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LIMITED LIABILITY PARTNERSHIP ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.

**PART II – REGISTRAR AND REGISTER
OF LIMITED LIABILITY PARTNERSHIPS**

3. Appointment and functions of Registrar and other officers.
4. Power of Registrar to refuse registration if information is not adequate.
5. Electronic lodgement of documents with Registrar.

PART III – NATURE OF LIMITED LIABILITY PARTNERSHIP

6. Limited liability partnership to have separate legal personality.
7. Capacity of limited liability partnership.
8. Partnership Act to apply to limited liability partnership.
9. Who can be partners in a limited liability partnership.
10. Liability of partners in limited liability partnership to be limited.
11. Power of partner to bind the limited liability partnership.
12. How the relationship of partners is to be governed.
13. How a partner ceases to be a member of a limited liability partnership.
14. What is the effect of a partner becoming bankrupt.
15. Partner may assign interest in limited liability partnership.

PART IV – REGISTRATION OF LIMITED LIABILITY PARTNERSHIPS

16. Registration of body as a limited liability partnership.
17. Requirements for registering limited liability partnerships.
18. Functions of Registrar with respect to the registration of limited liability partnerships.
19. Registrar to refuse registration on certain national security or public interest grounds.
20. Requirements for names of limited liability partnerships.
21. Restrictions on registration of limited liability partnership names.
22. Registrar to notify decision refusing registration and state reasons for the decision.
23. Right to appeal against refusal of registration.

**PART V – CONVERSION OF PARTNERSHIPS AND PRIVATE
COMPANIES INTO A LIMITED LIABILITY PARTNERSHIP**

24. Conversion from firm to a limited liability partnership.
25. Conversion of a private company to a limited liability partnership.

PART VI – MANAGEMENT OF LIMITED LIABILITY PARTNERSHIPS

26. Limited liability partnership to have at least two partners.
27. Limited liability partnership to have manager.
28. Provisions that apply when limited liability partnership has more than one manager.

Limited Liability Partnership

Section

29. Limited liability partnership to lodge annual declaration of solvency or insolvency with Registrar.
30. Limited partnership to keep proper accounting records.
31. Limited liability partnership to have registered office in Kenya.
32. Requirements for documents issued by limited liability partnership.
33. Changes to registered details of limited liability partnership to be lodged with Registrar.

**PART VII – RECEIVERSHIP AND WINDING
UP OF A LIMITED LIABILITY PARTNERSHIP**

34. Insolvency and winding up of limited partnership.

PART VIII – MISCELLANEOUS PROVISIONS

35. Power of Minister to make regulations for the purposes of this Act.
36. Power to make procedural rules for the purposes of proceedings under this Act.
37. Repeal of Cap. 30.
38. Transitional provisions.

SCHEDULES

FIRST SCHEDULE –	DEFAULT PROVISIONS FOR A LIMITED LIABILITY PARTNERSHIP
SECOND SCHEDULE –	CONVERSION FROM A PARTNERSHIP TO A LIMITED LIABILITY PARTNERSHIP
THIRD SCHEDULE –	CONVERSION FROM A PRIVATE COMPANY TO A LIMITED LIABILITY PARTNERSHIP
FOURTH SCHEDULE –	RECEIVERS AND MANAGERS
FIFTH SCHEDULE –	WINDING UP OF LIMITED LIABILITY PARTNERSHIP

NO. 42 OF 2011

LIMITED LIABILITY PARTNERSHIP ACT

[Date of assent: 11th November, 2011.]

[Date of commencement: 16th March, 2012.]

An Act of Parliament to make provision for limited liability partnerships and for connected purposes

[Act No. 42 of 2011, L.N. 15/2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Limited Liability Partnership Act, 2011.

2. Interpretation

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

“**accounting records**” include—

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and
- (b) documents and records that record such entries; and
- (c) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“**address**”, in relation to a member of a limited liability partnership, means—

- (a) if a natural person, the person’s usual residential address;
- (b) if a body corporate, the body’s registered office;

“**company**” means a company registered under the Companies Act (Cap. 486);

“**disposition**”, in relation to property, includes any conveyance, assignment or transfer of, or any mortgage or charge over, the property;

“**identity document**” means—

- (a) in the case of a person issued with an identity card, the number of the person’s identity card; or
- (b) in the case of a person not issued with an identity card, particulars of the person’s passport or other available evidence sufficient to identify the person;

“**limited liability partnership**” means a partnership registered under this Act;

“**limited liability partnership agreement**”, in relation to a limited liability partnership, means an agreement (expressed or implied)—

- (a) between the partners of the partnership; or
- (b) between the partnership and its partners,

that determines the mutual rights and duties of the partners and their rights and duties in relation to the partnership;

“**liquidator**” includes the Official Receiver when acting as the liquidator of a corporation;

“**manager**”, in relation to a limited liability partnership, means a person who (whether or not a partner of the partnership) is concerned in, or takes part in, the management of the partnership (whether or not the particulars or consent of that partner to act as such are lodged with Registrar as required under section 27(2));

“**Minister**” means the Minister for the time being responsible for matter relating to limited liability partnerships;

“**misfeasance**” includes neglect and omission;

“**obligation**” includes liability;

“**officer**”, in relation to a limited liability partnership, means—

- (a) a manager of the limited liability partnership;
- (b) a receiver and a manager of a part of the undertaking of the partnership appointed under a power contained in an instrument; or
- (c) a liquidator of the partnership appointed in a voluntary winding up, but does not include—
 - (d) a receiver who is not a manager;
 - (e) a receiver and manager appointed by the Court; or
 - (f) a liquidator appointed by the Court or by the creditors;

“**partner**”, in relation to a limited liability partnership, means a person who has been admitted as a partner in the partnership in accordance with the relevant limited liability partnership agreement;

“**powers**” includes rights and authorities;

“**property**” includes things in action;

“**record**” includes any book, account, document, paper or other source of information compiled, recorded or stored in written form, or on microfilm, or by electronic process, or in any other manner or by any other means;

“**Register**” means the Register of Limited Liability Partnerships established and maintained under this Act;

“**Registrar**” means the Registrar of Limited Liability Partnerships appointed or taken to have been appointed under section 3, and includes a Deputy Registrar or Assistant Registrar appointed under that section.

PART II – REGISTRAR AND REGISTER OF LIMITED LIABILITY PARTNERSHIPS

3. Appointment and functions of Registrar and other officers

- (1) There shall be a Registrar of Limited Liability Partnerships.
- (2) The Registrar of Companies is the Registrar of Limited Liability Partnerships.
- (3) There shall be a Deputy Registrar of Limited Liability Partnerships and Assistant Registrars of Limited Liability Partnerships.

(4) The Registrar may authorise the Deputy Registrar or an Assistant Registrar to perform and exercise such of the Registrar's functions and powers as the Registrar may from time to time specify.

(5) Functions and powers of the Registrar performed or exercised in accordance with an authority conferred under subsection (4) are taken to have been performed or exercised by the Registrar.

4. Power of Registrar to refuse registration if information is not adequate

The Registrar may refuse to register an entity (including an existing partnership or a private company) as a limited liability partnership if the Registrar is not satisfied with the information purporting to be provided under this Act in respect of the entity.

5. Electronic lodgement of documents with Registrar

(1) The Registrar may require any document to be lodged under this Act to be lodged electronically.

(2) If a document is required to be lodged with the Registrar electronically, the Registrar may allow the document to be lodged by an agent of the person who is required to lodge it, subject to such conditions (if any) as the Registrar may impose from time to time.

(3) A copy of a document lodged electronically with the Registrar under this Act, purporting to be certified by the Registrar as being a true copy of the original document, is, in the absence of evidence to the contrary, admissible in all legal proceedings as proof of the original document.

PART III – NATURE OF LIMITED LIABILITY PARTNERSHIP

6. Limited liability partnership to have separate legal personality

(1) A limited liability partnership is an entity formed by being registered under this Act.

(2) On being registered under this Act, a limited liability partnership becomes a body corporate with perpetual succession with a legal personality separate from that of its partners.

(3) A change in the partners of a limited liability partnership does not affect the existence, rights or obligations of the limited liability partnership.

7. Capacity of limited liability partnership

(1) A limited liability partnership is, in its name, capable of—

- (a) suing and being sued;
- (b) acquiring, owning, holding and developing or disposing of movable and immovable property; and
- (c) doing such other acts and things as a body corporate may lawfully do.

(2) A limited liability partnership is required to acquire and maintain a common seal that bears its name and to use the seal for the execution of all documents that by law are required to be sealed.

8. Partnership Act to apply to limited liability partnership

The Partnerships Act shall apply to a limited liability partnership except so far as a provision of this Act otherwise expressly provides.

9. Who can be partners in a limited liability partnership

(1) A natural person or a body corporate may be a partner in a limited liability partnership.

(2) A trade union is not a body corporate for the purposes of subsection (1).

10. Liability of partners in limited liability partnership to be limited

(1) A limited liability partnership shall be solely obligated to an issue arising from contract, tort or otherwise.

(2) A person is not personally liable, directly or indirectly, for an obligation referred to in subsection (1) only because the person is a partner of the limited liability partnership.

(3) Subsection (1) shall not affect the personal liability of a partner in tort for the wrongful act or omission of that partner.

(4) A partner is not personally liable for the wrongful act or omission of another partner of the limited liability partnership.

(5) If a partner of a limited liability partnership is liable to a person other than another partner of the partnership as a result of a wrongful act or omission of that partner in the course of the business of the limited liability partnership or with its authority, the partnership is liable to the same extent as that partner.

(6) The liabilities of a limited liability partnership are payable out of the property of the limited liability partnership.

11. Power of partner to bind the limited liability partnership

(1) A partner of a limited liability partnership is the agent of the limited liability partnership.

(2) Notwithstanding subsection (1), a limited liability partnership is not bound by anything done by a partner in dealing with a person if—

- (a) the partner has in fact no authority to act for the limited liability partnership by doing that thing; and
- (b) the person knows that that person has no authority or does not know or believe that person to be a partner of the limited liability partnership.

(3) If a person has ceased to be a partner of a limited liability partnership, the former partner is, in relation to a person dealing with the partnership, to be treated as still being a partner of the partnership, unless—

- (a) the person has notice that the former partner has ceased to be a partner of the limited liability partnership; or
- (b) the former partner has ceased to be a partner of the limited liability partnership and notice of that fact has been delivered to the Registrar.

12. How the relationship of partners is to be governed

(1) Except as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, are governed—

- (a) by the limited liability partnership agreement; or
- (b) if there is no such agreement or there is such an agreement but it does not deal with a particular matter, by the First Schedule.

(2) Any reference to a resolution of the partners in relation to a particular matter is reference to a resolution passed by all of the partners unanimously or by such

number of them as may be specified by the limited liability partnership agreement as the number required to pass such a resolution.

13. How a partner ceases to be a member of a limited liability partnership

(1) A partner of a limited liability partnership may cease to be a partner—

- (a) by complying with the requirements of the relevant limited liability partnership agreement; or
- (b) in the absence of such an agreement, by giving not less than ninety days' notice to the other partners of the intention of the partner to resign as partner.

(2) A partner of a limited liability partnership also ceases to be a partner on the partner's death or on dissolution of the partnership.

(3) If a person ceases to be a partner of limited liability partnership, then, unless otherwise provided for in the limited liability partnership agreement (if any), that person, or the person's personal representative, or the liquidator (if any) of the partner's estate, is entitled to receive from the limited liability partnership an amount—

- (a) equal to the person's capital contribution to the limited liability partnership and the person's right to share in the accumulated profits of the limited liability partnership after the deduction of losses of the limited liability partnership; and
- (b) determined as at the date the person ceased to be a partner.

(4) A person who was formerly a partner of a limited liability partnership, or, if the person has died, the person's personal representative or a liquidator is not entitled to interfere in the management of the partnership.

14. What is the effect of a partner becoming bankrupt

(1) This section applies to a limited liability partnership unless otherwise provided for in the relevant limited liability partnership agreement.

(2) If a partner of the limited liability partnership is adjudicated bankrupt by a court in Kenya or elsewhere, the bankruptcy is not by itself cause for the partner to cease being a partner of the partnership, but the restriction on the partner being a manager of the partnership under Part VI applies.

(3) The Official Receiver or a trustee of the estate of the bankrupt partner is not entitled to interfere in the management of the limited liability partnership but is entitled to receive distributions from the partnership that the bankrupt partner is entitled to receive under the limited liability partnership agreement.

15. Partner may assign interest in limited liability partnership

(1) This section applies to a limited liability partnership unless otherwise provided for in the limited liability partnership agreement.

(2) A partner in a limited liability partnership may assign the whole or any part of the partner's interest in the partnership but only to the extent that the assignee becomes entitled to receive distributions from the partnership that the partner would otherwise have been entitled to receive.

(3) An assignment under subsection (2)—

- (a) terminates the partner's partnership in the partnership; and
- (b) entitles the assignee to participate in the management of the limited liability partnership.

PART IV – REGISTRATION OF LIMITED LIABILITY PARTNERSHIPS

16. Registration of body as a limited liability partnership

Two or more persons associated for carrying on a lawful business with a view to making a profit may, by complying with the registration requirements of this Part, register (the persons) as a limited liability partnership under this Act.

17. Requirements for registering limited liability partnerships

(1) For an entity to be registered as a limited liability partnership under this Act, a statement that complies with subsection (2) shall be lodged with the Registrar.

