

Insolvency Act, 2063 (2006)

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An Act Made to Provide for Insolvency Proceedings

Preamble: Whereas, it is expedient to make legal provisions immediately in relation to the administration, insolvency proceedings of companies which are insolvent or going to be insolvent being unable to pay debts to creditors or which are facing financial difficulties, and in relation to the restructuring of such companies;

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063(2006).

Chapter - 1

Preliminary

1. Short title and commencement:

- (c) “financial difficulty” means a situation where company becomes or may become insolvent immediately or in the near future if the company is not restructured made pursuant to this Act;
- (d) “liquidation of company” means a situation where the registration of a company is canceled by fulfilling the procedures referred to in this Act;
- (e) “restructuring” means a process to be adopted under this Act in order to a company which may become insolvent because of financial difficulty;
- (f) “restructuring program” means a restructuring program as referred to in Chapter-4;
- (g) “Court” means the commercial bench of such court as designated by the Government of Nepal, in consultation with the Supreme Court, by notification in the Nepal Gazette;
- (h) “debt” means a certain amount due and payable immediately or as claimed due and payable;
- (i) “creditor” means a person who is entitled to receive payment from a company which has become insolvent or may become insolvent; and this expression also includes a secured creditor;
- (j) “security” means any or all property furnished as pledge, mortgage or any other kind of security of a debt;
- (k) “secured creditor” means a creditor that lends money to a company against a security;
- (l) “company which has become insolvent” means a situation where an order has been issued under this Act for the liquidation of the company;
- (m) “Office” means the Insolvency Administration Office established pursuant to Section 65;

- (n) “insolvency practitioner” means a person licensed under Section 64 to carry on business relating to insolvency;
- (o) “inquiry officer” means an inquiry officer appointed pursuant to Section 10;
- (p) “restructuring manager” means a person who is appointed by order of the Court pursuant to Sub-section (2) of Section 22 to operate and manage the restructuring scheme of a company;
- (q) “liquidator” means a person who is appointed by an order of the Court or a resolution adopted by a meeting of creditors to liquidate the affairs of a company, and this expression also includes the Office;
- (r) “associated person” means any director, officer, shareholder of a company which has become insolvent or any director, officer or shareholder of a company that is holding or subsidiary company of such company; and this expression also includes the husband, wife, son, daughter, adopted son, adopted daughter, father, mother, step mother, elder brother, younger brother, elder sister, younger sister of any director, officer, shareholder of that company or of a company that is holding or a subsidiary of such company;
- (s) “prescribed” or “as prescribed” means prescribed or as prescribed by the Rules framed under this Company.

Chapter-2

Insolvency Proceedings

3. **Prohibition on commencing insolvency proceedings without order of Court:** Save as ordered by the Court pursuant to this Act, no person shall commence insolvency proceedings against any company.
4. **Application to be made for insolvency proceedings:** (1) Where it is required to institute insolvency proceedings against any company, any of the following persons may make an application to the Court in the prescribed form for the institution of such proceedings:

- (a) A company itself which has become insolvent;
- (b) Out of the total creditors of a company which has become insolvent, at least ten percent creditor or creditors who has or have lent money;
- (c) Shareholder or shareholders that has or have subscribed at least five percent of shares, out of the total shareholders of a company;
- (d) Debenture-holder or debenture-holders that has or have subscribed at least five percent of debentures, out of the total debenture-holders of a company;
- (e) A liquidator who has been appointed to liquidate a company; or
- (f) In the case of a company that carries on any specific type of business set forth in Section 8, a body authorized to administer and regulate such business.

(2) In order for an application to be made pursuant to Sub-section (1), a period of thirty five days shall have been expired after a notice issued to pay the debt referred to in Section 5 has been duly served on the concerned company.

(3) Every application to be made pursuant to Sub-section (1) shall be accompanied by the reason for making the application, short description of the financial condition of the company and the evidence supporting the fact that the company has become insolvent and the following details, as well:

- (a) Where the company itself which has become insolvent makes such application:
 - (1) A document certified by the board of directors of the company, mentioning that the company has become insolvent;

- (2) A special resolution adopted by the board of directors of the company to institute the insolvency proceedings pursuant to this Act;
 - (3) Certified copies of the balance sheet and audit report of the company available at the time of making application for the institution of insolvency proceedings.
- (b) Where the creditor of a company which has become insolvent makes such application:
- (1) A statement of the principal and interest of the debt which the creditor claims to be due and payable by the company;
 - (2) The date on which the company borrowed the debt claimed by the creditor and the reason why the debt was borrowed;
 - (3) Description that the amount referred to in Clause (1) is due and such amount is payable immediately;
 - (4) That the debtor believes or the reason and ground the debtor has to believe that the company in respect of which demand is made for insolvency proceedings has become insolvent.
- (c) Where the liquidator makes such application:
- (1) Evidence that the company in respect of which application is made for insolvency proceedings has appointed the liquidator for the purposes of liquidation of the company; and
 - (2) The opinion expressed by the liquidator on the matter that the company in respect of which application is made for insolvency proceedings has become insolvent, and the ground for such opinion.

(4) Notwithstanding anything contained elsewhere in this Section, any shareholder or debenture-holder of a company shall obtain permission of the Court to make an application for insolvency proceedings pursuant to Clause (c) or (d) of Sub-section (1), and the shareholder or debenture-holder may, if so permitted, make an application on such terms and conditions as may be specified by the Court.

(5) The Court shall not give permission referred to in Sub-section (4) unless and until sufficient evidence proving that the company has become insolvent is produced.

5. **Notice to be given for payment of debt:** (1) Prior to making an application to the Court pursuant to Section 4 for insolvency proceedings, a notice shall be sent to the registered office of the company in the prescribed form for the payment of debt.

(2) The notice referred to in Sub-section (1) shall be signed by the creditor himself or herself or by a person authorized by the creditor, on his or her behalf.

6. **Application to void notice issued for payment of debt:** (1) Where the notice received pursuant to Section 5 is not reasonable or where there are any other reason for not repaying the debt immediately, the concerned company may make an application to the Court in order to void the notice, not later than thirty five days after the date of receipt of that notice.

(2) Where the application referred to in Sub-section (1) is made, the Court shall issue a notice summoning the creditor giving the notice referred to in Section 5 to appear before the Court within seven days; the notice to be so issued shall also be accompanied by a copy of such application.

(3) The Court may make a decision to void or not to void the notice issued pursuant to Section 5 no later than seven days after the date of appearance of the creditor pursuant to Sub-section (2) or after the date of

expiration of the time prescribed for the appearance before the Court where the creditor has failed to make such appearance.

(4) The Court may issue an order to void the notice issued pursuant Section 5 on the following condition:

- (a) There is a clear dispute as to whether the creditor has extended debt to the company or not; or
- (b) The debt due to be paid by the company to the credit does not appear to be payable immediately.

(5) Where the Court issues an order pursuant to Sub-section (4), no notice that is issued to pay the debt can be given to the company again on the same matter nor can an application be made for the institution of insolvency proceedings until the condition set forth in that Sub-section continues to exist.

(6) Where the Court does not issue an order pursuant to Sub-section (4), the company shall pay the debt of creditor no later than thirty five days from that date.

7. **Company deemed to have become insolvent:** (1) Save as proved otherwise, a company shall be deemed to have become insolvent on the following condition:

- (a) The general meeting of shareholders adopts a resolution that the company has become insolvent or a meeting of the board of directors of the company makes such decision; or
- (b) The Court issues an order requiring the company to pay the debt and the debt is not paid up within thirty five days from the date of receipt by the company of such order; or
- (c) The company fails to pay the debt within thirty five days after the service by the creditor on the company a notice for the payment of the debt or fails to make an application to the Court within the said period to void such notice.

