that relates to the insolvency practitioner appointment being considered. Professional or personal relationships may include (but are not restricted to) relationships with—
(a) the entity;
(b) any director or shadow director or former director or shadow director of the entity;
(c) shareholders of the entity;
(d) any principal or employee of the entity;
(e) business partners of the entity;
(f) companies or entities controlled by the entity;
(g) companies which are under common control;
(h) creditors (including debenture holders) of the entity;
(i) debtors of the entity;
(j) close or immediate family of the officers of the entity;
(k) or others with commercial relationships with the entity.

Safeguards within the practice shall include policies and procedures to identify relationships between individuals within the practice and third parties in a way that is proportionate and reasonable in relation to the insolvency practitioner appointment being considered.

45. Where a professional or personal relationship of the type described in paragraph 44 has been identified, the insolvency practitioner shall evaluate the impact of the relationship in the context of the insolvency practitioner appointment being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following:

(a) the nature of the previous duties undertaken by a practice during an earlier relationship with the entity;
(b) the impact of the work conducted by the practice on the financial state and/or the financial stability of the entity in respect of which the insolvency practitioner appointment is being considered;
(c) whether the fee received for the work by the practice is or was significant to the practice itself or is or was substantial;
(d) the time elapsed since professional work was last carried out by the practice for the entity;
(e) whether the insolvency practitioner appointment being considered involves consideration of any work previously undertaken by the practice for that entity;
(f) the nature of any personal relationship and the proximity of the insolvency practitioner to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the entity in relation to which the insolvency practitioner appointment relates;
(g) whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists;
(h) the nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the entity;

(i) the extent of the insolvency practitioner’s team’s familiarity with the individuals connected with the entity.

Having identified and evaluated a relationship that may create a threat to the fundamental principles, the insolvency practitioner shall consider his or her response including the introduction of any possible safeguards to reduce the threat to an acceptable level. Such safeguards may include-

(a) withdrawing from the insolvency practitioner’s team;
(b) terminating (where possible) the financial or business relationship giving rise to the threat;
(c) disclosure of the relationship and any financial benefit received by the practice (whether directly or indirectly) to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.

46. An insolvency practitioner may encounter situations in which no or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a significant professional relationship or a significant personal relationship. Where this is the case the insolvency practitioner shall conclude that it is not appropriate to take the insolvency practitioner appointment.

Consideration should always be given to the perception of others when deciding whether to accept an insolvency practitioner appointment. Whilst an insolvency practitioner may regard a relationship as not being significant to the insolvency practitioner appointment, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

47. Actual or perceived threats to the fundamental principles during realisation of assets in the course of an insolvency practitioner appointment.

Save in circumstances which clearly do not impair the insolvency practitioner’s objectivity, insolvency practitioners shall not themselves acquire, directly or indirectly, any of the
assets of an entity, nor knowingly permit any individual within the practice, or any close or immediate family member of the insolvency practitioner or of an individual within the practice, directly or indirectly, to do so.

48. Where the insolvency practitioner sells the assets and business of an insolvent company shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. Creditors or others not involved in the prior agreement may also see the sale as a threat to objectivity. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.

It is also particularly important for an insolvency practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his or her decision-making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

Obtaining specialist advice and services

49. When an insolvency practitioner intends to rely on the advice or work of another, the insolvency practitioner shall evaluate whether such reliance is warranted. The insolvency practitioner shall consider factors such as reputation, expertise and available resources and the applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

50. Threats to the fundamental principles (for example familiarity threats and self-interest threats) can arise if services are provided by a regular source independent of the practice. Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each insolvency practitioner appointment. Additional safeguards may include clear guidelines and policies within the practice on such relationships. An insolvency practitioner should also consider disclosure of the existence of such business relationships to the general body of creditors, or the creditors’ committee if one exists.

51. Threats to the fundamental principles can also arise where
services are provided from within the practice, or by a party with whom the practice (or an individual within the practice) has a business or personal relationship. An insolvency practitioner shall take particular care in such circumstances to ensure that the best value and service is being provided.

Fees and other types of remuneration

52. Where an engagement may lead to an insolvency practitioner appointment, an insolvency practitioner shall make any party to the work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees.

53. The following applies after accepting an insolvency practitioner appointment-
   (a) during an insolvency practitioner appointment, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate;
   (b) if such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the insolvency practitioner or the practice;
   (c) further, where such fees or commissions are accepted an insolvency practitioner should disclose them to creditors.

Obtaining insolvency practitioner appointments

54. The special nature of insolvency practitioner appointments makes the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of insolvency practitioner appointments inappropriate. This does not, however, preclude an arrangement between an insolvency practitioner and an employee whereby the employee’s remuneration is based in whole or in part on introductions obtained for the insolvency practitioner through the efforts of the employee.

Gifts and hospitality

55. An insolvency practitioner, or a close or immediate family member, may be offered gifts and hospitality. In relation to an insolvency practitioner appointment, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and
intimidation threats may arise from the possibility of such offers being made public.

The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality the insolvency practitioner shall have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision-making or obtain information, the insolvency practitioner may generally conclude that there is no significant threat to compliance with the fundamental principles.

56. Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. If an insolvency practitioner encounters a situation in which no or no reasonable safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level he or she should conclude that it is not appropriate to accept the offer.

57. An insolvency practitioner shall not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

58. It will always be for the insolvency practitioner to justify his or her actions. An insolvency practitioner will be expected to be able to demonstrate the steps that he or she took and the conclusions that he or she reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency practitioner appointment, by reference to written contemporaneous records.

59. The records an insolvency practitioner maintains, in relation to the steps that he or she took and the conclusions that he or she reached, must be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his or her actions.

Timeliness

60. Administrations that are conducted in a timely manner will generally be more efficient and effective. In the interests of
minimising costs, administrations should be conducted in a timely manner. To ensure that statutory requirements are met, insolvency practitioners should use and maintain a checklist or other systems that alert them to critical dates such as-

(a) statutory obligations and notifications;
(b) meetings; and
(c) reporting.

If an extension of time is required, the insolvency practitioner will need to give reasons for the need for additional time.

61. An insolvency practitioner may claim remuneration and costs of applying for an extension of time from the administration, subject to any order from the Court. An insolvency practitioner may not claim remuneration and costs for applying for an extension of time if the reason for the failure to meet the deadline was attributable to the poor conduct of the insolvency practitioner such as-

(a) inattention to the passage of time;
(b) lack of knowledge of the time limits;
(c) poor processes; or
(d) inadequately trained or supervised staff.

62. Insolvency practitioners must ensure that stakeholders are clearly advised of time limits that impact on them and the consequences of not meeting those time limits.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Insolvency Act, 2015 to ensure that it conforms to other laws, global trends and best practices. This Bill is meant to ensure ease of doing business and clarify the ambiguities in the Act.

The enactment of the Bill does not occasion additional expenditure of public funds.

Dated the…………………………………………………………, 2020.
P. KIHARA KARIUKI,
Attorney- General.