(2) A statement complies with this subsection if it is signed by each person who proposes to be a partner of the proposed limited liability partnership and contains the following information—

- (a) the name of that partnership;
- (b) the general nature of the proposed business of that partnership;
- (c) the proposed registered office of that partnership;
- (d) the name, identity document (if any), nationality, and usual place of residence of each person who will be a partner of the partnership;
- (e) if any of the persons referred to in paragraph (d) is a body corporate—
 - (i) the body's corporate name;
 - (ii) the body's place of incorporation or registration;
 - (iii) the body's registration number (if any); and
 - (iv) the registered office of the body to which all communications may be addressed;
- (f) the name, identity document (if any), nationality and the usual place of residence of each person who will be a manager of the partnership and, if any such person is a body corporate—
 - (i) the corporate name, place of incorporation or registration number (if any) of the body; and
 - (ii) the registered office of the body to which all communications may be addressed; and
- (g) such other information concerning the proposed limited liability partnership as may be prescribed by the regulations.

(3) The statement shall be in a form prescribed or approved by the Registrar and be accompanied by the prescribed fee (if any).

(4) The Registrar may, in a particular case, require the statement to be verified in a manner that the Registrar considers appropriate.

(5) The Registrar may refuse to register the partnership as a limited liability partnership if such a requirement is not complied with.

18. Functions of Registrar with respect to the registration of limited liability partnerships

(1) As soon as practicable after receiving the statement lodged under section 17 and being satisfied that the requirements of that section and section 20 have been complied with, the Registrar shall—

- (a) register the statements; and

(b) issue a certificate of registration to the persons who lodged the statement.

(2) A certificate of registration is conclusive evidence that—

- (a) the requirements of sections 17 and 20 have been complied with; and
- (b) the limited liability partnership is registered by the name specified in the certificate.

(3) If not satisfied that the requirements of sections 17 and 20 have been complied with in relation to an entity, the Registrar shall refuse to register the entity as a limited liability partnership under this Act.

19. Registrar to refuse registration on certain national security or public interest grounds

(1) Without limiting section 18, the Registrar shall refuse to register an entity as a limited liability partnership under this Act if satisfied that—

- (a) the entity is likely to be operated for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Kenya; or
- (b) it would be contrary to the national security or public interest for the entity to be so registered.

(2) The Minister responsible for internal security may, by notice in writing given to the Registrar, certify that the Minister is satisfied that it would be contrary to the national security or the public interest for an entity to be registered as a limited liability partnership under this Act.

(3) In making a decision under subsection (1), the Registrar shall take into account any relevant certificate notified to the Registrar under subsection (2).

20. Requirements for names of limited liability partnerships

(1) The name of a limited liability partnership shall end with—

- (a) the expression “limited liability partnership”; or
- (b) the abbreviation “llp” or “LLP”.

(2) A limited liability partnership that is registered under this Act may not carry on business under a name that is not registered under section 18 or 32.

(3) The registration of a name under which a limited liability partnership carries on business does not authorise the use of that name if, apart from that registration, the use of that name is prohibited.

(4) A limited liability partnership that contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

21. Restrictions on registration of limited liability partnership names

(1) The Registrar may refuse to register a limited liability partnership under a name, or allow a limited liability partnership to change its name to one that in the opinion of the Registrar is—

- (a) undesirable;
- (b) identical to that of any other limited liability partnership, corporation or business name;
- (c) identical to a name that is being reserved under this section, the Business Names Act (Cap. 499) or the laws relating to Companies; or

Limited Liability Partnership

(d) a name of a kind that the Minister has, by written notice, directed the Registrar not to accept for registration.

(2) A person may apply to the Registrar in the prescribed manner for the reservation of a name specified in the application as—

- (a) the name of a proposed limited liability partnership; or
- (b) the name to which a limited liability partnership proposes to change its name.

(3) On receiving an application under subsection (2) and on payment of the prescribed fee the Registrar shall, if satisfied that the name to be reserved is not one that may be rejected on a ground referred to in subsection (1), reserve the name for a period of two months from the date on which the application was lodged or for such longer period as the Registrar may specify.

(4) If the Registrar is satisfied that a limited liability partnership has been registered under a name that—

- (a) is a name referred to in subsection (1); or
- (b) nearly resembles the name of any other limited liability partnership or company or a business name as to be likely to be mistaken for it,

the Registrar may direct the limited liability partnership to change its name.

(5) A direction may be given under subsection (4) whether the name was registered through inadvertence, mistake or otherwise and whether at the time the partnership was first registered or when it changed its name.

(6) A limited liability partnership shall comply with a direction given to it under subsection (4) within six weeks after being notified of the direction or within such longer period as the Registrar may allow.

(7) A person may, in writing, apply to the Registrar to give a direction to a limited liability partnership, to change its name on a ground referred to in subsection (4) (a) or (b).

(8) The Registrar shall not consider an application under subsection (6) to give a direction to a limited liability partnership on the ground referred to in subsection (4)(b) unless the Registrar receiving the application within twelve months after the date of the registration of the partnership under that name.

(9) A limited liability partnership which fails to comply with a direction given under subsection (4) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.

(10) If, after being convicted of an offence under subsection (8), a limited liability partnership still fails to comply with a direction given under subsection (4), the partnership commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

(11) The Registrar may, if it is satisfied that a limited liability partnership is directed under subsection (4) to change its name had applied for registration under that name in bad faith, require the partnership to pay the Registrar such penalty as may be prescribed and the Registrar may, by proceedings brought in a court of competent jurisdiction, recover such a fee as a debt due to the Registrar.

(12) A limited liability partnership which is aggrieved by a direction of the Registrar under subsection (4) or a requirement of the Registrar under subsection

(10) may, within thirty days after the date of the direction or requirement, appeal to the Minister.

22. Registrar to notify decision refusing registration and state reasons for the decision

(1) As soon as practicable after deciding to refuse to register an entity as a limited liability partnership under section 16, 17 or 19, the Registrar shall, in writing given to the persons who lodged the statement in relation to the entity, notify them of the decision and the reasons on which the decision was based.

(2) The Registrar may not make a decision refusing to register an entity as a limited liability partnership without giving the persons concerned an opportunity to show cause as to why the entity should be so registered.

23. Right to appeal against refusal of registration

A person who is notified of the decision of the Registrar in accordance with section 22 may, within thirty days after being so notified, appeal to the Court against the decision appeal to the Minister against the decision.

PART V – CONVERSION OF PARTNERSHIPS AND PRIVATE COMPANIES INTO A LIMITED LIABILITY PARTNERSHIP

24. Conversion from firm to a limited liability partnership

(1) A partnership may convert itself into a limited liability partnership by satisfying the requirements of the Second Schedule.

(2) On conversion—

- (a) the limited liability partnership to which the partnership has converted; and
- (b) the partners of that limited liability partnership,

are bound by the Second Schedule.

(3) In this section and in the Second Schedule, “convert”, in relation to a partnership converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligation and the undertaking of the partnership to the limited liability partnership in accordance with the Second Schedule.

25. Conversion of a private company to a limited liability partnership

(1) A private company may convert itself into a limited liability partnership by satisfying the requirements set out in the Third Schedule.

(2) When a private company is converted to a limited liability partnership in accordance with subsection (1)—

- (a) the company;
- (b) its shareholders;
- (c) the limited liability partnership into which the private company is converted; and
- (d) the partners of that limited liability partnership,

are bound by the Third Schedule.

PART VI – MANAGEMENT OF LIMITED LIABILITY PARTNERSHIPS

26. Limited liability partnership to have at least two partners

(1) A limited liability partnership is required to have at least two partners.

(2) If a limited liability partnership carries on business with only one person as partner for more than two years, that person shall be personally liable, jointly and severally with the partnership, for any obligation of the partnership incurred during the period that the partnership carries on business beyond those two years if, at the time the obligation was incurred, that person—

- (a) was a partner of the partnership; and
- (b) knew or ought to have known that the partnership was carrying on business with fewer than two partners beyond those two years.

27. Limited liability partnership to have manager

(1) A limited liability partnership shall have at least one manager who is a natural person who has attained the age of eighteen years and who is resident in Kenya.

(2) A limited liability partnership shall lodge with the Registrar, in the manner prescribed by the Registrar—

- (a) the details of the person who is designated as manager of the partnership; and
- (b) the consent of that person to act as the partnership manager.

(3) A manager of a limited liability partnership—

- (a) shall be personally responsible for ensuring that the partnership complies with sections 29, 32 and 33; and
- (b) shall be personally liable for all penalties imposed on the partnership for any failure to comply with or contravention of those sections, unless the manager satisfies the court that the manager should not be liable.

(4) If a limited liability partnership fails to comply with subsection (1), the partnership and each of its partners commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(5) A limited liability partnership that fails to comply with subsection (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) If, after being convicted of an offence under subsection (4), a limited liability partnership still fails to comply with subsection (1), the partnership and each of its partners commit a further offence on every day or part of a day during which the failure continues after the conviction and shall be liable on conviction to a fine not exceeding five thousand shillings for each such offence.

(7) If, after being convicted of an offence under subsection (5), a limited liability partnership still fails to comply with subsection (2), the partnership and each of its partners commit a further offence on every day or part of a day during which the failure continues after the conviction and shall be liable on conviction to a fine not exceeding five thousand shillings for each such offence.

28. Provisions that apply when limited liability partnership has more than one manager

(1) If a limited liability partnership has more than one manager—

- (a) anything that the manager is required to do under this Act may be done by any one of the managers; and
- (b) anything that constitutes an offence by a manager under this Act constitutes an offence by each of the managers.

(2) A reference in this Act to the manager of a limited liability partnership is, if the partnership has only one manager, a reference to that manager.

(3) A reference in this Act to the doing of an act by two or more managers of a limited liability partnership that has only one manager is a reference to the doing of that act by that manager.

29. Limited liability partnership to lodge annual declaration of solvency or insolvency with Registrar

(1) A limited liability partnership shall lodge with the Registrar a declaration by one of its managers that in the opinion of the manager, the partnership either—

- (a) appears, as at that date, to be solvent; or
- (b) does not appear, as at that date, to be solvent.

(2) The declaration shall be lodged not later than fifteen months after the registration of the limited liability partnership and subsequently once in every calendar year at intervals of not more than fifteen months.

(3) However, the Registrar may, on an application by a limited liability partnership, extend the period within which the declaration may be lodged.

(4) If a limited liability partnership fails to lodge the declaration within the period referred to in subsection (2), or within the extended period referred to in subsection (3), the partnership—

- (a) commits an offence and is liable to a fine not exceeding one hundred thousand shillings; and
- (b) paragraph 3(2)(d) of the Fifth Schedule applies.

(5) A manager of a limited liability partnership who makes a declaration without having reasonable grounds for believing that the partnership is solvent, commits an offence and is liable on conviction—

- (a) if the manager is a natural person, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding twelve months, or to both; or
- (b) if the manager is a body corporate, to a fine not exceeding fifty thousand shillings.

(6) A person who, in a declaration made under this section, makes a statement or gives information (whether directly or indirectly) to a manager that is false or misleading, when the person knows or ought reasonably to have known that the statement or information is false or misleading, commits an offence and is liable on conviction—

- (a) in the case of a natural person, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or to both; and
- (b) in the case of a body corporate, to a fine not exceeding two hundred and fifty thousand shillings.

(7) If an offence under this section is committed with intent to defraud a creditor of the limited liability partnership or for a fraudulent purpose, the offender is liable on conviction—

- (a) if the offender is a natural person, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding three years, or to both; and
- (b) if the offender is a body corporate, to a fine not exceeding two hundred and fifty shillings.

(8) For the purposes of this section, “solvent”, in relation to a limited liability partnership, means the ability of the partnership to pay its debts as they become due in the ordinary course of business.

30. Limited partnership to keep proper accounting records

(1) A limited liability partnership shall keep such accounting and other records as will—

- (a) sufficiently explain the transactions and financial position of the partnership; and
- (b) enable a profit and loss account and a balance sheet to be prepared, from time to time that gives a true and fair view of the state of affairs of the partnership.

(2) A limited liability partnership shall retain its accounting records for not less than seven years after completion of the matters to which they relate.

(3) A limited liability partnership shall keep its accounting records at such place as the partners consider fit and shall at all times be open to inspection by the partners.

(4) The Registrar may, by notice in writing to the limited liability partnership or any of its partners, require the partnership or that partner to produce the partnership’s accounting records for inspection by the Registrar at such time or with such period, and at such place, as is specified by that notice.

(5) If a limited liability partnership fails to comply with subsection (1), (2) or (3), the partnership and each of the partners commits an offence and is liable on conviction—

- (a) if the offender is a natural person, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both; and
- (b) if the offender is a body corporate, to a fine not exceeding one hundred thousand shillings.

(6) A person who fails to comply with a notice given under subsection (4) commits an offence and is liable—

- (a) if the offender is a natural person, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both; and
- (b) if the offender is a body corporate, to a fine not exceeding one hundred thousand shillings.

31. Limited liability partnership to have registered office in Kenya

(1) A limited liability partnership shall establish and maintain a registered office within Kenya to which all communication and notices to the partnership are to be addressed.

(2) A document may be served on a limited liability partnership by delivering it at or sending it by post, to the partnership's registered office.

(3) A limited liability partnership may change the address of its registered office by lodging with the Registrar a notice of change in the manner determined by the Registrar and such a change takes effect when the notice is lodged.

32. Requirements for documents issued by limited liability partnership

(1) A limited liability partnership shall ensure that no invoice or other document relating to the partnership business is issued unless it bears—

- (a) the name and registration number of the partnership; and
- (b) a statement that it is registered with limited liability.

(2) A limited liability partnership that fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.

(3) If after being convicted of an offence under subsection (2), a limited liability partnership fails to comply with subsection (1), the partnership and each of its partners if, after being convicted of an offence under subsection (4), a limited liability partnership still fails to comply with subsection (1), the partnership and each of its partners commit a further offence on every day or part of a day during which the failure continues after the conviction and shall be liable on conviction to a fine not exceeding five thousand shillings for each such offence.

33. Changes to registered details of limited liability partnership to be lodged with Registrar

(1) Whenever a change occurs in any of the details registered in respect of a limited liability partnership, the partnership shall, within fourteen days after the change, lodge with the Registrar a statement specifying the nature and effective date of the change and such other information (if any) as is prescribed by the regulations.