(2) Nothing contained in this Section shall prevent the establishing of the fact that a company has become insolvent where it is proved from any other matter that the liability of the company exceed the value of the assets of the company or the company itself admits that it has become insolvent.

8. **Application for insolvency proceedings:** (1) Notwithstanding anything contained in Section 4, no application may be made to the Court for insolvency proceedings in relation to the following company without obtaining prior approval of the following authority:

- (a) In the case of a bank or financial institution carrying on banking and financial business, the Nepal Rastra Bank, or
- (b) In the case of an insurance company carrying on insurance business, the Insurance Board formed pursuant to the Insurance Act, 2049(---), or
- (c) In the case of a company which cannot undergo voluntary liquidation without approval of the competent body or authority, except that mentioned in Clause (a) or (b), such authority.

(2) Every application to be made for insolvency proceedings in relation to a company mentioned in Sub-section (1) shall be accompanied by a copy of the approval given by the authority set forth in that Sub-section for that purpose.

9. **Action on application:** (1) Where an application is made to institute, or cause to be instituted, insolvency proceedings in relation to any company pursuant to Section 4, the Court shall register the application where it has been made duly and so appoint the date for hearing the same that such hearing can take place within fifteen days.

(2) Except where a company itself makes an application for insolvency proceedings, after the registration of an application referred to in Sub-section (1), a notice shall be issued in the name of the concerned

company to submit statements in writing, if any, for not instituting such proceedings within seven days and be delivered to the registered office of such company.

(3) Where the Court considers reasonable, it may, prior to the hearing on an application referred to in this Section, and as per necessity, order the authority set forth in Sub-section (1) of Section 8 to submit statements of reasons, if any, for not instituting any proceedings as requested by the applicant prior to the date appointed for hearing and shall publish a notice thereof at least twice in any daily newspaper of national circulation so that the shareholders, creditors of the concerned company or any other persons having dealing with the concerned company and the Stock Exchange, as well, where such company is enlisted in the Stock Exchange get such information.

(4) Any company or person that receives a notice issued or published pursuant to Sub-section (2) or (3) shall submit statements in writing, accompanied by the reason, if any, for not instituting the insolvency proceedings of the concerned, within the time specified by the Court.

- 10. Decision to be made upon keeping on hearing:** (1) Notwithstanding anything contained in the laws in force, the Court shall keep on hearing an application made pursuant to this Chapter after commencement of the hearing on the application on the day appointed for the hearing on the application pending the final settlement thereof and make a decision thereon.

Provided that this provision shall not prevent the keeping of hearing on that matter on the day on which the Court remains open where the hearing cannot be completed or decision cannot be made on the day of hearing because of time constraint.

(2) Upon the completion of hearing referred to in Sub-section (1), the Court shall make an order to institute or not to institute insolvency proceedings in relation to the company concerned.

(3) In making an order pursuant to Sub-section (2), the Court shall order to appoint an insolvency professional as an inquiry official for the purposes of making insolvency related inquiry.

(4) In making appointment of an inquiry authority pursuant to Sub-section (3), a person whom the Court thinks fit, out of the persons whose names are included in the list approved by the Office for that purpose, shall be appointed.

11. Power to issue interim order: (1) Where, in making hearing on an application made to the Court pursuant to Section 4, it appears that there exists in the company any of the following situations which may prejudice the interests of the creditor or any other person having dealing with the company, the Court may, on an application by the concerned party or at its own discretion, issue an interim order:

- (a) The assets of the company have been sold and disposed of wrongfully or there exists a possibility of such sale and disposal;
- (b) The management of the company has not been carried out properly;
- (c) Any legal action is going to be instituted or such action is going to be enforced or there exists a possibility of such enforcement in such a manner as to prejudice the assets of the company.

(2) In issuing an interim order pursuant to Sub-section (1), the Court may issue order restraining from doing any or all of the following acts:

- (a) Transferring, selling and disposing of, or otherwise mortgaging or pledging, any assets of the Company, other than that business of the company which it has been carrying on in the ordinary course of business;

- (b) Transferring the shares of the company in any manner or altering the status of the shareholders of the company in any manner;
- (c) Withholding or foreclosing any assets of the company by any person; or
- (d) Instituting any legal action or keeping on such action or taking any action or foreclosing by any creditor or person against the assets of the company or any assets owned or possessed or foreclosed by the company.

(3) Where an order is issued by the Court pursuant to Sub-section (2), information thereof shall be given to the concerned company, company registrar and Office, and where the Court thinks fit, it may also issue order requiring to publish such information in a daily paper of national circulation in a manner that the general public can get such information.

(4) The Court may, if it considers necessary, issue order to appoint any appropriate person as the interim administration of the company for the interim management of the company during the currency of the interim order.

(5) The functions, duties and powers of the interim administrator appointed pursuant to Sub-section (4) shall be as prescribed by the Court at the time of such appointment.

(6) Notwithstanding anything contained elsewhere in this Act, where the Court issues order for inquiry into insolvency proceedings or dismisses the application, the interim order issued pursuant to this Section shall *ipso facto* be ineffective.

12. Application not to be withdrawn: Notwithstanding anything contained in the laws in force, an application made to the Court for insolvency proceedings pursuant to Section 4 cannot be withdrawn except as permitted by the Court.

Chapter-3

Inquiry into Insolvency Proceedings

13. **To inquire into insolvency proceedings:** (1) Where the Court issues order to inquire into insolvency proceedings pursuant to Sub-section (3) of Section 10, the inquiry official shall independently inquire into the financial situation of the concerned company in order to determine the following:
- (a) Whether or not there should be issued an order for immediate liquidation of the company by the reason that its financial situation cannot be improved;
 - (b) Whether or not the period of inquiry as referred to in Section 14 should be extended;
 - (c) Whether or not there should be issued an order for the restructuring of the company through the restructuring program;
 - (c) Whether or not the company has become or is likely to become insolvent.
- (2) The inquiry official shall make inquiry pursuant to Sub-section (1) and submit an inquiry report to the Court within the period specified by the Court, and such report shall contain, *inter alia*, the resolution, if any, adopted by the meeting of creditors, the company's report and evaluation and recommendation made by the official.
14. **Power to extend period of insolvency proceedings:** (1)Where the inquiry officer, showing a reasonable reason why the financial situation of the company cannot be inquired into within the period of inquiry as specified pursuant to Sub-section (2) of Section 13, makes an application to the Court for the extension of that period, the Court may, if it finds the reasonable ground , extend the period as appropriate.

(2) Where the period of inquiry is extended pursuant to Sub-section (1), the information thereof shall be given to the concerned company.

15. Management of company during inquiry period: (1) Notwithstanding anything contained in the laws in force, the board of director of the company shall carry out the management and ordinary transactions of the company during the period of inquiry of insolvency proceedings, under the regular supervision of the inquiry official.

(2) Notwithstanding anything contained in Sub-section (1), where the inquiry officer submits to the Court a report indicating that the board of directors of the company has not operated the company properly, the Court may issue an order to remove the board of directors and order the inquiry officer to carry out the management and ordinary transactions of the company.

(3) Where the Court orders the inquiry officer to carry out the management and ordinary transactions of the company pursuant to Sub-section (2), the inquiry officer shall carry out the transactions accordingly.

(4) Where any special transaction such as the sale of the assets or business of the company shall be carried out in the course of operating the ordinary business of the company pursuant to Sub-section (3), an application setting out the reason therefor shall be made to the Court for permission, and where the Court issues an order granting such permission, the inquiry officer may carry out such transaction.