(2) A person who ceases to be a partner or a manager of a limited liability partnership may personally lodge with the Registrar the statement referred to in subsection (1) if that partner or manager reasonably believes that the partnership will not lodge the statement with the Registrar.

(3) The Registrar may, in any particular case, require a statement lodged under subsection (1) to be rectified in a manner the Registrar considers fit.

(4) Any statement required to be lodged under this section may be lodged in the manner specified by the Registrar.

PART VII – RECEIVERSHIP AND WINDING
UP OF A LIMITED LIABILITY PARTNERSHIP

34. Insolvency and winding up of limited partnership

(1) If a limited liability partnership becomes insolvent, the Fourth Schedule shall have effect with respect to the appointment of a receiver or manager in respect of the partnership and the conduct of the receivership or management of the affairs of the partnership.

(2) The Minister may make regulations, not inconsistent with the Fourth Schedule, providing for the insolvency and winding up of a limited liability partnership, or a foreign limited liability partnership.

PART VIII – MISCELLANEOUS PROVISIONS

35. Power of Minister to make regulations for the purposes of this Act

(1) The Minister may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary to be prescribed for carrying out or giving effect to this Act.

36. Power to make procedural rules for the purposes of proceedings under this Act

The Court may make rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed by rules.

37. Repeal of Cap. 30

The Limited Partnerships Act is repealed.

38. Transitional provisions

(1) In this section—

“**existing limited liability partnership**” means a limited liability partnership whose registration is continued under subsection (2);

“**repealed Act**” means the Act repealed by section 37.

(2) The registration of a limited liability partnership under the repealed Act is, if in force under the repealed Act immediately before the commencement of this Act, continued under this Act.

(3) All rights, powers, liabilities and duties, whether arising under the repealed Act or any other law, that immediately before the commencement of this Act were vested in, imposed on or enforceable by or against an existing limited liability partnership are continued under this Act.

(4) All legal proceedings pending by or against an existing limited liability partnership immediately before the commencement of this Act continue under this Act.

(5) The partners and managers of an existing limited partnership in office immediately before the commencement of this Act continue to hold office as the partners and managers of the partnership.

FIRST SCHEDULE

[Section 10.]

DEFAULT PROVISIONS FOR A LIMITED LIABILITY PARTNERSHIP

1. Subject to the terms of the limited liability partnership agreement (if any), the mutual rights and duties of the partners, and the mutual rights and duties of the limited liability partnership and the partners, shall be determined in accordance with this Schedule.

2. All the partners of a limited liability partnership are entitled to share equally in the capital and profits of the partnership.

Limited Liability Partnership

- 3.** A limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by the partner in—
- (a) the ordinary and proper conduct of the business of the limited liability partnership; or
 - (b) doing anything necessary for the preservation of the business or property of the limited liability partnership.
- 4.** Each partner in a limited liability partnership is entitled to participate in the management of the partnership.
- 5.** A partner in a limited liability partnership is not entitled to remuneration for acting in the business or management of the partnership.
- 6.** A person can only become a partner in a limited liability partnership with the consent of all the existing partners.
- 7.** (1) A matter relating to a limited liability partnership is to be decided by a resolution passed by a majority of the partners.
- (2) For the purpose of deciding a matter relating to a limited liability partnership, each partner shall have one vote.
- 8.** Each partner in a limited liability partnership shall provide to the partnership and to the other partners true accounts and full information of all matters affecting the limited liability partnership about which the partner has knowledge or over which the partner has control.
- 9.** If a partner in a limited liability partnership, without the consent of the partnership, carries on a business of the same nature as, and competing with the partnership, that partner shall account for, and pay over to the limited liability partnership, all profits made by that partner in that business.
- 10.** A partner in a limited liability partnership shall account to the partnership for any benefit derived by the partner without the consent of the partnership from any transaction concerning the partnership, or from any use by that partner of the property, name or any business connection of the partnership.
- 11.** A partner in a limited liability partnership may not be expelled by a majority of the other partners unless a power to do so has been conferred by an express agreement among the partners.

SECOND SCHEDULE

[Section 24.]

**CONVERSION FROM A PARTNERSHIP
TO A LIMITED LIABILITY PARTNERSHIP****1. Eligibility for conversion**

A partnership may apply to convert to a limited liability partnership in accordance with this Schedule if the partners of the limited liability partnership to which the partnership is to be converted will comprise all the partners of the partnership.

2. Compliance for conversion

(1) A partnership that wishes to convert to a limited liability partnership shall do so by lodging with the Registrar a statement that complies with sub-paragraph (2).

(2) A statement complies with this sub-paragraph if it is signed by all of the partners and contains the following information—

- (a) the name and registration number (if applicable) of the partnership under the Business Registration Act or under any other relevant written law; and
- (b) the date (if any) on which the partnership was registered under that Act or other relevant written law;
- (c) the name of the proposed limited liability partnership;
- (d) the general nature of the proposed business of that partnership;
- (e) the proposed registered office of that partnership;
- (f) the name, identity document (if any), nationality, and usual place of residence of each person who will be a partner in that partnership;
- (g) if any of the persons referred to in paragraph (f) is a body corporate—
 - (i) the body's corporate name;
 - (ii) the body's place of incorporation or registration;
 - (iii) the body's registration number (if any); and
 - (iv) the registered office of the body to which all communications may be addressed;
- (h) the name, identity document (if any), nationality and the usual place of residence of each person who will be a manager of that partnership and, if any such person is a body corporate—
 - (i) the corporate name, place of incorporation or registration number (if any) of the body; and
 - (ii) the registered office of the body to which all communications may be addressed; and
- (i) such other information concerning the proposed limited liability partnership as may be prescribed by the regulations.

(3) The statement shall be in a form prescribed or approved by the Registrar and be accompanied by the prescribed fee.

(4) The Registrar may, in a particular case, require the statement to be verified in a manner that the Registrar considers appropriate.

(5) The Registrar may refuse to register the partnership as a limited liability partnership if such a requirement is not complied with.

3. Registration of conversion

On receiving a statement lodged in accordance with paragraph 2, the Registrar shall—

- (a) register the partnership as a limited liability partnership; and
- (b) issue a certificate of registration in a form determined by the Registrar stating that the limited liability partnership is registered under this Act.

4. Effect of registration

On and from the registration of a partnership under paragraph 3—

- (a) the limited liability partnership named in the certificate of registration is registered under this Act with all the attributes described in Part II of, and subject to, this Act;

- (b) all movable and immovable property vested in the partnership, all assets, interests, rights, privileges, liabilities, obligations relating to the partnership and the whole of the undertaking of the partnership vest in the limited liability partnership without further instrument than this Act; and
- (c) the partnership is taken to be dissolved and, if previously registered under the Business Registration Act (Cap. 532), shall be removed from the register of businesses under that Act.

5. Registration in relation to property

If any property to which paragraph 4(b) applies is registered with any public authority, the limited liability partnership shall, as soon as practicable after its registration under paragraph 3, notify the authority of the conversion and provide it with such details of the conversion as it may reasonably require.

6. Pending proceedings involving converted partnership

All proceedings by or against a partnership that were pending immediately before its registration as a limited liability partnership in accordance with paragraph 3 may be continued, completed and enforced by or against the limited liability partnership.

7. Continuance of conviction, ruling, order or judgment

A conviction, a ruling, an order or a judgment in favour of or against a partnership registered as a limited liability partnership in accordance with paragraph 3 may be enforced by or against the limited liability partnership.

8. Existing agreements of converted partnerships

(1) Any agreement to which a partnership was a party immediately before its registration as a limited liability partnership in accordance with paragraph 3 has effect as from that registration as if—

- (a) the limited liability partnership were a party to the agreement instead of the converted partnership; and
- (b) for any reference to the converted partnership, there were substituted in respect of anything to be done after registration a reference to the limited liability partnership.

(2) In this paragraph, “agreement” includes an agreement whether or not it is of such nature that the rights and liabilities under the agreement could be assigned.

9. Existing contracts of converted partnerships

(1) This paragraph applies to any deed, contract, scheme, bond, agreement, application, arrangement or other document that had effect in relation to a partnership immediately before its registration as a limited liability partnership.

(2) A document to which this paragraph applies—

- (a) has effect in relation to the limited liability partnership on and after its registration as if it related to that partnership; and
- (b) shall be enforceable by or against the limited liability partnership as if it were named in the document instead of the converted partnership.

10. Continuance of employment of staff of converted partnership

A contract of employment to which paragraph 8 or 9 applies continues in effect on and after the registration of a partnership as a limited liability partnership as if the limited liability partnership was the employer under the agreement instead of the converted partnership.

11. Existing appointment, authority or power of converted partnership

(1) An appointment of a partnership that had effect immediately before its registration as a limited liability partnership in accordance with paragraph 3 takes effect as from that registration as if the limited liability partnership had been appointed instead of the converted partnership.

(2) An authority or power conferred on a partnership that had effect immediately before the registration of the partnership as a limited liability partnership in accordance with paragraph 3 continues to have effect as from that registration as if it had been conferred on the limited liability partnership.

12. Paragraphs 5 to 11 not to apply to certain approvals, permits, licences and other authorities

Paragraphs 5 to 11 shall not apply to any approval, permit, licence or other authority in force in respect of a partnership immediately before its registration as a limited liability partnership in accordance with paragraph 3.

13. Partners to continue to be liable for obligations of partnership before conversion

(1) Despite paragraphs 6 to 12, each partner in a partnership that is converted to a limited liability partnership continues to be personally liable (jointly and severally with the limited liability partnership) for the obligations of the partnership that were incurred before its registration in accordance with paragraph 3 or that arose from a contract entered into before that registration.

(2) A partner who discharges an obligation referred to in sub-paragraph (1) is entitled to be fully indemnified by the limited liability partnership in respect of the obligation.

(3) Sub-paragraph (2) shall be subject to any agreement with that partnership to the contrary.

14. Notice of conversion in invoices and correspondence

(1) A limited liability partnership shall ensure that, for the twelve months beginning fourteen days after the date of its registration in accordance with paragraph 3, every invoice or other written communication given or sent by or on behalf of the partnership bears—

- (a) a statement that the partnership was, as from its registration, converted from a partnership to a limited liability partnership; and
- (b) the name and registration number (if applicable) of the partnership from which it was converted.

(2) A limited liability partnership that contravenes sub-paragraph (1) commits an offence and is liable to a fine not exceeding one hundred thousand shillings.

(3) If, after a limited liability partnership has been convicted of an offence under sub-paragraph (2), an invoice or other written communication that does not contain the information referred to in sub-paragraph (1) is sent or given by or on behalf of the partnership, the partnership commits a further offence and is liable

on conviction to a fine not exceeding twenty thousand shillings for each such contravention.

THIRD SCHEDULE

[Section 25.]

CONVERSION FROM A PRIVATE COMPANY TO A LIMITED LIABILITY PARTNERSHIP

1. Interpretation of terms used in this Schedule

In this Schedule, “company” and “private company” have the same meanings as in the Companies Act (Cap. 486).

2. What companies are eligible to convert to limited liability partnerships

A company may apply to convert to a limited liability partnership in accordance with this Schedule if—

- (a) no security interest over the company’s assets is subsisting at the time of the application; and
- (b) the company is a private company in which the partners of the proposed limited liability partnership comprise all the shareholders of the company and no one else.

3. Statement required to be lodged with Registrar

(1) A company that wishes to convert to a limited liability partnership shall lodge with the Registrar a statement that complies with sub-paragraph (2).

(2) A statement complies with this sub-paragraph if it is signed by all of the shareholders of the company and contains the following information—

- (a) the name and registration number of the company;
- (b) the date on which the company was incorporated under the Companies Act (Cap. 486);
- (c) the name of the proposed limited liability partnership;
- (d) the general nature of the proposed business of that partnership;
- (e) the proposed registered office in that partnership;
- (f) the name, identity document (if any), nationality, and usual place of residence of each person who will be a partner in that partnership;
- (g) if any of the persons referred to in paragraph (f) is a body corporate—
 - (i) the body’s corporate name;
 - (ii) the body’s place of incorporation or registration;
 - (iii) the body’s registration number (if any); and
 - (iv) the registered office of the body to which all communications may be addressed;
- (h) the name, identity document (if any), nationality and the usual place of residence of each person who will be a manager of that partnership and, if any such person is a body corporate—
 - (i) the corporate name, place of incorporation or registration number (if any) of the body; and

- (ii) the registered office of the body to which all communications may be addressed; and
- (i) such other information concerning the proposed limited liability partnership as may be prescribed by the regulations.

(3) The statement shall be in a form prescribed or approved by the Registrar and be accompanied by the prescribed fee.

(4) The Registrar may, in a particular case, require the statement to be verified in a manner that the Registrar considers appropriate.

(5) The Registrar may refuse to register the company as a limited liability partnership if such a requirement is not complied with.

4. Registration of conversion

On receiving a statement lodged in accordance with paragraph 3, the Registrar shall—

- (a) register the company as a limited liability partnership; and
- (b) issue a certificate of registration in a form determined by the Registrar stating that the limited liability partnership is registered under this Act.

5. Effect of registration

On and from the registration of the company in accordance with paragraph 4—

- (a) the limited liability partnership named in the certificate of registration is registered under this Act with all the attributes described in Part II of, and subject to, this Act;
- (b) all movable and immovable property vested in the company, all assets, interests, rights, privileges and obligations relating to the company and the whole of the undertaking of the company vest in the limited liability partnership without further instrument than this Act; and
- (c) the company is taken to be dissolved and shall be removed from the register of companies kept under the Companies Act (Cap. 486).

6. Registration in relation to property of converted company

If any property referred to in paragraph 5(b) is registered with a public authority, the limited liability partnership shall, as soon as practicable after its registration under paragraph 4, notify the authority to notify of the conversion and provide it with such details of the conversion as it may reasonably require.

7. Pending proceedings involving converted company

Any proceedings by or against the company that were pending immediately before its registration as a limited liability partnership may be continued, completed and enforced by or against the partnership.

8. Continuance of conviction, ruling, order or judgment made in respect of converted company

Any conviction, ruling, order or judgment in favour of or against a company registered as a limited liability partnership in accordance with paragraph 4 may be enforced by or against the limited liability partnership.

9. Existing agreements of converted companies

(1) Any agreement to which the company was a party to immediately before its registration as a limited liability partnership has effect as from that registration as if—

- (a) the partnership was a party to an agreement instead of the company; and
- (b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the partnership.

(2) In this paragraph, “agreement” includes an agreement whether or not it is of such nature that the rights and liabilities under the agreement could be assigned.

10. Existing contracts of converted companies

(1) This paragraph applies to any deed, contract, a scheme, bond, agreement, application, arrangement or other document that had effect in relation to a company immediately before its registration as a limited liability partnership in accordance with paragraph 4.

(2) A document to which this paragraph applies—

- (a) has effect in relation to the limited liability partnership on and after its registration as if it related to the company; and
- (b) is enforceable by or against the limited liability partnership as if it were named in the document instead of the company.

11. Continuance of employment

A contract of employment to which paragraph 10 or 11 applies continues in effect on and after the registration of the company as a limited liability partnership as if the partnership was the employer under the contract instead of the company.

12. Existing appointment authority or power of converted company

(1) An appointment of a company that had effect immediately before its registration as a limited liability partnership in accordance with paragraph 4 continues to have effect as from that registration as if the partnership had been appointed instead of the company.

(2) An authority or power conferred on a company that had effect immediately before the registration of the company as a limited liability partnership continues to have effect as from that registration as if it had been conferred on the partnership.

13. Paragraphs 6 to 13 not to apply to certain approvals, permits, licences and other authorities

Paragraphs 6 to 13 do not apply to any approval, permit, licence or other authority that is in force in respect of a company immediately before its registration as a limited liability partnership in accordance with paragraph 4.

14. Notice of conversion in invoices and corresponding

(1) A limited liability partnership shall ensure that, for the twelve months beginning fourteen days after its registration in accordance with paragraph 4, every invoice or other written communication given or sent by or on behalf of the partnership bears—

Limited Liability Partnership

- (a) a statement that the partnership was, as from the date of its registration, converted from a private company to a limited liability partnership; and
- (b) the name and registration number of the company from which it was converted.

(2) A limited liability partnership that contravenes sub-paragraph (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(3) If, after a limited liability partnership has been convicted of an offence under subsection (2), an invoice or other written communication that does not contain the information referred to in subsection (1)(a) and (b) is sent or given by or on behalf of the partnership, the partnership commits a further offence and is liable on conviction to a fine not exceeding twenty thousand shillings for each such offence.

FOURTH SCHEDULE

[Section 34.]

RECEIVERS AND MANAGERS**1. Certain persons disqualified from being appointed as receiver of limited liability partnership**

(1) The following are not qualified to be appointed or to act as a receiver of the property of a limited liability partnership—

- (a) a corporation;
- (b) an undischarged bankrupt;
- (c) a mortgagee of any property of the partnership, or a director, a manager or an employee of the partnership or of any corporation that is a mortgagee of the property of the partnership;
- (d) a person who is not an approved liquidator or the Official Receiver.

(2) Sub-paragraph (1) does not prevent a corporation authorized to do so by any written law from acting as receiver of the property of a limited liability partnership.

2. Liability of receiver etc. for certain debts incurred during receivership

(1) A person who takes possession of assets of a limited liability partnership as a receiver or under some authorization for the purpose of enforcing a charge is liable for debts that the person incurs in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Sub-paragraph (1) does not constitute the person entitled to the charge as a mortgagee in possession.

(3) Sub-paragraph (1) has effect irrespective of any agreement to the contrary, but does not affect the rights of the receiver or other person against the limited liability partnership or any other person.

(4) A receiver or a manager of the property of a limited liability partnership may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

(5) If a receiver or a manager has been appointed to enforce a charge for the benefit of a holder of a debenture of a limited liability partnership, the debenture

holder may apply to the Court for directions in relation to a matter arising in connection with the performance of the functions of the receiver or the manager.

3. Power of court to fix remuneration of receivers and managers

(1) The Court may, on application by the liquidator of a limited liability partnership, by order, fix the amount to be paid as remuneration to a person who, under the powers contained in an instrument, has been appointed as a receiver or manager of property of the partnership.

(2) The power of the Court, if no previous order has been made with respect to it—

- (a) extends to fixing the remuneration for any period before the order was made or applied for;
- (b) is exercisable even if the receiver or the manager has died or ceased to act before the order was made or applied for; and
- (c) if the receiver or the manager has been paid remuneration for a period before the order was made an amount in excess of that payable for that period, extends to requiring the receiver or manager, or a personal representative of the receiver or manager to account for the excess or such part of it as may be specified in the order.

(3) The power conferred by sub-paragraph (2)(c) may not be exercised with respect to a period before the application for the order was made unless, in the opinion of the Court, there are special circumstances making it appropriate for the power to be exercised.

(4) The Court may, from time to time, on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under this paragraph.

4. Appointment of liquidator as receiver

If a limited liability partnership is being wound up by the Court, the Court may, on application made by or on behalf of the debenture holders or other creditors of the partnership, appoint a liquidator as receiver of the property of the partnership.

5. Notification of appointment

(1) Within seven days after—

- (a) obtaining an order for the appointment of a receiver or a manager of the property of a limited liability partnership; or
- (b) appointing such a receiver or manager under any powers contained in any relevant instrument,

the person obtaining the order or making the appointment shall

lodge with the Registrar a notice giving details of the order or appointment.

(2) A person appointed as a receiver or a manager of the property of a limited liability partnership under the powers contained in an instrument shall, within seven days after ceasing to act as a receiver or a manager, lodge with the Registrar a notice of the cessation.

(3) A person who fails to comply with sub-paragraph (1) or (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(4) If, after being convicted of an offence under sub-paragraph (2), a person continues to fail to lodge with the Registrar the notice required by sub-paragraph

(1) or (2), the person commits a further offence for every day or part of a day during which the failure continues and is liable to a fine not exceeding twenty thousand shillings for each such offence.

6. Statement that receiver appointed

(1) In this paragraph—

- (a) “**relevant document**”, in relation to a limited liability partnership, means an invoice, order for goods or business letter—
 - (i) issued by or on behalf of the partnership, or a receiver, manager or liquidator of the partnership; and
 - (ii) on or in which the name of the partnership appears;
- (b) “**responsible person**”, in relation to a limited liability partnership, means an officer or a liquidator of the partnership or a receiver or a manager of the property of the partnership.

(2) If a receiver or a manager of the property of a limited liability partnership has been appointed, every relevant document concerning the partnership shall contain a statement immediately following the name of the partnership that a receiver or a manager has been appointed.

(3) If sub-paragraph (2) is not complied with, the limited liability partnership and each responsible person commits an offence and on conviction are each liable to a fine not exceeding one hundred thousand shillings.

7. Provisions as to information where receiver or manager appointed

(1) If a receiver or a manager of the property of a limited liability partnership is appointed, the following provisions apply—

- (a) the receiver or the manager shall immediately send notice of the appointment to the partnership;
- (b) within fourteen days after being required by the receiver or manager to prepare and submit a statement and affidavit in accordance with paragraph 8(2), or within such extended period as may be allowed by the Court or by the receiver or manager, the responsible person concerned shall prepare and submit to the receiver or manager the required statement and affidavit;
- (c) within one month after receiving the statement and affidavit, the receiver or the manager shall—
 - (i) lodge with the Registrar, a copy of the statement and affidavit and of any comments the receiver or the manager has made about it;
 - (ii) send to the partnership, a copy of any comments referred to in sub-paragraph (i), or if the receiver or manager has not made any such comments, a notice to that effect; and
 - (iii) if the receiver or the manager is appointed by or on behalf of the holders of debentures of the limited liability partnership, send to the trustees (if any), or the holders, a copy of the statement and the comments (if any) of the receiver or the manager on the statement.

(2) Sub-paragraph (1) shall not apply in relation to the appointment of a receiver or a manager to act with an existing receiver or a manager or in place of a receiver or a manager dying or ceasing to act.

(3) Where sub-paragraph (1) applies to a receiver or a manager who dies or ceases to act before that sub-paragraph has been fully complied with, the references in sub-paragraph (1)(b) and (c) to the receiver or manager, subject to sub-paragraph (3), include references to the successor of the receiver or manager and to any continuing receiver or manager.

(4) If a limited liability partnership is being wound up, this paragraph and paragraph 9 apply even if the receiver or the manager and the liquidator are the same person, but subject to any necessary modifications arising from that fact.

(5) A receiver or manager who fails to comply with a requirement of sub-paragraph (1) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(6) If, after being convicted of an offence under sub-paragraph (5), a receiver or manager continues to fail to do the act that gave rise to the conviction, the receiver or manager commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding twenty thousand shillings for each such offence.

8. Responsible person to submit statement to account receiver or the manager

(1) In this paragraph “responsible person”, in relation to a limited liability partnership in respect of which a receiver or manager has been appointed to manage the property of the partnership, means any of the following—

- (a) a manager of the partnership;
- (b) a person who is, or was formerly, an officer of the partnership; or
- (c) a person who took part in the formation of the partnership at any time during the period of 12 months preceding the date of appointment of the receiver or manager;
- (d) a person who is, or who was during that period, an employee of the partnership;
- (e) a person who is, or who during that period was, an officer of or employer of a corporation that is, or was during that period, an officer of the partnership.

(2) On being required to do so by the receiver or manager of the property of a limited liability partnership, a responsible person shall, within the designated period, prepare and submit to the receiver or manager a statement relating to the affairs of the partnership that complies with sub-paragraph (4), together with an affidavit verifying the contents of the statement.

(3) For the purpose of sub-paragraph (2), the designated period is the period referred to in paragraph 7(1)(b).

(4) The statement shall show, as at the date of the appointment of the receiver—

- (a) details of the partnership’s assets, debts and liabilities;
- (b) the names and addresses of its creditors and the securities held by them respectively;
- (c) the dates when the securities were respectively given; and
- (d) such other information (if any) as may be prescribed for the purposes of this paragraph.

(5) The receiver or manager shall pay to the person who prepared and submitted the statement required under sub-paragraph (2) such amount as the

receiver or manager considers to have been reasonably incurred by the person in preparing and submitting the statement and the accompanying affidavit.

(6) The amount under sub-paragraph (5) shall be payable from the receipts of the receiver or manager.

(7) If the person who prepared the statement and affidavit is dissatisfied with the amount allowed by the receiver or manager, that person may, within the prescribed period, appeal to the Court in respect of that amount.

(8) On the hearing of the appeal, the Court may either confirm the amount allowed or vary it by substituting such amount as it considers to be fair and reasonable.

(9) The receiver or manager is entitled to be heard or represented at the hearing of an appeal under this sub-paragraph.

(10) A responsible person who, without reasonable excuse, fails to comply with sub-paragraph (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(11) If, after being convicted of an offence under sub-paragraph (7), a responsible person still fails to do prepare and submit the statement or affidavit referred to in sub-paragraph (2), the person commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding twenty thousand shillings for each such offence.

(12) For the purposes of this paragraph, a reference to the successor of the receiver or manager includes a continuing receiver or a manager.

9. Receiver or manager to lodge detailed accounts with Registrar

(1) In this paragraph—

(a) “**relevant date**”, in relation to a limited liability partnership in respect of which a receiver or manager has been appointed to manage the property of the partnership, means—

- (i) the date on which the period of six months from the date appointment of the receiver or manager ends; or
- (ii) the date on which every subsequent period of six months ends; or
- (iii) the date on which the receiver or manager ceases to act as such;

(b) “**relevant period**” means—

- (i) the period of six months from the date of the appointment of the receiver or manager;
- (ii) each subsequent period of six months during the appointment of the receiver or manager; or
- (iii) if the receiver or manager has ceased to act as such, the period from the end of the period to which the previous account related or the period from the date of the appointment of the receiver or manager to the date on which the receiver or manager ceased to act as such, whichever period is applicable.

(2) A receiver or a manager of the property of a limited liability partnership shall, within one month after each relevant date, lodge with the Registrar a detailed account that complies with sub-paragraph (3), together with an affidavit verifying all items referred to the account.

(3) An account complies with this sub-paragraph if it is in the prescribed form and shows details of—

- (a) the receipts and the payments of the receiver or manager during each relevant period;
- (b) the aggregate amount of those receipts and payments during all preceding relevant periods (if any); and
- (c) if the receiver or manager has been appointed in accordance with a power contained in a relevant instrument, the amount owing under the instrument at the time of the appointment of the receiver or manager, in the case of the first account, and at the end of every relevant period and the estimate of the receiver or manager of the total value of all assets of the partnership that are subject to the instrument.

(4) The Registrar may, on the Registrar's own motion or on the application of the limited liability partnership concerned or a creditor of the partnership, arrange for the accounts of the partnership to be audited by a public accountant appointed by the Registrar.

(5) In order to facilitate such an audit, the receiver or the manager—

- (a) shall provide the auditor with such vouchers and information as that auditor requires; and
- (b) shall, if the auditor requires the production of any accounting records kept by the receiver or the manager or of any document relating to them, produce the records or document to the auditor for inspection.

(6) If the Registrar arranges for the accounts to be audited on the application of the request of the limited liability partnership concerned or of a creditor of that partnership, the applicant shall, if the Registrar so requires, give security for the payment of the cost of the audit.