16. Report to be made by director: A person who has held the office of director of the company at the time when the Court has issued an order to inquire into insolvency proceedings pursuant to Sub-section (3) of Section 10 or during the period of one year prior thereto, shall submit to the Court a report on the financial situation and transactions of the company as at the time of his or her retirement, in the prescribed format.

17. Power to raise loans: (1) Where the inquiry officer considers the need of any amount to keep on the company or operate the ordinary transactions of the company, the inquiry officer may borrow loans from any person, with or without furnishing necessary security.

(2) Any loans borrowed pursuant to Sub-section (1) shall be deemed to be the amount spent during the period of inquiry into insolvency proceedings and such amount shall be paid in order of priority as provided in this Act.

Provided that where the security furnished by the company to borrow a loan has already been furnished as a security with any person, the order of priority shall not apply in relation to the claim for security except in the case where the inquiry official has made an agreement of a person entitled to claim the same.

18. Report to be submitted by inquiry officer : (1) The inquiry officer shall inquire into the financial and business situation of the company and submit a report thereof to the Court within the period of inquiry.

(2) The inquiry officer shall determine any one matter set forth in Sub-section (1) of Section 13 and make a recommendation report referred to in Sub-section (1) containing the reasons and grounds for such determination, and such report shall contain, *inter alia*, the actual financial situation of the company, details obtained by the inquiry official upon making inquiry and his or her opinion and findings.

(3) Where the recommendation made pursuant to Sub-section (2) has been submitted to the meeting of creditors, whether a majority of the creditors attending such meeting has accepted such recommendation or not shall also be mentioned.

(4) A copy of the report submitted pursuant to Sub-section (1) shall be sent to each of the concerned company and the Office; and the concerned company and the Office shall make arrangements to maintain the report so

received that the shareholders, directors and creditors of the Company may inspect such report.

19. Ipsa facto suspension: (1) Notwithstanding anything contained in the laws in force, where the Court issues order to institute insolvency proceedings in relation of any company pursuant to Sub-section (2) of Section 10, any of the following acts or actions shall not be done or taken; and any acts or actions being done or taken but not completed shall *ipso facto* be suspended:

- (a) Transferring, selling and disposing of the shares of the company or altering the status of any shareholder;
- (b) Transferring, selling and disposing of any assets of the company or mortgaging or pledging the same as collateral in any manner;
- (c) Foreclosing any assets of the company or realizing any security according to any judgment or order;
- (d) Preempting any property leased to the company by the lessor or instituting any legal action in relation thereto;
- (e) Paying any debt whose payment was outstanding or which had become payable at the time when the court made order to institute insolvency proceedings pursuant to Sub-section (2) of Section 10 or pledging of a security in consideration thereof; and
- (f) Transferring or withdrawing moneys in the fund of the company.

(2) Notwithstanding anything contained in Sub-section (1), where any person makes an application to the Court claiming that the automatic suspension of any transaction pursuant to the said Sub-section will cause a loss to that person, the Court may, if it holds that the statements of the applicant are reasonable and that this does not prejudice the interests of the company or its creditors, issue an order to do any transaction.

20. **Prohibition on cutting down essential services:** Notwithstanding anything contained in the laws in force, where the Court orders the institution of insolvency proceedings in relation to any company pursuant to Sub-section (2) of Section 10, no institution or person providing essential services such as electricity, drinking water, drainage, gas and telephone or any other telecommunication service to such company shall stop or cut down such services during the period between the date of the said order and the date of completion of the said proceedings, except without permission of the Court.
21. **Meeting of creditors to be convened:** (1)The inquiry officer shall, before submitting his or her report to the Court, convene a meeting of the creditors of the company to discuss his or her report in order to know the views of the creditors on the future plan of the company which has become insolvent, and every person who is identified as a creditor of the company from the accounts and other records of the company shall also be invited to attend such meeting.
- (2) A notice indicating the venue, date, time and agenda of the meeting shall be given to every person identified as a creditor under Sub-section (1) in advance of at least seven days, and the notice shall also be published at least two times in a daily newspaper of national circulation.
- (3) While giving a notice pursuant to Sub-section (2), it may be given by a letter, telex, telefax, e-mail or any other means of electronic communication which can be recorded.
- (4) Where any person other than a person mentioned in Sub-section (1) makes any claim against the company as a creditor, the inquiry official may ask that person to submit evidence thereof and detailed description of the claim against the company.
- (5) The inquiry official may dismiss the claim of a person who fails to submit the evidence or description referred to in Sub-section (4); and

where the claim is so dismissed, such person shall not be entitled to attend the meeting of creditors.

Provided that a person shall not be considered to be a creditor of the company by the reason only that the person has taken part in the meeting of creditors.

(6) The inquiry official shall chair the meeting of creditors.

(7) The meeting of creditors shall make decision by majority. In the event of a tie, decision shall be made by lot. The inquiry official may ascertain the voting right of creditors in proportion to the claim made on the debts due to be paid immediately by or payable by the Company and specify the mode of voting.

(8) The directors of the company or the officers invited by the inquiry official may participate in the meeting of creditors.

Provided that they shall not be entitled to take part in voting.

(9) Except where any concerned person makes an application to the Court showing the reasons and grounds that injustice has been done to that person, no question may be raised in any court about the meeting of creditors and the business executed by it.

22. Power to Court to make order: (1) The Court may, if it considers appropriate, make any of the following orders, within seven days after the receipt of the report submitted by the inquiry officer pursuant to Sub-section (1) of Section 18, the resolution adopted by the meeting of creditors or the restructuring scheme submitted by the company or any other resolution adopted:

- (a) To immediately liquidate the company;
- (b) To implement the restructuring program of the company;
- (c) In the event of possibility of improvement without liquidating the company immediately, to stay until the period specified by the court;

- (d) To extend the period of insolvency proceedings as specified by the Court for the submission of report by making further inquiry; or
- (e) To quash the order issued pursuant to Sub-section (2) of Section 10.

(2) Where an order is made under Sub-section (1) to liquidate the company or implement the restructuring scheme, the Court shall make an order to appoint an insolvency practitioner as the liquidator of the company or to operate the restructuring scheme of the company and implement the liquidation or restructuring scheme of the Company; and the person so appointed shall perform such act within such period as specified by the Court at the time of his or her appointment.

(3) Notwithstanding anything contained elsewhere in this Section, where the inquiry officer makes an application for any of the following orders as per the understanding reached between any company which has become insolvent or of which situation requires its immediate liquidation or showing the reason that even though a company has become insolvent, there is a situation that the proposal on the restructuring scheme prepared for the improvement of the company can be considered in a meeting of creditors to be convened pursuant to Chapter-4, the Court may, if it considers so appropriate, make such order:

- (a) To end the inquiry into insolvency proceedings before the expiry of that period;
- (b) To waive the requirement to convene the meeting of creditors by the inquiry official; or
- (c) To liquidate the company or carry out the restructuring of the company.

(4) Where the Court considers it reasonable to make any order other than that mentioned in Sub-section (1) or (3), it may also make such order.

Chapter-4

Restructuring Scheme of Company

23. Restructuring program to be prepared: (1) Where the Court makes an order to restructure any company pursuant to Sub-section (2) of Section 22, the restructuring manager shall prepare a restructuring scheme of the company in writing.

(2) The scheme prepared pursuant to Sub-section (1) shall contain the following programs:

- (a) To capitalize the debt of the company and alter the capital structure ;
- (b) To pay the claims of creditors by selling any portion of the assets of the company;
- (c) To change the nature of claims of creditors of the company and issue securities for the same;
- (d) To get the creditors of the company to participate in capital investment by issuing shares in consideration for their claims;
- (e) To amalgamate the company with any other company;
- (f) To change the management of the company; or
- (g) To do any such other act which the Court considers appropriate to restructure the company.

24. To call meeting of creditors: (1) The restructuring manager appointed by order of the Court to make restructuring of the company pursuant to Sub-section (2) of Section 22 shall give a notice, meeting the requirements set forth in sub-sections (2) and (3) of Section 21, to all creditors to submit their respective claims, along with their respective proofs and evidences, no later than 15 days after the manager has commenced the business, and such notice

shall be published in a daily newspaper of national circulation for at least two times; and such notice may also be put on the website.

(2) All creditors who have any kinds of credit claims against the company shall submit to the restructuring manager statements of credit claims with or without security, along with evidence substantiating such claims no later than fifteen days after the issuance of the notice as referred to in Sub-section (1).

(3) No later than fifteen days after the receipt of statements of claims pursuant to Sub-section (2), the restructuring manager shall call a meeting of creditors, by fulfilling the requirements set forth in sub-sections (2) and (3) of Section 21. In calling such meeting, a copy of the restructuring program shall be sent along with that notice.

(4) The restructuring manager shall chair the meeting called pursuant to Sub-section (3).

(5) The meeting of creditors may be conducted and adjourned as per necessity.

Provided that such meeting shall not be adjourned in a manner that it exceeds the period of restructuring.

(6) The directors of the company may attend the meeting of creditors and answer the questions raised by the creditors in relation to the business and financial situation of the company.

(7) The meeting of creditors called pursuant to Sub-section (3) shall discuss the details of restructuring program presented by the restructuring manager and adopt a resolution on any of the following matters, subject to Sub-section (7) of Section 21:

- (a) To adopt, with or without amendment, the proposal on restructuring submitted by the restructuring manager, or
- (b) To immediately liquidate the company without accepting the resolution referred to in Clause (a).

(8) Notwithstanding anything contained in Sub-section (7), the secured creditor shall not be entitled to vote.

(9) The restructuring program adopted and approved pursuant to Sub-section (7) or the resolution adopted to reject the program and liquidate the company shall be submitted to the Court for approval; and if the Court issues order approving that resolution, it shall be implemented.

25. Report to be submitted by restructuring manager: (1) The restructuring manager shall, within the period of restructuring, submit to the Court a report, accompanied by the transactions, assets and financial situation of the company and its restructuring program, if any proposed.

(2) The report referred to in Sub-section (1) shall, where a restructuring program is proposed, state the following matters in relation to such program.

- (a) summary and analysis of the proposed program;
- (b) Details of effects likely to be caused to the creditors of the company from the implementation of the proposed program;
- (c) A comparison between the consideration and effects that would have been available to the creditors if the company had been liquidated immediately and the consideration effects that may be available to the creditors on the implementation of the restructuring program; and
- (d) Opinion and description, accompanied by the finding of the restructuring manager that the company would not be insolvent if the restructuring program was implemented.

(3) There shall be no formal form and structure of a restructuring program prepared pursuant to Sub-section (1), except the set forth below:

- (a) All details of the program to be implemented by the company in the future and written details of the relevant proposal;

- (b) Details of the matter that the creditors of company will get more benefits if the company is not liquidated immediately but restructured and if the program is implemented;
- (c) Details of the matter that no portion of the proposed program is illegal or prohibited by the laws in force;
- (d) Details that if the program is implemented, the company will be rescued from insolvency or will not become insolvent.

(4) The program prepared pursuant to this Section shall also contain details of payment of expenses incurred during the inquiry period of insolvency proceedings or the restructuring period and of the remuneration of the inquiry officer or the restructuring manager.

26. To make information in the event of failure to submit details of restructuring program:

(1) Where it is not possible to submit the details of the restructuring program of the company to the Court within the restructuring period, the restructuring manager shall make an application, accompanied by the reasons, to the Court.

(2) Where an application is made pursuant to Sub-section (1), the Court may, if it considers to be reasonable, invalidate the order to make restructuring and issue an order to liquidate the company.

27. Claim and objection to approved restructuring program:

(1) A creditor who is not agreed with the proposal of restructuring program approved pursuant to Sub-section (7) of Section 24 may make an application of claim and objection within seven days, setting out the following grounds and reasons:

- (a) The restructuring program approved by a majority in the meeting of creditors is not in the interest of the creditors other than the secured creditors;
- (b) A serious irregularity has been committed in calling or conducting the meeting of creditors, and the program approved

by that meeting is not in the interest of the creditors other than the secured creditors;

(c) Any false or misleading information has been given or material information has been concealed in relation to the company or its restructuring program.

(2) Where an application referred to in Sub-section (1), the Court shall order the company and the restructuring manager to submit written statements in relation thereto within a period of seven days.

(3) On receipt of written statements referred to in Sub-section (2) or on the expiry of the period for the submission of such written statements, the Court shall hear the application referred to in Sub-section (1) and may, if the application is found to be based on grounds, invalidate to make ineffective the resolution on the restructuring program adopted in the meeting of creditors.

(4) If the Court invalidates to make ineffective the resolution adopted in the meeting of creditors and approved pursuant to Sub-section (3), the Court shall issue order to liquidate the company immediately.

(5) Information of the order issued pursuant to Sub-section (3) or (4) shall be given to the concerned company and the restructuring manager.

28. Consequence of approval of restructuring program by Court: If the Court issues an order to approve the restructuring program adopted by the meeting of creditors pursuant to Sub-section (9) of Section 24, the program shall be binding on all creditors of the company, directors and shareholders of the company, other than the secured creditors of the company; and the restructuring period shall end on that date.

29. Not to affect secured creditors: (1) No restructuring program adopted by a meeting of creditors and approved by the Court pursuant to this Chapter shall, except on the following condition, prevent the secured creditors from executing or otherwise dealing the security:

- (a) Where the secured creditor votes in favor of the restructuring program or otherwise gives his or her consent that such program will be acceptable to him or her; or
- (b) Where the Court orders that that program shall be binding to the secured creditor.

(2) The Court may, if it is satisfied with the following matters, issue order referred to in Clause (b) of Sub-section (1):

- (a) Where the secured creditor executes the security that he or she has taken, it may substantially prejudice the achievements to be made from the implementation of the restructuring program;
- (b) Where such program adequately protects the right of the secured creditor to the security, and the security.

30. Not to affect the right of owner of any property or of any lessor: (1)

No restructuring program adopted by a meeting of creditors and approved by the Court pursuant to this Chapter shall, except on the following condition, prevent the owner of any property used or possessed or owned by the company or the lessor of such property if it has been leased from executing the right to such property or returning the same:

- (a) Where the owner or lessor of such property votes in favor of such program or otherwise gives his or her consent in writing that such program will be acceptable to him or her; or
- (b) Where the Court orders that the program shall be binding to the owner or lessor of such property.

(2) The Court may, if it is satisfied with the following matters, issue order referred to in Clause (b) of Sub-section (1):

- (a) Where the owner or lessor of such property gets back that property, it may substantially prejudice the achievements to be made from the implementation of the restructuring program;

- (b) Where such restructuring program adequately protects that property and the right of the owner or lessor of such property.

31. **Restructuring manager is to operate company:** (1) The restructuring manager shall operate the company during the currency of the restructuring period.

(2) In operating the company pursuant to Sub-section (1), the manager may exercise the following powers:

- (a) Management and control of the business, properties and transactions of the company;
- (b) Termination, sale and disposal of any business or property of the company;
- (c) Doing or exercising any such act or power that the company or its officer may do or exercise.