(7) The Registrar shall determine the costs of an audit under sub-paragraph (4) and these costs shall be payable by the receiver unless the Registrar otherwise determines.

(8) A receiver or a manager who fails to comply with sub-paragraph (2) or (5) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(9) If, after being convicted of an offence under sub-paragraph (8), a receiver or manager continues to fail to do the act that gave rise to the conviction, the receiver or manager commits a further offence on each day or part of a day during which the failure continues and is liable on conviction not exceeding twenty thousand shillings for each such offence.

10. Floating charge to have priority to payment of certain debts

(1) This paragraph applies if—

- (a) a receiver is appointed on behalf of the holders of debentures of a limited liability partnership secured by a floating charge; or
- (b) possession, is taken by or on behalf of debenture holders of any property that is subject to a floating charge.

(2) In this paragraph—

- (a) **“floating charge”** means a charge that, as created, was a floating charge;
- (b) **“relevant debts”**, in relation to a limited liability partnership, means—

- (i) debts that in every winding up are preferential debts and are due as wages, salary, retrenchment benefits or *ex gratia* payments, vacation leave payments or superannuation or provident fund payments; and
- (ii) amounts that in a winding up are payable in accordance with paragraph 76(6) or (8) of the Fifth Schedule.

(3) If the limited liability partnership is not at the relevant time in the course of being wound up, the receiver or, if any other person has taken possession of the debentures in priority to any claim for principal or interest in respect of the debentures, that other person shall pay those debts out of any assets coming into the possession of the receiver or person in the same order of priority as is prescribed by that paragraph in respect of any such debts or amounts.

(4) For the purposes of this paragraph, the Fifth Schedule to the commencement of the winding up are to be read as a reference to the date of the appointment of the receiver or of possession being taken, as the case requires.

(5) As far as possible, payments made under this paragraph are to be recovered out of those assets of the partnership available for payment of general creditors.

11. Enforcement of duty of receiver or manager to make returns, etc

(1) If a receiver or manager of property of a limited liability partnership has failed to comply with a requirement to make or lodge any return, account or other document, or to give any notice, required by law—

- (a) a partner or creditor of the limited liability partnership; or
- (b) a trustee for debenture holders of a notice,

may serve on the receiver or manager a compliance notice requiring the receiver or manager to comply with the requirement within fourteen days after being served with the notice.

(2) If a receiver or manager of the property of a limited liability partnership fails to comply with a compliance notice within fourteen days after being served with the notice, the Court may, on the application of the person who served the notice, make an order directing the receiver or manager to comply with the requirement within such period as is specified in the order.

(3) If it appears that a receiver or a manager of the property of a limited liability partnership has—

- (a) misapplied or retained or become liable or accountable for any money or property of the partnership; or
- (b) been guilty of any misfeasance or breach of trust or duty in relation to the partnership,

any creditor or a partner or of the liquidator may apply to the Court for an order under sub-paragraph (4).

(4) On the hearing of an application made under sub-paragraph (3), the Court may—

- (a) conduct an examination of the conduct of the receiver or manager; and
- (b) if appropriate, compel the receiver or manager—
 - (i) to repay or restore the money or property or any part of it, together with interest at a rate fixed by the Court; or

- (ii) to contribute to the assets of the partnership as compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty such amount as the Court thinks just.

(5) Sub-paragraph (2) has effect even if the conduct of the receiver or manager is conduct for which the receiver or manager is criminally liable.

FIFTH SCHEDULE

[Section 30.]

WINDING UP OF LIMITED LIABILITY PARTNERSHIP

PART I – INTERPRETATION

1. Definition of term used in Schedule

In this Schedule—

“**insolvency practitioner**” means—

- (a) a person who is registered as an insolvency practitioner under the law relating to Insolvency; or
- (b) a person who has been approved under that Act as an insolvency practitioner and whose approval has not been revoked.

PART II – WINDING UP BY COURT

General

2. Application for winding up by Court

(1) A limited liability partnership can be wound up under an order of the Court on the application of any one or more of the following—

- (a) the partnership;
- (b) a creditor, including a contingent or a prospective creditor, of the partnership;
- (c) a partner or the Official Receiver or a trustee of the estate of a bankrupt partner;
- (d) the liquidator; or
- (e) the Minister on a ground specified in paragraph 3(1)(b) or (f).

(2) Sub-paragraph (1) applies even if the limited liability partnership is being wound up voluntarily.

(3) If such an application is made by a contingent or a prospective creditor, the Court may not hear the application until—

- (a) such security for costs has been given as the Court thinks reasonable; and
- (b) a *prima facie* case for winding up has been established to the satisfaction of the Court.

(4) The Court may not make a winding up order in respect of a limited liability partnership that is being wound up voluntarily unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or partners.

3. Circumstances in which limited liability partnership can be wound up by Court

(1) The Court may order the winding up of a limited liability partnership on any of the following grounds—

- (a) the partners have resolved that the limited liability partnership be wound up by the Court;
- (b) the partnership carries on business with fewer than two partners for more than two years;
- (c) the limited liability partnership is unable to pay its debts;
- (d) the Court is of the opinion that it is not reasonably practicable the business of the partnership is to be carried on in conformity with the limited liability partnership agreement;
- (e) the Court is of the opinion that it is just and equitable that the limited liability partnership be wound up;
- (f) the partnership is being operated—
 - (i) for an unlawful purpose; or
 - (ii) for a purpose prejudicial to public peace, welfare or good order; or
 - (iii) contrary to national security or the national interest.

(2) For the purposes of sub-paragraph (1)(c), a limited liability partnership is unable to pay its debts if—

- (a) a creditor by assignment or otherwise to whom the partnership is owed a sum exceeding one hundred thousand shillings then due has served on the partnership by leaving at its registered office a demand signed by the creditor or the creditor's agent requiring the partnership to pay the sum owed, and the partnership has for three weeks after the demand failed—
 - (i) to pay the sum; or
 - (ii) to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) execution or other process issued on a judgment, decree or order of a court in favour of a creditor of partnership is returned wholly or partly unsatisfied;
- (c) it is proved to the satisfaction of the Court that the limited liability partnership is unable to pay its debts; or
- (d) the limited liability partnership has failed and is continuing to fail to lodge a declaration of solvency or insolvency as required under section 29.

(3) In determining whether a limited liability partnership is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the partnership.

(4) For the purpose of sub-paragraph (1)(f), a certificate issued by the Minister responsible for internal security stating that the Minister is satisfied that the limited liability partnership referred to in the certificate is being operated for a purpose that is contrary to national security or the national interest is conclusive evidence that the partnership is being used for such purposes.

(5) If an application has been made by the Minister under paragraph 2 for the winding up of a limited liability partnership on the ground that it is being operated for a purpose contrary to national security or the national interest, the Court may, on the application of the Minister, pending the hearing of the winding up application or the making of a winding up order, make—

- (a) an order restraining the partnership or its partners, managers, officers or employees from doing any act or from carrying out any activity specified in the order; and
- (b) such other interim orders as the Court thinks fit.

(6) A person who fails to comply with an order made by the Court under subparagraph (5) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

4. Commencement of winding up

(1) If, before the filing of the application a resolution has been passed by the partners for the voluntary winding up of the limited liability partnership—

- (a) the winding up of the limited liability partnership commences at the time of the passing of the resolution; and
- (b) unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceedings brought in the voluntary winding up are to be regarded as having been validly brought.

(2) In any other case, the winding up commences at the time of the filing of an application for the winding up.

5. Payment of preliminary costs

(1) The persons on whose application a winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Schedule.

(2) Paragraph (2) shall not apply to the partnership itself or to any liquidator appointed in respect of the partnership.

(3) The liquidator shall, unless the Court orders otherwise, reimburse the applicant the taxed costs incurred by the applicant in any such proceedings from the assets of the limited liability partnership.

(4) If—

- (a) the limited liability partnership concerned has no assets or has insufficient assets; and
- (b) in the opinion of the Minister, fraud—
 - (i) was committed by a person during the formation of that partnership; or
 - (ii) has been committed by an officer of that partnership in relation to the partnership since it was registered,

the applicant may, with the written approval of the Minister, be reimbursed the taxed costs to an extent specified by the Minister (but in any case not exceeding one hundred thousand shillings) out of money provided by Parliament for that purpose.

(5) If a winding up order is made on the application of a limited liability partnership or of any liquidator appointed in respect of it, the costs incurred are,

subject to any order of the Court, payable out of assets of the partnership in the same way as the costs of any other applicant.

6. What the Court can do on the hearing of winding up application

- (1) On hearing a winding up application, the Court may—
 - (a) dismiss it with or without costs;
 - (b) adjourn the hearing conditionally or unconditionally; or
 - (c) make an interim or other order that it thinks fit.
- (2) The Court may not refuse to make a winding up order only because—
 - (a) the assets of the limited liability partnership have been mortgaged to an amount equal to or in excess of those assets; or
 - (b) the limited liability partnership has no assets; or
 - (c) in the case of a winding up application by a partner, no assets will be available for distribution among the partners.
- (3) On the hearing of a winding up application or on the application of an eligible applicant, the Court may do all or any of the following—
 - (a) direct that any notices be given, or any steps be taken, before or after the hearing of the winding up application;
 - (b) dispense with a requirement to give any notice, to take any step, that is required by this Act, the rules, or any prior order of the Court;
 - (c) direct that oral evidence be taken on the winding up application or any matter relating to it;
 - (d) direct a speedy hearing or trial of the winding up application or of any matter relating to it;
 - (e) allow the winding up application to be amended or withdrawn;
 - (f) give any directions as to the proceedings as the Court thinks appropriate.
- (4) The following persons are eligible to make an application under sub-paragraph (3)—
 - (a) the person making the winding up application;
 - (b) the limited liability partnership;
 - (c) any person who has given notice of intention to appear at the hearing of the winding up application.

7. Power to stay or restrain proceedings against limited liability partnership

(1) At any time after the filing of a winding up application and before a winding up order has been made, the limited liability partnership or a creditor or a partner of the partnership, may apply to the Court for an order staying or restraining further proceedings in the proceedings, but only if proceedings are pending against the partnership.

(2) On the hearing of an application made under sub-paragraph (1), the Court may make an order staying or restraining the proceedings subject to such terms as it thinks appropriate and may make such ancillary orders as it considers necessary.

8. Dispositions of property and certain attachments, etc., and winding up application to be *lis pendens* etc

(1) The following transactions are, if made after the commencement of the winding up, void unless the Court declares otherwise—

Limited Liability Partnership

- (a) any disposition of the property of the limited liability partnership;
- (b) any assignment of a partner's interest or right to distributions from that partnership;
- (c) an alteration in the status of the partners of that partnership made after the commencement of the winding up.

(2) Any attachment, sequestration, distress or execution purporting to be made or enforced against the assets of the limited liability partnership after the commencement of the winding up by the Court shall be void.

(3) An application for winding up a limited liability partnership constitutes a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* on purchasers or mortgagees.

9. Winding up order

(1) The applicant for a winding up order shall, within seven days after the making of a winding up order, lodge with the Registrar notice of—

- (a) the order and its date; and
- (b) the name and address of the liquidator.

(2) The applicant shall, within seven days after the making of the winding up order—

- (a) lodge an office copy of the order with the Official Receiver and a copy of the order with the Registrar;
- (b) cause a copy to be served upon a manager of the limited liability partnership or upon any other person or in a manner as the Court may direct; and
- (c) deliver a copy to the liquidator with a statement that the requirements of this sub-paragraph have been complied with.

(3) When a winding up order has been made, or a provisional liquidator has been appointed, no proceedings may be commenced or continued against the limited liability partnership except—

- (a) by leave of the Court; and
- (b) in accordance with such terms as the Court imposes in granting that leave.

(4) Subject to the Fifth Schedule, an order for winding up a limited liability partnership operates in favour of all the creditors and partners of the limited liability partnership as if it were made on the joint application of a creditor and of a partner.

(5) An applicant who, without reasonable excuse, fails to comply with sub-paragraph (1) or (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) If, after being convicted of an offence under sub-paragraph (5), an applicant continues to fail to do the act the failure to do which gave rise to the conviction, the applicant commits a further offence on every day or part of a day during which the failure continued.

*Liquidators***10. Disqualification of liquidators**

(1) Subject to this paragraph, a person shall not act as a liquidator of a limited liability partnership if the person—

- (a) is not an insolvency practitioner;
- (b) is indebted to the limited liability partnership;
- (c) is—
 - (i) an officer of the partnership;
 - (ii) a partner, employer or employee of an officer of the partnership; or
 - (iii) a partner or employee of an employee of an officer of the partnership;
- (d) is an undischarged bankrupt;
- (e) has assigned the person's estate for the benefit of the person's creditors or has made an arrangement with the person's creditors in accordance with any law relating to bankruptcy; or
- (f) has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more.

(2) Sub-paragraph (1)(a) and (c) do not apply—

- (a) to a winding up by the partners; or
- (b) to a voluntary winding up by the creditors, if, by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which seven days' notice has been given to every creditor stating the object of the meeting, it is determined that that sub-paragraph is not to apply to the winding up.

(3) A person may not be appointed as liquidator of a limited liability partnership unless that person has, prior to that appointment, consented in writing to act as a liquidator.

(4) A person who acts as a liquidator in contravention of sub-paragraph (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings.