(3) In exercising the powers referred to in Sub-section (2), the restructuring manager shall have power to inspect all books of account, ledgers, records, accounts and documents of the company.

(4) In doing or exercising any act or power set forth in this Section, the restructuring manager shall act in capacity of an agent of the company.

(5) If so sought by the restructuring manager, the director and other officer of the company shall provide any kind of such assistance as may be necessary for the management and control of the company.

(6) No director and officer of the company shall, except with written direction of the restructuring manager, exercise any power or do any act of the company in capacity of the director or officer of the company.

(7) The director of the company shall provide such information about the company and its business, property and transaction to the restructuring manager as sought by the restructuring manager.

32. **Power of restructuring manager to borrow loan:** (1) Where, in acting as the manager of the company, the restructuring manager considers any

amount to be necessary to keep on running the company or operate the business and transaction of the company, he or she may borrow loan with or without furnishing the company's property as security.

(2) The amount of loan borrowed pursuant to Sub-section (1) and terms thereof shall be as set forth in Section 17.

33. Ceiling of remittance of loan of company:

Where as per the agreement of creditors, the restructuring program provides for the remission or alteration in the terms of any loan or any portion of the loan not secured, such remission or alteration may be made in accordance with that program.

34. Implementation of restructuring program: (1) The company shall be responsible for implementing the restructuring program adopted by the meeting of creditors and approved by the Court pursuant to this Chapter.

(2) The Court shall designate the restructuring manager for the supervision and management of the implementation of the program referred to in Sub-section (1).

35. Alteration in and amendment to restructuring program: (1)

Where it appears that the restructuring program cannot be implemented wholly or partly at the time of implementation of that program but that program can be implemented if it is altered or amended, the restructuring manager shall call a meeting of creditors in order to alter or amend that program.

(2) Where the meeting called pursuant to Sub-section (1) adopts a resolution altering or amending the program, it shall be submitted to the Court for approval.

(3) Where it is reasonable to approve the program submitted pursuant to Sub-section (2) for the interest of creditors, the Court may order to that effect.

(4) The program approved pursuant to Sub-section (3) shall be implemented as per such alteration or amendment.

36. Termination of restructuring program: (1) Where the company has already implemented the restructuring program or the Court, on application by the restructuring manager, makes an order to terminate the program because of the company's failure to implement it, such program shall terminate.

(2) Where the Court issues an order to terminate the restructuring program because of the company's failure to implement it pursuant to Sub-section (1), it shall also issue an order to liquidate such company.

Chapter-5

Liquidation of Company

37. Liquidation of company on issuance of order for liquidation:

(1) Where the Court makes an order to liquidate a company pursuant to this Act, the Court shall make an order to appoint one person as the liquidator, from amongst the persons who are entitled to carry on insolvency business at the time of making of such order.

(2) Following the making of order pursuant to Sub-section (1), the liquidation proceedings of the company shall be deemed to have commenced.

38. Consequences on the commencement of liquidation proceedings: (1)

On the commencement of the liquidation proceedings of any company, the following provisions shall govern the following matters in relation to such company:

(a) Where the director and officer of the company are relieved of office, the liquidator shall exercise all such powers as may be exercisable by the director and officer of the company in relation to the management of that company;

(b) The liquidator shall take in his or her custody and control all assets, accounts and books of account of the company, except the properties in possession of secured creditors;

(c) Except as ordered otherwise by the liquidator, the service of all employees appointed by the company shall terminate.

(2) The provision relation to *ipso facto* suspension set forth in Section shall, except for the following matter, apply during the period of currency of liquidation proceedings:

(a) Implementation of the right of secured creditors to execute pursuant to this Act; or

(b) Implementation of the right of the lessor of any property leased to the company to redeem the property pursuant to this Act.

39. Conversion of liquidation of company into restructuring program:

(1) Where, based on the study and examination of the business and assets of the company, nature of the goods or services to be produced by the company and market potentiality thereof, the liquidator thinks that the restructuring program of the company can be adopted by a meeting of creditors and approved, the liquidator may make an application, accompanied by the reasons, to the Court for an order to keep pending the order on liquidation of company issued by the Court pursuant to this Act for a certain period of time and to implement the restructuring program pursuant to this Act.

(2) Where the Court is satisfied with the contents of the application received pursuant to Sub-section (1), it may issue an order to suspend the order on liquidation of a company issued previously for any certain period of time and implement the restructuring program.

(3) Where an order is issued pursuant to Sub-section (2), the order shall be implemented pursuant to this Act.

40. Functions, duties and powers of liquidator: (1) The functions, duties and powers of the liquidator in addition to the other provisions set forth in this Act shall be as follows,:

- (a) To institute or defend any case or legal action on behalf of the company;
- (b) To appoint employees to assist in the discharge of his or her functions;
- (c) Where any installment on any share of the company is due, to make a call on the shareholder for payment of such installment;
- (d) To do and execute, or cause to be done and executed, all such acts and deeds or documents as required to be done and executed on behalf of the company and in the name of the company and use the seal of the company for that purpose;
- (e) To borrow loans against security of the assets of the company;
- (f) Where the liquidator considers that the sale and disposal of any property or termination of any contract or liability will render benefits to the company, to sell and dispose of such property or terminate such contract or liability;
- (g) To enter into compromise with any creditor of the company or any person who claims to be a creditor of the company in relation to the claim made by such creditor or person;
- (h) To enter into compromise with any person against whom the company may make a claim in relation to any loan, liability or any other claim;
- (i) To sell the assets of the company and distribute the proceeds of such sale pursuant to this Act; and
- (j) To perform, or cause to be performed, all such other acts as may be necessary to liquidate the company.

(2) It shall be the duty of the liquidator to perform the following functions, in addition to those set forth in Sub-section (1):

- (a) To collect, protect and sell the assets of the company;
- (b) To examine the business and financial situation of the company;
- (c) To accept debt claim of any creditor subject to Chapter-6;
- (d) To distribute the proceeds of sale of the assets of the company subject to the order of priority determined for the payment of liability pursuant to this Act;
- (e) To call and conduct the meeting of creditors;
- (f) To prepare a report on his or her acts and actions and present it to the Court and the Office;
- (g) To facilitate the cancellation of registration of the company; and
- (h) To examine or inquire into whether any director or employee or shareholder of the company or any person has committed any fraud, cheating or deception against the company or its creditors and institute necessary legal action against such person.

(3) In addition to the functions, duties and powers set forth in Sub-section (1) or (2), the liquidator may also perform other functions such as to get back any property of the company if such property is used by any person or to institute legal action to get back such property or amount involved in a void transaction.

Provided that the liquidator shall not be entitled to make such expenses as may not be payable from the assets of the company.

(4) Even though the company does not have adequate amount to pay necessary expenses or remuneration to the liquidator for the exercise of

the powers or performance of the duties set forth in Sub-section (1), (2) or (3), the liquidator shall exercise such powers and perform such duties.

(5) Where the liquidator faces any difficulty with the exercise of any power or the performance of any duty pursuant to this Chapter, the liquidator may make an application to the Court for the removal of such difficulty; and where an application is so made, the Court may, if it holds the application to be reasonable, remove difficulty.

41. Money to be lent by creditor: (1) Where any act to be done by any company which has become insolvent may render or yield benefit or advantage to the creditors, any creditor of such company may advance money to the liquidator to do such act.

(2) Any amount borrowed pursuant to Sub-section (1) shall be paid from the amount received from such act.

(3) Any creditor may make an application to the Court for any order for making payment of a debt claim accepted by the company from the amount received pursuant to Sub-section (1).

(4) Where an application is made pursuant to Sub-section (3), the Court may, if it considers reasonable that such loan can be repaid from the amount referred to in Sub-section (1), make an order for that purpose.

42. Report to be submitted by liquidator: (1) The liquidator shall prepare a progress report on the proceedings carried out in relation to the company and submit it to the Court and the Office no later than three months after the date of his or her appointment.

(2) The report submitted pursuant to Sub-section (1) shall state the following matters, in addition to other matters:

- (a) The amount of issued capital of the company, capital that the shareholders have undertaken to subscribe and paid-up capital;
- (b) Estimated value of the assets and liabilities of the company;

- (c) Opinion of the liquidator in relation to the reason for financial failure of the company;
- (d) Opinion of the liquidator on the need to further examine or inquire into the promotion, incorporation of the company or the affairs of the company and its directors and shareholders;
- (e) Such other necessary matters as the liquidator considers appropriate.

43. To call meeting of creditors: (1) The liquidator shall, prior to preparing his or her report pursuant to Section 42 and thereafter from time to time as per necessity, call a meeting of creditors of the company.

(2) A meeting of creditors shall be called pursuant to Sub-section (1) by fulfilling the requirements set forth in sub-sections (2) and (3) of Section 21.

(3) The liquidator shall chair the meeting of creditors.

(4) The provisions of Section 24 shall apply, *mutatis mutandis*, to the other matters relating to the meeting of creditors.

44. Power to form committee of creditors:

(1) A meeting of creditors held pursuant to Section 43 may form a committee consisting of a maximum of five creditors in order to assist the liquidator in relation to the liquidation of the company.

(2) The scope of work of the committee formed pursuant to Sub-section (1), rules of procedures relating to its meeting or other necessary matters shall be as specified by the meeting of creditors at the time of its formation.

45. To give time limit for submission of debt claim: (1) The liquidator shall give a notice with the time limit of fifteen days to all creditors of the company which has become insolvent to submit their respective debt claims in the prescribed format.

(2) The notice given pursuant to Sub-section (1) shall be published at least twice in a newspaper of national circulation.

(3) The liquidator may reject any claims of the creditors who have not made claim within the time limit referred to in Sub-section (1).

Provided that where any creditor makes an application, accompanied by the reason for failure to submit his or her claim within that time limit, to the liquidator, the liquidator may accept such claim if the contents of such application are found reasonable.

46. Power of the Court to make order in relation to liquidation of

company: Notwithstanding anything contained elsewhere in this Chapter, the Court may at any time issue the following order in respect of any company which is undergoing liquidation proceedings:

- (a) To suspend or terminate the liquidation of the company;
- (b) To require to hand over the assets of the company to the liquidator;
- (c) To pay any call made for payment of installment;
- (d) Where there is a doubt that any person is possessing or using any property of the company, to stop such possession or use; or
- (e) To arrest any person who causes any hindrance in or obstruction to the performance of functions or duties or the exercise of powers by the liquidators.

47. Cancellation of registration of company: Any liquidator appointed to liquidate any company pursuant to this Chapter shall, while liquidate the company, cancel the registration of the company by following the procedures determined by this Act or by other laws in force.

Chapter-6

Claims of Creditors and Mode of Payment

48. Creditors to submit claims: (1) A creditor of the company which has become insolvent shall submit a claim for the loan due and outstanding or payable by such company to him or her, in the prescribed format within the time limit specified by the restructuring manager or liquidator.

(2) While submitting a claim pursuant to Sub-section (1), the creditor shall also submit the proof and evidence substantiating such claim, if any, where the restructuring manager or liquidator demands such proof and evidence.

(3) The restructuring manager or liquidator shall examine the submitted pursuant to Sub-section (2) and may accept or reject such claim wholly or partly.

(4) Where the restructuring manager or liquidator accepts or rejects the claim wholly or partly pursuant to Sub-section (3), the manager or liquidator shall give written information thereof, accompanied by the reasons for such acceptance or rejection, to the creditor submitting the claim no later than seven days.

(5) The creditor who is not satisfied with the information received pursuant to Sub-section (4) may make an application to the Appellate Court for review no later than fifteen days.

(6) Even a foreign creditor who has lent money to the company pursuant to the laws in force may, if he or she has any debt claim against the company, submit a claim pursuant to this Section.

49. Claim for interest: Where any company which has become insolvent has borrowed a loan on the condition of paying interest on it according to the agreement entered into at the time of borrowing such loan, such interest may also be included in the claim made pursuant to Sub-section (1) of Section 48.

Provided that no interest may be claimed for the period after the date of issue by the Court of an order to liquidate the company or implement the restructuring program of the company.

50. Claims on undetermined or contingent liability: (1) Except as set forth in Section 48, any claim on any liability of an undetermined value which has resulted from any loss caused by the company, or from any compensation to be paid by the company to anyone as a result of its failure to comply with any contract or for having violated any contract, or from any other action which creates a civil obligation, or any claim on any contingent obligation of the company whose value is yet to be determined but which has resulted from the failure of a debtor to fulfill any obligation for which the company has provided guarantee under any guarantee agreement may be presented pursuant to Sub-section (1) of Section 48.

(2) Where a claim is received pursuant to Sub-section (1), the restructuring manager or liquidator shall either accept or reject such claim pursuant to Sub-section (3) of Section 48 and give a notice thereof pursuant to Sub-section (4) of the said Section.

(3) Where such claim is accepted pursuant to Sub-section (2), the restructuring manager or liquidator shall also determine the estimated value of such claim.

(4) Notwithstanding anything contained in Sub-section (3), the restructuring manager or liquidator may make an application to the Court to have the value of such claim determined; and where an petition is so made, the Court shall determine the estimated value of such claim.

(5) Any person who is not satisfied with the decision to reject the claim pursuant to Sub-section (2) or with the value of such claim determined pursuant to Sub-section (3) may make a complaint to the Court within fifteen days from the date of receipt of the notice thereof.

51. **Immature claims:** The restructuring manager or liquidator may make prescribed exemption from the debt claims relating to immature debts made against the company.
52. **Claims involving foreign exchange:** Any claims made in relation to any debt or other liability in a foreign currency under this Act shall be settled by calculating the value in the Nepali currency according to the exchange rate fixed by the Nepal Rastra Bank for the day on which an application is made to the Court for the liquidation, insolvency of the company or its restructuring.
53. **Adjustment of debts:** (1) Where there has been any other transaction between a company which has become insolvent and any creditor who makes a debt claim against the company, the debt or such debt claim or transaction shall be adjusted as follows:
- (a) To determine the amount due to be paid by one party to the other party;
 - (b) To deduct the amount payable by one party to the other party from the amount determined pursuant to Clause (a);
 - (c) To fix only the amount that remains after making deduction pursuant to Clause (b) as the claim of debt payable by the company.
- (2) Notwithstanding anything contained in Sub-section (1), any person who has supplied to or obtained a debt from the company when that person has knowledge or had a reasonable reason to have knowledge that the company has become insolvent shall not be entitled to make a claim to have the amount due to be paid to that person by the company deducted from the amount payable by that person to the company.

Explanation: For the purposes of this Section, the expression "company which has become insolvent" shall mean a company in relation to

which an application has been filed in the Court for the restructuring or liquidation of that company.

54. Right of secured creditor to make claim: (1) A secured creditor may make a debt claim against the company at any time; and the restructuring manager or liquidator may accept or reject that claim pursuant to Sub-section (3) of Section 48.

(2) The amount to be claimed pursuant to Sub-section (1) shall be limited to the difference between the amount received from the property according to its market value and the amount payable by the company to the secured creditor.