11. Appointment of liquidator in respect of a limited liability partnership

On a winding up order being made, the following provisions apply—

- (a) unless an insolvency practitioner (other than the Official Receiver) is appointed to be the liquidator of a limited liability partnership, the Official Receiver becomes provisional liquidator and shall continue to act as such until the Official Receiver or another person becomes a liquidator and is capable of acting as liquidator;
- (b) if no liquidator is appointed in respect of the partnership and the Official Receiver is liquidator, the Official Receiver shall convene a separate meeting of the creditors and partners of the partnership for the purposes of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;
- (c) the Court may make an appointment and order required to give effect to any such determination, and, if the determination of the meetings of the creditors and partners differ, the Court shall resolve the difference and make such order concerning the matter as it considers appropriate;

- (d) if a liquidator is not appointed by the Court [when the winding up order is made] the Official Receiver becomes the liquidator of the partnership;
- (e) when a winding up order is made because the partnership is being operated for a purpose that is contrary to national security or the national interest, the Official Receiver becomes the liquidator of the partnership;
- (f) if any vacancy occurs in the office of liquidator, the Official Receiver becomes the liquidator during the vacancy;
- (g) the Court may fill any vacancy in the office of liquidator appointed by the Court;
- (h) if the Official Receiver or a person other than the Official Receiver is holds office as liquidator of the partnership, the Official Receiver or the other person is to be described as “the Official Receiver” or “the liquidator”, and not by the individual name of the Official Receiver or liquidator.

12. Provisions that apply when person other than Official Receiver is appointed liquidator

If in the winding up of a limited liability partnership by the Court, a person other than the Official Receiver, is appointed a liquidator, the person—

- (a) may not act as liquidator until the person has notified the person’s appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and
- (b) shall give the Official Receiver information and access to and the facilities for inspecting the documents of the limited liability partnership, and generally provide such assistance as may be required for enabling the Official Receiver to perform that officer’s duties under this Act.

13. Control of unofficial liquidators by Official Receiver

(1) If in the winding up of a limited liability partnership by the Court, a person (other than the Official Receiver) is the liquidator of the partnership, the Official Receiver shall monitor the person’s conduct.

(2) If—

- (a) the person does not competently perform the duties of a liquidator and duly comply with all the requirements imposed on a liquidator by law; or
- (b) a complaint is made to the Official Receiver by a creditor or partner in regard to the person’s conduct as liquidator,

the Official Receiver shall inquire into the matter, and take such action on the matter as the Official Receiver considers appropriate.

(3) The Official Receiver—

- (a) may, at any time, require a liquidator of a limited liability partnership that is being wound up by the Court to answer any question in relation to a winding up in which that liquidator is engaged; and
- (b) may, if the Official Receiver considers it appropriate to do so, apply to the Court to examine that liquidator or any other person on oath concerning the winding up.

(4) The Official Receiver may direct a local investigation to be made of the records of a liquidator of a limited liability partnership.

14. Control of official receiver by Minister

(1) The Minister shall monitor the conduct of the Official Receiver and of all Assistant Official Receivers who are concerned in the liquidation of a limited liability partnership.

(2) If—

- (a) it appears to the Minister that the Official Receiver is not competently performing or has not competently performed the duties imposed on the Official Receiver by this Act or any other law; or
- (b) a complaint is made to the Minister by a creditor or partner of the limited liability partnership about the way in which the Official Receiver is performing or has performed those duties,

the Minister shall inquire into the matter.

(3) At the conclusion of the inquiry, the Minister shall take such action on the matter as appear to the Minister to be warranted, and may direct a local investigation to be made of the records of the Official Receiver.

15. Power of Court to appoint provisional liquidator

(1) At any time after a winding up application has been filed, and before the Court has made a winding up order, in respect of a limited liability partnership, the Court may appoint the Official Receiver or an insolvency practitioner as provisional liquidator of the partnership.

(2) A provisional liquidator has and shall perform all the functions and may exercise all the powers of a liquidator, subject to such limitations as may be prescribed by the rules or as the Court may specify in the order appointing the Official Receiver or insolvency practitioner as provisional liquidator.

16. General provision as to liquidators

(1) A liquidator appointed by the Court may resign or may be removed by the Court.

(2) A provisional liquidator (other than the Official Receiver) is entitled to receive remuneration by way of percentage or otherwise as is determined by the Court.

(3) A liquidator of a limited liability partnership (other than the Official Receiver) is entitled to receive remuneration by way of percentage or otherwise as is determined—

- (a) by agreement between the liquidator and the committee of inspection (if any);
- (b) failing such an agreement, or if there is no committee of inspection, by a resolution passed at a meeting of creditors of the partnership by a majority of not less than seventy five percent in value and fifty percent in number of the creditors present in person or by proxy and voting at the meeting, and whose debts have been admitted for the purposes of voting; or
- (c) if it cannot be determined in accordance with sub-paragraph (a) or (b), by the Court.

(4) The liquidator shall, whenever necessary, convene a meeting of creditors for the purpose of sub-paragraph (3)(b) by giving to each creditor of the limited liability partnership—

- (a) a notice specifying the time, date and place of the meeting;
- (b) a statement of all receipts and expenditure by the liquidator; and
- (c) the amount sought by the liquidator.

(5) If the remuneration of a liquidator is determined in accordance with sub-paragraph (3)(a), the Court may, on the application of a partner, confirm or vary the determination.

(6) If the remuneration of a liquidator is determined in accordance with sub-paragraph (3)(b), the Court may, on the application of the liquidator or a partner, confirm or vary the determination.

(7) When acting as a liquidator or provisional liquidator of a limited liability partnership, the Official Receiver is, subject to any order of the Court to the contrary, entitled to receive such remuneration by way of percentage or otherwise as is prescribed.

(8) If the Court appoints more than one liquidator, the Court shall declare whether anything that is required or authorised to be done by the liquidator is to be done by all of the liquidators or by such one or more of them as is designated by the Court.

(9) Subject to the provisions of this Act, the acts of a liquidator are valid despite any defects that may afterwards be discovered in the appointment or qualification of the liquidator.

17. Custody and vesting of limited liability partnership's property

(1) As soon as practicable after a winding up order has been made, or a provisional liquidator has been appointed, in respect of a limited liability partnership, the liquidator or provisional liquidator shall take custody of or control over all the property to which the partnership is or appears to be entitled.

(2) On the application of the liquidator, the Court may, by order, direct that all or any part of the property belonging to the limited liability partnership or held by trustees on its behalf vest in the liquidator.

(3) On the making of such an order in respect of a limited liability partnership—

- (a) the property to which it relates vests in the liquidator; and
- (b) the liquidator may, after giving such indemnity (if any) as the Court directs, bring or defend any action or any other legal proceedings that relates to that property or that it is necessary to bring or defend for the purposes of effectively winding up the partnership and recovering its property.

(4) Within seven days after an order is made under this paragraph, the liquidator of the limited liability partnership in relation to which the order is made shall—

- (a) lodge a copy of the order with the Registrar; and
- (b) if the order relates to land, lodge a copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land.

(5) A liquidator who, without reasonable excuse, fails to comply with sub-paragraph (1) or (4) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) If, after being convicted of an offence under sub-paragraph (5), a liquidator still fails to take control or possession of the property of the limited liability partnership, or to lodge the copy of the order referred to in sub-paragraph (4), the liquidator commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

(7) A vesting order referred to in this paragraph does not have effect in transferring or otherwise vesting land until an appropriate entry is made by the appropriate authority.

(8) A reference in sub-paragraphs (2) to (6) to a liquidator includes a reference to a provisional liquidator.

(9) If two or more liquidators are appointed in respect of a limited liability partnership, each of them has an obligation to comply with a requirement imposed by this paragraph, but if one of them complies with the obligation, each of the others is also taken to have complied with the obligation.

18. Responsible person to submit statement of limited liability partnership's affairs to liquidator or Official Receiver

(1) In this paragraph, "responsible person", in relation to a limited liability partnership in respect of which a winding up order has been made, means any of the following persons—

- (a) a manager of the partnership;
- (b) a person who is or has been a partner or officer of the partnership;
- (c) a person who took part in the formation of the partnership at any time during the period of twelve months preceding the date of the winding up order;
- (d) a person who is, or was during that period, an officer or employee of a corporation that is, or within that period was, an officer of the partnership.

(2) On being required to do so by the liquidator of the limited liability partnership concerned or, if there is no liquidator, by the Official Receiver, a responsible person shall, within the designated period, prepare and submit to the liquidator a statement relating to the affairs of the partnership that complies with sub-paragraph (4), together with an affidavit verifying the contents of the statement.

(3) For the purpose of sub-paragraph (2), the designated period is—

- (a) fourteen days after the date of the relevant winding up order; or
- (b) such extended period as the liquidator or, if there is no liquidator, the Official Receiver, or the Court for special reasons allows.

(4) The statement shall show, as at the date of the winding up order—

- (a) details of the partnership's assets, debts and liabilities;
- (b) the names and addresses of its creditors and the securities held by them respectively;
- (c) the dates when the securities were respectively given; and

(d) such other information (if any) as may be prescribed for the purposes of this paragraph.

(5) Within seven days after receiving the statement, the liquidator or, if there is no liquidator, the Official Receiver shall ensure that—

- (a) a copy of the statement is filed with the Court; and
- (b) another copy of the statement is lodged with the Registrar.

(6) If the Official Receiver is not the liquidator, the liquidator shall also ensure that within that period a copy of the statement is lodged with the Official Receiver.

(7) The liquidator or, if there is no liquidator, the Official Receiver shall, subject to and in accordance with the rules, pay to the person who prepared the statement required under sub-paragraph (2) such amount as the liquidator or Official Receiver considers to have been reasonably incurred by the person in preparing and submitting the statement and the accompanying affidavit. The amount is payable from the assets of the limited liability partnership concerned.

(8) If the person who prepared the statement and affidavit is dissatisfied with the amount paid by the liquidator or the Official Receiver, that person may, within the prescribed period, appeal to the Court in respect of that amount.

(9) On the hearing of the appeal, the Court may either confirm the amount paid by the liquidator or vary it by substituting such amount as it considers to be fair and reasonable.

(10) The liquidator or Official Receiver is entitled to be heard or represented at the hearing of an appeal under this sub-paragraph.

(11) A responsible person who, without reasonable excuse, fails to comply with sub-paragraph (2) commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings to imprisonment for a term not exceeding twelve months, or to both.

(12) If, after being convicted of an offence under sub-paragraph (11), a responsible person still fails to prepare and submit the statement or affidavit referred to in sub-paragraph (2), the person commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

19. Liquidator to make reports to the Court

(1) As soon as practicable after receiving the statement prepared and submitted in accordance with paragraph 18, the liquidator shall submit a preliminary report to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver.

(2) The preliminary report shall—

- (a) state the amount of capital paid up and the estimated amount of assets and liabilities;
- (b) if the limited liability partnership has failed, specify the causes of the failure; and
- (c) state whether, in the liquidator's opinion, further inquiry is desirable into any matter relating to the formation or failure of the partnership or the conduct of its business.

(3) The liquidator may make further reports to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver stating—

- (a) the manner in which the limited liability partnership was formed;

- (b) whether in the liquidator's opinion, fraud has been committed or any material fact was concealed by a person in the formation of the partnership, or by an officer in relation to the partnership since its formation; and
- (c) whether an officer of the partnership has failed to comply with, or is failing to comply with, any of the provisions of this Act, and if so, the provisions that the officer has not complied with or is not complying with; and
- (d) any other matter that in the liquidator's opinion ought to be brought to the notice of the Court.

20. Powers of liquidator on the winding up

(1) The liquidator of a limited liability partnership may, with the authority either of the Court or of the committee of inspection (if any), exercise all or any of the following powers—

- (a) carry on the business of the partnership so far as it is beneficial for the winding up;
- (b) subject to this Schedule, pay any class of creditors in full;
- (c) make a compromise or arrangement with creditors or persons claiming to be creditors or whereby the limited liability partnership may be rendered liable;
- (d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect of it;
- (e) appoint an advocate to assist the liquidator in performing the liquidator's duties.

(2) The liquidator does not have to obtain the authority of the Court or the committee of inspection to carry on the business of the limited liability partnership during the four weeks immediately following the date of the winding up order.

(3) The liquidator of a limited liability partnership may also exercise any of the following powers—

- (a) bring or defend legal proceedings in the name and on behalf of the partnership;
- (b) compromise any debt due to the partnership, other than calls and liabilities for calls and other than a debt where the amount claimed by the partnership exceeds one hundred and fifty thousand shillings;
- (c) sell the property of the partnership by public auction, public tender or private contract with power to transfer all or any of that property to any other person;
- (d) do all acts and execute in the name and on behalf of the partnership all documents and for that purpose use when necessary the partnership's seal;
- (e) prove, rank and claim in the bankruptcy of any partner or debtor for any balance against estate of that partner or debtor, and receive dividends in that bankruptcy in respect of that balance as a separate

debt due from the bankrupt, and rateably with the other separate creditors;

- (f) draw, accept, and endorse any bill of exchange or promissory note in the name and on behalf of the partnership;
- (g) raise on the security of the assets of the partnership any money required by the liquidator;
- (h) take out letters of administration in respect of the estate of any deceased partner or debtor, and do any other act necessary for obtaining payment of any money due from a partner or debtor, or the estate of that partner or debtor, that cannot be conveniently done in the name of the partnership;
- (i) appoint an agent to do any business that the liquidator is unable to do personally;
- (j) do all such other things as are necessary for winding up the affairs of the limited liability partnership and distributing its assets.

(4) The exercise by the liquidator of the powers conferred by this paragraph is subject to the control of the Court, and any creditor or partner may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

21. Liquidator may exercise powers and how they can be controlled

(1) When administering the assets of a limited liability partnership and distributing them among creditors of the partnership, the liquidator of a limited liability partnership shall have regard to any directions given by resolution of the creditors or partners at any general meeting or by the committee of inspection.

(2) In the case of conflict between the creditors or partners and the committee of inspection, directions given by the creditors or partners override directions given by that committee.

(3) The liquidator of a limited liability partnership may call a general meeting of the creditors or partners of the partnership for the purposes of ascertaining their wishes and shall call such a meeting—

- (a) at such times as the creditors or partners by resolution direct; or
- (b) whenever requested in writing to do so by not less than ten percent in value of the creditors or ten percent of the total number of partners.