(3) Where there arises a dispute between the secured creditor and the company which has become insolvent in relation to the difference between the value of the secured property and the amount outstanding and payable pursuant to Sub-section (2), a party who is not satisfied with that matter may make an application to the Court; and the Court may examine the application so made and determine the difference.

55. Shareholder's claim: Where any creditor who is also a shareholder of a company which has become insolvent makes a claim against the company, and where that creditor has not paid any amount due on his or her share and where the time has already matured to pay such amount or there may arise a situation requiring him or her to pay the same, his or her claim up to the extent of the amount likely to be so paid shall not be accepted.

56. Deemed to be creditor if debt is accepted: (1) Where a debt claim made by a person making a claim against the company which has become insolvent is accepted pursuant to this Chapter, that person shall acquire the status of creditor.

(2) A person who acquires the status of creditor pursuant to Sub-section (1) shall acquire the right to participate in a meeting of creditors,

exercise the voting right to the extent of the accepted debt claim and receive payment of the amount of debt under this Act.

57. Order of settlement of liabilities: (1) While settling the liabilities of a company which is being liquidated under this Act, the liquidator shall make payment of liabilities from the available funds according to the following order of priority:

- (a) All expenses associated with the functions discharged by the interim administrator appointed pursuant to Sub-section (4) of Section 11 and remuneration;
 - (b) Other amounts to be settled pursuant to Chapter-2;
 - (c) All expenses associated with the functions discharged by the inquiry officer appointed pursuant to sub-sections (3) and (4) of Section 10 and remuneration;
 - (d) All expenses associated with the functions discharged by the restructuring manager appointed pursuant to Sub-section (2) of Section 22 and remuneration;
 - (e) All debts of the company borrowed during the period of investigation of the insolvency proceedings;
 - (f) All debts of the company borrowed during the period of the restructuring program of the company;
 - (g) All expenses associated with the functions discharged by the liquidator appointed pursuant to Sub-section (1) of Section 37 and remuneration;
 - (h) Wages and remuneration due and payable to the workers or employees of the company at the time of the issue of the order under this Act to liquidate or restructure the company;
- Provided that no director of the company shall be entitled to such amount.

(i) Amounts payable to the workers or employees of the company in consideration of home leave, sick leave, gratuity and employee provident fund, if any, at the time of the issue of the order under this Act to liquidate or restructure the company; Provided that no director of the company shall be entitled to such amount.

(j) All other amounts in consideration of debt claims accepted by the liquidator.

(2) Every liability falling in the order of priority referred to in Sub-section (1) shall be treated equally; and all liabilities falling in such order shall be settled fully.

Provided that if such liabilities cannot be settled fully, they shall be settled proportionately.

(3) Where any liability of the company is insured, the amount receivable under such insurance contract shall be paid to that person who is entitled to it.

(4) Where the liabilities mentioned in Sub-section (1), (2) or (3) are settled fully, the surplus shall be used by the liquidator to pay interest payable on debts from the date of the order issued to liquidate or restructure the company to the date of acceptance of the debt claim. The amount remaining after such payment shall be distributed among the preference shareholders, and the remaining amount shall be distributed among the other shareholders proportionately.

58. Mode of settling liabilities: While settling the liabilities of the creditors pursuant to this Chapter, the liquidator may do so at one time or at different times

Chapter-7

Voidable Transactions

59. **Voidable transactions:** (1) Where any company has become insolvent, the following transactions shall be void:

(a) Preferential transactions carried on in advance of six months immediately preceding the commencement of the insolvency proceedings or within the period of six months after the commencement of the proceedings;

(b) Preferential transactions carried on with the associated persons of the company in advance of one year immediately preceding the commencement of the insolvency proceedings or within the period of one year after the commencement of the proceedings;

Explanation: For the purposes of Clause s (a) and (b), the expression "preferential transactions" shall mean any transactions done or entered into with a provision for payment of amount that exceeds the payment which any creditor of the company other than a secured creditor would have been entitled to get if the creditor had made a claim against the company at the time of its liquidation.

(c) Any under-valued transactions have been carried on in advance of one year immediately preceding the commencement of the insolvency proceedings or within the period of one year after the commencement of the proceedings and the company has become insolvent as a consequence of such transaction or other under-valued transactions carried on after the commencement of the insolvency proceedings;

Explanation: For the purposes of this Clause , the expression "under-valued transactions" shall mean any transactions in relation to which the company has received a value that is

lower than the prevailing market value or has not received any value at all for any consideration given by the company to the other party to the transactions.

- (d) All fraudulent transactions carried on in advance of two years immediately preceding the commencement of the insolvency proceedings or within the period of two years after the commencement of the proceedings;

Explanation: For the purposes of this Clause , the expression "fraudulent transactions" shall mean any transactions carried on, in relation to any assets of the company, with ulterior motive to cheat the creditors of the company or delay making payments to them or prejudice the rights of the creditors.

(2) The liquidator shall make an application to the Court to have the transactions referred to in Sub-section (1) declared void.

(3) While making an application pursuant to Sub-section (2), the liquidator shall prove that the company was insolvent when such transactions were carried on or the company has become insolvent by the reason of such transactions.

(4) Where any associated person of the company is found involved in the proceeding carried out in relation to void any voidable transactions, it shall be presumed that the company was insolvent when such transactions were carried on or the company has become insolvent by the reason of such transactions.

60. To defend voidable transactions: (1) The associated person may prove the following matters in his or her defense:

- (a) That the company was not insolvent when the transactions were carried on;
- (b) That he or she has not derived any benefit from the transactions;

- (c) That the company was insolvent when any benefit was derived from the transactions or there was no reasonable reason to suspect that the company might become insolvent by the reason of the transactions.

61. **Powers of the Court in relation to voidable transactions:** (1) Where the Court is satisfied that any transaction is voidable, the Court may issue orders as follows:

- (a) To order the concerned person to pay to the liquidator some or all of the amounts paid by the company in connection with such transaction;
- (b) To order the concerned person to hand over to the liquidator the asset so transacted or an amount equivalent thereto;
- (c) To order that the debt obtained by the company through such transaction, or the collateral or guarantee furnished by the company for that debt be fully or partly remitted or released;
- (d) To order that any remission or assignment made or agreement entered into between the company and any other person in consequence of the voidable transaction be void, inoperative or unenforceable.

(2) The Court may also issue any such other additional order any may be required to enforce the order issued pursuant to Sub-section (1).

62. **Right to claim amount paid in consideration of preferential transaction:** Any creditor who pays any amount to the liquidator in relation to any preferential transaction made with the company, according to the order of the Court or for any other reason, may make a claim for that amount as a debt claim against the company in liquidation.

Chapter-8

Insolvency Practice, and Regulation and Administration Thereof

63. Prohibition on carrying on insolvency practice without license: (1)

No person shall operate insolvency practice without obtaining a license from the Office pursuant to this Act.

(2) Any person who has not obtained the license pursuant to Sub-section (1) shall not be appointed as the inquiry officer, restructuring manager or liquidator in the course of carrying out insolvency proceedings under this Act. Where any person other than a licensee is appointed as the inquiry officer, restructuring manager or liquidator, such appointment shall *ipso facto* be void.

64. Application to be made for license: (1) A person who is desirous of obtaining a license pursuant to Sub-section (1) of Section 63 shall make an application, along with the prescribed fee, to the Office in the prescribed format.

(2) A person who makes an application pursuant to Sub-section (1) shall meet the following conditions:

- (a) Have completed the age of thirty five years;
- (b) Being a member of the prescribed professional association;
- (c) Having acquired at least bachelor's degree in commercial law, commerce, management, accounts or any other prescribed subject from a recognized university;
- (d) Having abode in the State of Nepal;
- (e) Being competent to carry on insolvency practice under this Act.