(4) The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

(5) Subject to this Schedule, the liquidator shall use the liquidator's discretion in the management of the affairs and property of the limited liability partnership and the distribution of its assets.

22. Liquidator to pay receipts into bank account

(1) A liquidator shall, in the manner and at the times prescribed by the rules, pay money received in the course of liquidation into such bank account as is prescribed by the rules or as is specified by the Court.

(2) If a liquidator retains for more than ten days—

- (a) an amount exceeding fifty thousand shillings; or
- (b) an amount exceeding such other amount as the Court in any particular case authorises,

without paying the excess into the bank account in accordance with sub-paragraph (1), the liquidator shall pay interest on the excess amount, unless the liquidator has explained the retention to the satisfaction of the Court.

(3) That interest is payable at the rate of twenty percent per year, computed from the end of the ten days until the liquidator complies with sub-paragraph (1).

(4) Whenever a liquidator is liable to pay interest under sub-paragraph (2), the Court may do any or all of the following—

- (a) disallow all or such part of the defaulting liquidator's remuneration as it considers just;
- (b) remove the liquidator from office;
- (c) order the liquidator to pay any expenses attributable to the liquidator's default.

(5) A liquidator who pays an amount received in the course of the liquidation into a bank or account other than the bank account prescribed or specified under sub-paragraph (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

23. Release of liquidators and dissolution of limited liability partnership

(1) When a liquidator of a limited liability partnership—

- (a) has completed the liquidation of the partnership; or
- (b) has resigned or has been removed from office,

the liquidator may apply to the Court for an order under sub-paragraph (2).

(2) On hearing an application made under sub-paragraph (1), the Court may make—

- (a) an order that the liquidator be released; or
- (b) an order that the liquidator be released and that the partnership be dissolved.

(3) For the purpose of sub-paragraph (1)(a), a liquidator has completed the liquidation of a limited liability partnership when—

- (a) all of the property of the partnership has been realized or so much of it as can, in the opinion of the liquidator, be realized without needlessly protracting the liquidation;
- (b) a final dividend (if any) has been paid to the creditors;
- (c) the rights of the partners have been adjusted among themselves; and
- (d) the liquidator has made a final return to the partners.

24. Effect of orders for release or dissolution

(1) If an order is made for the dissolution of a limited liability partnership, the partnership is dissolved from the date of the order.

(2) The Court may arrange for a report on the accounts of a liquidator (not being the Official Receiver) to be prepared by the Official Receiver or by a public accountant appointed by the Court.

(3) On considering the report prepared in accordance with sub-paragraph (2) and on being satisfied that the liquidator has complied with the Court's requirements, the Court shall, after taking account of any objection that is made by the Official Receiver or the public accountant, or any creditor or partner or other

person interested against the release of the liquidator, decide whether to grant or withhold the release of the liquidator.

(4) If the release of a liquidator is withheld, the Court may, on the application of any creditor or partner or person interested, make such order as it thinks just charging the liquidator with the consequences of any misfeasance that the liquidator may have committed in the course of, or in connection with, the liquidation.

(5) An order of the Court releasing the liquidator discharges the liquidator from all liability in respect of any act done or omitted to be done during the course of, or in connection with, the liquidation, but the Court may revoke any such order on being satisfied that it was obtained by fraud, or by suppression or concealment of any material fact.

(6) If the liquidator has not previously resigned or been removed from office, the release of the liquidator operates as a removal from office.

(7) Within fourteen days after the Court has made—

- (a) an order that the liquidator be released; or
- (b) an order that the liquidator be released and that the limited liability partnership be dissolved,

the liquidator shall—

- (i) lodge with the Registrar a copy of the order; and
- (ii) lodge with the Official Receiver an office copy of the order.

(8) A liquidator who fails to comply with sub-paragraph (7) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(9) If, after being convicted of an offence under sub-paragraph (8), the liquidator still fails to lodge a copy of an order referred to in sub-paragraph (7), the liquidator commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a further fine not exceeding ten thousand shillings for each such offence.

Committees of inspection

25. Appointment, constitution and proceedings of committee of inspection

(1) The liquidator may, and shall, if requested by a creditor or a partner, convene a separate meeting of the creditors and partners for the purpose of determining—

- (a) whether or not the creditors or partners require the appointment of a committee of inspection to act with the liquidator; and
- (b) if so, who are to be the members of the committee.

(2) If the determinations of the meetings of the creditors and partners differ, the Court shall, by order, resolve the difference.

(3) A committee of inspection is to consist of creditors and partners of the limited liability partnership or persons holding—

- (a) general powers of attorney from creditors or partners; or
- (b) special authorities from creditors or partners authorising the persons named to be members of the committee, appointed by the meetings of creditors and partners in such proportions as are agreed or, if there is no agreement, as are determined by the Court.

(4) The committee shall meet at such time and place as it decides from time to time.

(5) The liquidator or a member of the committee may call a meeting of the committee as and when the liquidator or member thinks necessary.

(6) The quorum for a meeting of a committee of inspection is a majority of its members, and the committee may act only if a majority of the committee is present.

(7) A member of the committee may resign by notice in writing signed by the member and given to the liquidator.

(8) A person ceases to be a member of the committee if—

- (a) the person becomes bankrupt;
- (b) assigns the person's estate for the benefit of the person's creditors;
- (c) makes an arrangement with the person's creditors in accordance with any enactment relating to bankruptcy; or
- (d) is absent from five consecutive meetings of the committee without the leave of the members who together represent the creditors or partners.

(9) A person also ceases to be a member of the committee if an ordinary resolution terminating the person's membership of the committee is passed—

- (a) at a meeting of creditors, if that member represents creditors; or
- (b) at a meeting of partners, if that member represents partners,

being a meeting of which meeting seven days' notice has been given stating the object of the meeting.

(10) A committee of inspection may fill a vacancy in the membership of the committee by appointing—

- (a) the same or another creditor or a partner; or
- (b) a person holding a general power of attorney or special authority as specified in sub-paragraph (3).

(11) The liquidator—

- (a) may, at any time on that liquidator's own initiative; or
- (b) shall, within seven days after being requested in writing to do so by a creditor or a partner,

call a meeting of creditors or of partners, as the case requires, to consider any appointment made under sub-paragraph (10).

(12) Such a meeting may—

- (a) confirm the appointment; or
- (b) revoke the appointment and appoint another creditor or a partner or a person holding a general power of attorney or special authority as specified in sub-paragraph (3), as the case requires.

(13) The continuing members of the committee may act even when there is a vacancy in the membership of the committee so long as at least two members remain.

*General powers of Court***26. Power to stay a winding up**

(1) At any time after an order for winding up has been made, the Court may, on the application of the liquidator or of a creditor or a partner and on the proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit.

(2) On an application, the Court may, before making an order, require the liquidator to furnish a report with respect to any facts or matters that are, in the opinion of that liquidator, relevant.

(3) A copy of an order made under this paragraph and an office copy of that order shall be lodged by the limited liability partnership with the Registrar and the Official Receiver, respectively, within fourteen days after the making of that order.

(4) A person who contravenes sub-paragraph (3) commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand shillings and, in the case of a continuing offence, to a further fine not exceeding five thousand shillings for every day or part thereof during which the offence continues after conviction.

27. Responsibilities of Court regarding collection and application of assets of a limited liability partnership

(1) As soon as possible after making a winding up order, the Court shall—

- (a) rectify the register of partners in all cases in which rectification is required by this Schedule; and
- (b) arrange for the assets of the limited liability partnership to be collected and applied in discharge of the partnership's liabilities.

(2) The Court may order a person from whom money is due to the limited liability partnership to pay the money into a bank specified in the order to the account of the liquidator instead of paying it to the liquidator. Such an order may be enforced as if the Court had directed payment to the liquidator.

(3) All money and securities paid or delivered to a bank in accordance with this Schedule are subject to supervision by the Court.

28. Appointment of special manager

(1) The liquidator of a limited liability partnership may, if satisfied that the nature of the estate or business of the partnership, or the interests of the creditors or partners generally, require the appointment of a special manager of that estate or business (other than that liquidator) apply to the Court for an order under sub-paragraph (2).

(2) On considering an application made under sub-paragraph (1), the Court may appoint a special manager of the estate or business to act during such period as the Court directs, with such powers (including any of the powers of a receiver or a manager) as are conferred on the manager by the Court.

(3) The special manager—

- (a) shall give security in such manner as the Court directs;
- (b) is accountable to the Court in respect of the exercise of the powers referred to in sub-paragraph (2) and shall provide the Court with such

reports with respect to the exercise of those powers as the Court directs;

- (c) is entitled to be paid such receive remuneration as is fixed by the Court;
- (d) may at any time resign by giving not less than one month's notice in writing to the liquidator; and
- (e) may, for cause shown, be removed by order of the Court.

29. Powers of Court to make order for payment of claim of creditors and to distribute partnership assets

(1) The Court may fix a date on or before which the creditors of a limited liability partnership are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

(2) The Court may, if the assets of the limited liability partnership are insufficient to satisfy its liabilities, make an order for the payment out of the assets of the costs, charges and expenses incurred in winding up the partnership in such order of priority as the Court thinks fair and reasonable.

30. Power of Court to make order for inspection of books by creditors and partners

(1) The Court may make an order for inspection of the records of the limited liability partnership by a creditor and a partner as the Court considers appropriate.

(2) A creditor or partner in whose favour such an order has been made may, in accordance with the order, inspect any records in the possession of that partnership.

31. Power to summon persons connected with limited liability partnership

(1) The Court may summon to appear before it any person—

- (a) any person known or suspected by the liquidator to be in possession of property of the limited liability partnership;
- (b) any person alleged to owe money to that partnership; or
- (c) any person whom the Court considers capable of giving information concerning the formation, affairs or property of that partnership.

(2) The Court may—

- (a) examine on oath a person summoned under sub-paragraph (1) concerning the matters mentioned in sub-paragraph (1) either orally or on written interrogatories; and
- (b) record the person's answers and require the person to verify them.

(3) Any such record may be used in evidence in legal proceedings against the person concerned.

(4) The Court may also require a person summoned under sub-paragraph (1) to produce any records relating to the limited liability partnership that are in the custody or under the control of the person.

(5) If the person claims a lien on any such records, the production does not prejudice the lien, and the Court has jurisdiction to determine all questions relating to it.

(6) An examination under this paragraph or paragraph 32 may, if the Court so directs and subject to the Rules of Court, be conducted before a Resident

Magistrate designated for the purpose by the Court, in which case the Magistrate so designated may exercise the powers of the Court under this paragraph and paragraph 32.

(7) If, after being tendered a reasonable sum to cover expenses, a person summoned under this paragraph fails without lawful excuse to comply with the summons, the Court may order the person to be arrested and brought before it for examination.

32. Power to order public examination of officers, etc

(1) In this paragraph—

- (a) **“suspected person”**, in relation to a limited liability partnership, means—
 - (i) any person who was involved in the formation of the partnership;
 - (ii) any person who is an officer of the partnership; or
 - (iii) any person who was previously an officer of the partnership;
- (b) **“other relevant person”**, in relation to a limited liability partnership, means—
 - (i) any banker, solicitor or auditor of the partnership;
 - (ii) any person who is known or suspected to be in possession of any property of the partnership, or who is alleged to be indebted to the partnership; or
 - (iii) any person whom the Court considers capable of giving information concerning the formation, affairs or property of the partnership.

(2) If the liquidator of a limited liability partnership has made a report under this Schedule stating that, in the liquidator’s opinion—

- (a) a fraud has been committed, or any material fact has been concealed, by a suspected person; or
- (b) such a person has failed to act honestly or diligently, or has been guilty of an impropriety or recklessness in relation to the affairs of the partnership,

the Court may, after consideration of the report, summon the person or any other relevant person to attend before the Court at such time as it may appoint and to be publicly examined—

- (c) as to the formation, or the conduct of the business, of the partnership; or
- (d) in the case of a suspected person, as to the conduct of that person and the person’s dealings as an officer of the partnership.

(3) The liquidator, and any creditor or partner of the limited liability partnership, is entitled to participate in the examination either personally or by an advocate.

(4) Before being subjected to examination, a person summoned under sub-paragraph (2) is entitled to be given a copy of the liquidator’s report.

(5) The Court may question a person summoned under sub-paragraph (2) and may allow the person to be examined on oath or otherwise as the Court thinks fit.

(6) A person summoned under sub-paragraph (2) shall answer all the questions asked by the Court or as the Court allows to be put to that person.

(7) If a person summoned under sub-paragraph (2) applies to the Court to be exculpated from any charges made or suggested against that person, the liquidator shall appear at the hearing of the application and produce to the Court evidence on any matters that appear to the liquidator to be relevant.

(8) If the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application, it may allow the applicant such costs as it considers appropriate.

(9) The Court shall ensure that notes of the examination—

- (a) are in writing; and
- (b) are read over to or by and signed by the person examined.

(10) The notes of the examination can be used in evidence in any subsequent legal proceedings against that person.

(11) The liquidator shall make the notes of examination available for inspection by any creditor or partner of the limited liability partnership at all reasonable times.

(12) The Court may adjourn the examination from time to time.

33. Power to arrest absconding partner, manager or former manager

(1) This paragraph applies to a partner, manager or former manager of a limited liability partnership.

(2) At any time before or after making a winding up order in respect of a limited liability partnership, the Court, on being satisfied that a person to whom this paragraph applies—

- (a) is about to leave Kenya or otherwise to abscond; or
- (b) has removed or concealed, or is about to remove or conceal, property of the partnership,

for the purpose of evading the discharge of a liability arising under this Schedule, or of avoiding being examined about the affairs of the partnership, order the person to be arrested and the person's documents and other movable personal property to be seized and safely kept until such time as the Court orders.