(3) On receipt of an application under Sub-section (1), the Office shall, if it considers appropriate to issue a license to carry on the insolvency practice, issue the license in the prescribed format.

(4) The license issued pursuant to Sub-section (3) shall be renewed as prescribed.

65. Establishment of Insolvency Administration Office: (1) After the commencement of this Act, the Government of Nepal shall establish an Insolvency Administration Office, by notification in the Nepal Gazette. Pending the establishment of such Office, the Government of Nepal may designate any of its offices to perform the functions of the Insolvency Administration Office.

(2) The Office established pursuant to Sub-section (1) shall perform the following functions:

- (a) To administer insolvency practice;
- (b) To register insolvency practitioners, issue licenses to them, and renew such licenses;
- (c) To carry out general supervision of the management of companies which have become insolvent;
- (d) To conduct investigations of the code of office required to be observed by insolvency practitioners;
- (e) To maintain records of each company which has become insolvent; and
- (f) To perform such other functions as prescribed.

66. Power to suspend or cancel license: (1) Where a complaint is made that any person licensed pursuant to Sub-section (3) of Section 64 has not performed the functions as set forth in the license or the Office makes a report to that effect or the Court itself so considers, then the Court may institute action in this respect and issue an order suspending or canceling the license of such person.

(2) Prior to issuing any order pursuant to Sub-section (1), such person shall be provided with an opportunity to defend himself or herself.

(3) The Court may issue the order referred to in Sub-section (1) on the following grounds:

- (a) Where the licensee does any act that is prohibited under this Act;
- (b) Where the licensee does any acts required to be done under this Act in a reckless manner or fails to act such acts in a proper manner;
- (c) Where the person licensed to practice insolvency himself or herself becomes insolvent;
- (d) Where the person licensed to practice insolvency is convicted by a court of corruption, cheating, forgery or fraud.

67. Vacancies to be filled by Court: Where the office of the restructuring manager or liquidator appointed under this Act falls vacant as a result of the suspension or cancellation of license pursuant to Sub-section (1) of Section 66 or for any other reason, the Court may issue an order to appoint any other person who has possessed the qualification referred to in this Act to fill the vacancy by fulfilling the procedures followed while making the original appointment.

68. Remuneration: (1) The remuneration of the inquiry official, restructuring manager or liquidator appointed under this Act shall be as fixed by the meeting of creditors from time to time.

(2) Where remuneration cannot be fixed pursuant to Sub-section (1), the Court may specify such remuneration on the basis of the report of the Office.

69. Separate account to be opened: (1) The restructuring manager or liquidator appointed under this Act shall, while conducting insolvency proceedings under this Act, open and operate a separate bank account of every company to which he or she has been appointed.

(2) All amounts received by him or her shall be paid into the bank account opened pursuant to Sub-section (1).

(3) Any amount balance in the bank account opened pursuant to Sub-section (1) shall be invested only in the prescribed fields.

(4) In addition to those mentioned in Sub-section (1), the restructuring manager or liquidator shall maintain other accounts and books of accounts clearly reflecting the full and actual affairs of the insolvency proceedings of every company which has become insolvent and submit the statements of such accounts and books to the Court or the Office, as per necessity.

(5) The restructuring manager or liquidator shall, on performance of his or her duties, shall have the accounts and books of accounts, as well as the statements thereof, maintained by him or her pursuant to this Section audited in accordance with the laws and hand them over the same to the Office.

70. Power to remove by order of Court: (1) Where a complaint is made that a restructuring manager or liquidator appointed pursuant to this Act has failed to work in accordance with this Act while carrying out the insolvency proceedings of any company assigned to him or her or where his or her conduct is found to be contrary to this Act, the Court may issue an order to remove him or her.

(2) The concerned person shall not be deprived of an opportunity to defend himself or herself, prior to issuing the order referred to in Sub-section (1).

71. Reply to be made: Where the Court or the Office asks the restructuring manager or liquidator appointed pursuant to this Act any question in relation to any act or action done or taken by him or her, he or she shall make a reply to such question promptly.

Chapter-9

Miscellaneous

72. **Offense and punishment:** (1) A person shall be deemed to have committed an offense under this Act if he or she commits, or causes the commission of, any of the following acts:

- (a) Where a person holding the office of director of a company does not submit to the Court a report on the financial condition and transaction of the company in the prescribed format under Section 16;
- (b) Where any person acts as an insolvency practitioner without obtaining a license from the Office pursuant to this Act;
- (c) Where the director of a company deliberately conceals the fact that the company has become insolvent or is going to become insolvent;
- (d) Where an insolvency practitioner fails to discharge any such function in good faith as required to be discharged by him or her under this Act; or
- (e) Where any director or employee or shareholder or other person of a company commits any act of fraud or forgery against, or cheats or misleads, the company or its creditors.

(2) The Court may punish any director who commits the offense referred to in Clause (a) of Sub-section (1) with a fine not exceeding fifty thousand rupees.

(3) The Court may punish any person who commits the offense referred to in Clause (b) of Sub-section (1) with a fine from ten thousand rupees to fifty thousand rupees.

(4) Any director who commits the offense referred to in Clause (c) of Sub-section (1) shall be punished with a fine not exceeding two hundred thousand rupees; and the director shall pay such fine personally.

(5) Where any company, creditor or concerned party suffers any loss as a result of the failure of an insolvency practitioner to discharge such function in good faith as required to be discharged by him or her as mentioned in Clause (d) of Sub-section (1), compensation for such loss shall be recovered from such practitioner, and he or she may also be punished with a fine not exceeding five hundred thousand rupees.

(6) The Court may punish any director, employee, shareholder or other person who commits the offense referred to in Clause (e) of Sub-section (1) with imprisonment for a term from one year to two years and with a fine from one hundred thousand rupees to five hundred thousand rupees; and the amount involved in the offense shall also be recovered from such offender.

73. Cases to be filed: Where any person appears to have committed any of the offenses referred to in Section 72, the liquidator, Office or concerned party may file a case, along with the grounds for the same, in the concerned court.

74. Recovery of expenses and compensation: (1) Where any person makes an appeal to the concerned court against any order issued or decision made by the Court in relation to the insolvency proceedings instituted under this Act and the order or decision of the Court is also substantiated by the appellate level, the other party shall be entitled to have all expenses which he or she had to incurred in the course of such action recovered from the person making such appeal.

(2) Where it appears that the insolvency proceedings have prolonged as a result of any action instituted by any person pursuant to Sub-section (1), which has resulted in any loss or damage to the concerned company or its creditors or shareholders, the Court may also order such person to pay compensation for the actual loss or damage.

75. Power to frame Rules: The Government of Nepal may frame necessary rules in order to implement the objectives of this Act.

76. **Power to frame manuals:** The Office may frame necessary manuals in order to facilitate the insolvency proceedings.

77. **Effect of inoperativeness of the Insolvency Ordinance, 2062(2005):** With the Insolvency Ordinance, 2062 (2005) being inoperative, unless a different intention appears, the inoperativeness shall not:

- (a) revive anything not in force or existing at the time at which the Ordinance became inoperative;
- (b) affect the matter in operation as per the Ordinance or anything duly done or any punishment suffered thereunder;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance;
- (d) affect any penalty, punishment or forfeiture incurred under the Ordinance;
- (e) affect any action or remedy made or taken in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid; and any such legal proceeding or remedy may be instituted, continued or enforced as if the Ordinance were in force.