34. Rules of Court may allow certain powers of Court to be delegated to liquidator

(1) Rules of Court may provide for all or any of the following duties and powers and duties conferred and imposed on the Court by this Schedule to be exercised or performed by the liquidator as an officer of the Court (but subject to the control of the Court)—

- (a) holding and conducting meetings to ascertain the wishes of creditors and partners;
- (b) settling lists of partners, rectifying the register of partners when necessary, and collecting and applying the partnership assets;
- (c) paying, delivering, transferring or surrendering money, documents or other property to the liquidator;
- (d) making calls and adjusting the rights of the partners; and
- (e) fixing a period within which debts and claims must be proved.

(2) The Rule of Court may not provide for the liquidator—

- (a) to rectify the register of partners without the special leave of the Court; or

- (b) to make any call without either the special leave of the Court or the agreement of the committee of inspection.

35. Powers of Court under this Act to be additional to its other powers

(1) The powers conferred on the Court by this Act are in addition to any existing powers relating to the bringing and conduct of proceedings against any partner or debtor of a limited liability partnership, or the estate of any partner or debtor of the partnership, for the recovery of any call or other money.

(2) Subject to the Rules of Court, an appeal from an order or decision made or given in the winding up of a limited liability partnership lies in the same manner and subject to the same conditions as an appeal from any other order or decision of the Court in cases within its ordinary jurisdiction.

PART III – VOLUNTARY WINDING UP OF LIMITED LIABILITY PARTNERSHIPS

General provisions applicable to voluntary winding up

36. Circumstances in which limited liability partnership may be wound up voluntarily

(1) A limited liability partnership may be wound up voluntarily by resolution passed by all of the partners.

(2) A limited liability partnership shall—

- (a) within seven days after passing a resolution for its voluntary winding up, lodge a copy of the resolution with the Registrar; and
- (b) within fourteen days after passing the resolution, publish notice of the resolution in at least one daily newspaper circulating generally within Kenya.

(3) If a limited liability partnership fails to comply with sub-paragraph (2), the partnership, and each of its officers commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

37. Provisional liquidator to be appointed in certain circumstances

(1) If the managers of a limited liability partnership have lodged a statutory declaration in the prescribed form with the Official Receiver, and have lodged a copy of the declaration with the Registrar—

- (a) that the partnership cannot because of its liabilities continue its business; and
- (b) that meetings of the partnership and of its creditors have been called for a date within one month after the date on which the declaration was made,

the managers shall immediately appoint an approved liquidator to be the provisional liquidator of the partnership.

(2) A provisional liquidator has all the functions and powers of a liquidator in a creditors' winding up, and shall perform those functions and may exercise those powers, subject to the restrictions (if any) prescribed by the Rules of Court.

(3) The appointment of a provisional liquidator under this paragraph continues until—

- (a) the end of one month from the date of appointment, or if the Official Receiver extends that period, the end of that extended period; or

- (b) a liquidator is appointed in respect of the partnership whichever first occurs.

(4) Within fourteen days after the appointment of the provisional liquidator under this paragraph, the limited liability partnership shall advertise notice of the appointment, together with a copy of the declaration lodged with the Official Receiver, in at least one daily newspaper circulating generally within Kenya.

(5) A provisional liquidator is entitled to receive such remuneration as is prescribed.

38. Commencement of voluntary winding up

A voluntary winding up commences—

- (a) if a provisional liquidator has been appointed before the resolution for voluntary winding up was passed, at the time when the declaration referred to in paragraph 37(1) was lodged with the Registrar; and
- (b) in any other case, at the time when the resolution for voluntary winding up is passed.

39. Effect of voluntary winding up

(1) A limited liability partnership shall, from the commencement of the winding up, cease to carry on its business, except in so far as is in the opinion of the liquidator required for the beneficial winding up. However, the partnership continues in existence until it is dissolved, irrespective anything to the contrary in the limited liability partnership agreement.

(2) The following transactions are void—

- (a) an assignment of a partner's interest or right to distributions from the limited liability partnership (other than an assignment made to or with the approval of the liquidator); or
- (b) an alteration in the status of the partners made after the commencement of the winding up.

40. Managers of partnership to make declaration of solvency

(1) If it is proposed to wind up a limited liability partnership voluntarily, the managers of the partnership, or in the case of a limited liability partnership having more than two managers, a majority of those managers shall make a declaration to the effect that they—

- (a) have inquired into the affairs of the partnership; and
- (b) have concluded that the partnership will be able to pay its debts in full within twelve months after the commencement of the winding up.

(2) The managers shall attach to the declaration a statement of affairs of the limited liability partnership in the prescribed form showing—

- (a) the assets of the partnership and the total amount expected to be realised from their disposal;
- (b) the liabilities of the partnership; and
- (c) the estimated expenses of winding up, made up to the latest practicable date before the making of a declaration of solvency.

(3) A declaration made under sub-paragraph (2) does not have effect for the purposes of this Act unless it—

- (a) is made within the thirty five days preceding the passing of the resolution for voluntary winding up; and
- (b) is lodged with the Registrar at the same time as the resolution for winding up is lodged.

(4) A manager who makes a declaration under this paragraph without having reasonable grounds for concluding that the limited liability partnership will be able to pay its debts in full within the period stated in the declaration commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(5) If a limited liability partnership is wound up under a resolution for voluntary winding up passed within thirty five days after the declaration was made, but the partnership's debts are not paid or provided for in full within the period stated in the declaration, the manager is, until the contrary is established, presumed not to have had reasonable grounds for arriving at the conclusion.

Provisions applicable only to partners' voluntary winding up

41. Appointment and removal of liquidator

(1) The limited liability partnership—

- (a) shall, by resolution of the partners, appoint one or more liquidators for the purposes of winding up the affairs of the limited liability partnership and of distributing its assets (if any); and
- (b) may, by the same or another resolution, fix the remuneration to be paid to the liquidator or liquidators.

(2) On the appointment of a liquidator, all powers of control and management of the limited liability partnership conferred on any person cease, except in so far as the liquidator approves its continuance.

(3) A limited liability partnership may, in a meeting convened by a partner, or by resolution of the partners of which notice has been given to the creditors and the liquidators, remove from office any liquidator but no such resolution has effect if the Court, on the application of the liquidator or a creditor, makes an order to the contrary.

(4) If a vacancy occurs in the office of a liquidator, whether by death, resignation, removal or otherwise, the limited liability partnership may, by resolution of the partners—

- (a) fill the vacancy by appointing another person as liquidator; and
- (b) fix the remuneration to be paid to the person appointed.

42. Duty of liquidator to call creditors' meeting in case of insolvency

(1) Immediately after concluding that a limited liability partnership will not be able to pay, or provide for the payment of, its debts in full within the period stated in the declaration made under paragraph 40, the liquidator shall—

- (a) convene a meeting of the creditors; and
- (b) when the meeting is held, lay before the meeting a statement of the assets and liabilities of the partnership.

The liquidator shall ensure that the notice convening the meeting draws to the attention of the creditors the right conferred on them by sub-paragraph (2).

(2) At the meeting convened under sub-paragraph (1), the creditors of a limited liability partnership may replace the liquidator appointed by the partnership by

appointing another person to be the liquidator for the purpose of winding up the affairs of the partnership and distributing its assets (if any).

(3) If the creditors appoint another person to replace the liquidator appointed by the partnership, the winding up is to proceed as if it were a creditors' voluntary winding up.

(4) Within seven days after a meeting has been held in accordance with sub-paragraph (1)—

- (a) the liquidator; or
- (b) if another person has been appointed by the creditors to be liquidator, the person so appointed,

shall lodge with the Registrar and with the Official Receiver a notice of the appointment in the prescribed form.

(5) If the liquidator or the person so appointed fails to comply with sub-paragraph (4), the liquidator or that person commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) If, after being convicted of an offence under sub-paragraph (5), the liquidator or person still fails to lodge with the Registrar or Official Receiver the notice referred to in sub-paragraph (4), the liquidator or person commits a further offence on each day or part of a day during which the failure continues and is liable on conviction for each such offence to a fine not exceeding five thousand shillings.

(7) If—

- (a) the liquidator of a limited liability partnership has convened a meeting under sub-paragraph (1); and
- (b) at the meeting, the creditors do not appoint a liquidator to replace the liquidator appointed by the partnership,

the winding up is to proceed as if it were a creditors' voluntary winding up.

(8) The liquidator is not required to convene an annual meeting of creditors at the end of the first year after the commencement of the winding up if the meeting under sub-paragraph (1) is held less than three months before the end of that year.

Provisions applicable only to creditors' voluntary winding up

43. Partnership to convene meeting of creditors if members' voluntary winding up is proposed

(1) A limited liability partnership shall—

- (a) convene a meeting of the creditors of the partnership for the day, or the day next following the day, on which the meeting is to be held at which a motion to pass a resolution for voluntary winding up of the partnership is to be put; and
- (b) send by post to creditors notices of the meeting of creditors simultaneously with the sending of the notices of the meeting of the partnership.

(2) The limited liability partnership—

- (a) shall convene the creditors' meeting at a time and place convenient to the majority in value of the creditors; and
- (b) shall—
 - (i) give to the creditors at least seven clear days' notice by post of the meeting; and

- (ii) send to each creditor with the notice a statement showing the names of all creditors and the amounts of their claims.

(3) The limited liability partnership shall advertise the notice of the creditors' meeting to be advertised at least seven days before the date of the meeting in a newspaper circulating generally within Kenya.

(4) The managers of the limited liability partnership shall—

- (a) prepare a full statement of the partnership's affairs, verified in the prescribed form and manner, showing in respect of the partnership's assets the method and manner in which the valuation of the assets was arrived at;
- (b) produce the statement at the meeting of creditors, together with a list of the creditors and the estimated amount of their claims; and
- (c) appoint one of their number to attend the meeting.

(5) The manager so appointed shall attend the meeting and disclose to the meeting the limited liability partnership's affairs and the circumstances leading up to the proposed winding up.

(6) The creditors may appoint one of their number or the manager appointed under sub-paragraph (4)(c) to preside at the meeting.

(7) The person presiding at the meeting shall decide whether the meeting has been held at a time and place convenient to the majority in value of the creditors.

(8) If the person presiding at the meeting decides that the meeting has not been held at a time and place convenient to that majority, the meeting lapses, in which case the limited liability partnership shall, as soon as is practicable, convene a further meeting at such time and place as it may specify and notify the creditors accordingly.

(9) If the meeting of the limited liability partnership is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the creditors' meeting has effect as if it had been passed immediately after the passing of the resolution for winding up.

(10) A limited liability partnership that, without reasonable excuse, fails to comply with sub-paragraph (1), (2), (3) or (8) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(11) If sub-paragraph (4) is not complied with, each of the managers of the limited liability partnership commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(12) A manager of a limited liability company who, without reasonable excuse, fails to comply with sub-paragraph (5) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

44. Partners and creditors entitled to nominate liquidator

(1) At their respective meetings, the limited liability partnership shall, and the creditors may, nominate a person to be liquidator for the purpose of winding up the affairs of the partnership and distributing its assets. If the creditors and the partnership nominate different persons, the person nominated by the creditors is to be the liquidator, but if the creditors do not make a nomination, the person nominated by the partnership is to be the liquidator.

(2) Despite sub-paragraph (1), if different persons are nominated, any manager, partner or creditor may, within seven days after the date on which the nomination

was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the limited liability partnership be the liquidator instead of or jointly with the person nominated by the creditors.

(3) The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.

(4) On the appointment of a liquidator, all powers of control and management of the limited liability partnership conferred on any person cease, except in so far as the committee of inspection (or, if there is no such committee, the creditors) approve their continuance.

(5) If a liquidator (other than a liquidator appointed by or by the direction of the Court) dies or otherwise vacates the office, the creditors may fill the vacancy, and for the purpose of enabling them to do so, any two or more of them may convene a creditors' meeting.

45. Power of creditors to appoint committee of inspection

(1) The creditors at the meeting called in accordance with paragraph 42 or 43, or at any subsequent meeting, may appoint a committee of inspection comprising not more than five persons (who need not be creditors).

(2) If such a committee is appointed, the limited liability partnership may, after passing the resolution for voluntary winding up, appoint such number of persons (but not more than five) to act as members of the committee.

(3) Despite sub-paragraph (1), the creditors may resolve that some or all of the persons so appointed by the limited liability partnership should not be members of the committee of inspection, in which case the persons mentioned in the resolution cease to be qualified to act as members of the committee, unless the Court orders otherwise.

(4) On the hearing of any application to the Court under this sub-paragraph the Court may appoint other persons to replace the persons mentioned in the resolution.

(5) Subject to this paragraph and the rules (if any), paragraph 25 relating to the proceedings of and vacancies in committees of inspection applies with respect to a committee of inspection appointed under this paragraph.

46. Effect of creditors' winding up on the property and proceedings on property of limited liability partnership

(1) On the commencement of a creditors' winding up of a limited liability partnership, any attachment, sequestration, distress or execution purporting to be exercised against the property of a limited liability partnership is void.

(2) After the commencement of the winding up of a limited liability partnership, no legal proceedings may be commenced or continued against the partnership without the approval of the Court, which may be given on such terms as the Court considers appropriate.

Provisions applicable to every voluntary winding up

47. How liquidator is to distribute property of limited liability partnership

(1) On completion of the winding up of a limited liability partnership, the liquidator shall, unless the limited liability partnership agreement otherwise provides, distribute the property among the partners according to their rights and interests in the partnership.

(2) This paragraph is subject to the provisions of this Act regarding the making of preferential payments.

48. Appointment of liquidator

If, for any reason the office of liquidator of a limited liability partnership is vacant, the Court may appoint a liquidator to fill the vacancy.

49. Removal of liquidator

The Court may, for cause shown, remove a liquidator and appoint another liquidator.

50. Review of liquidator's remuneration

(1) A partner, creditor or the liquidator of a limited liability partnership may, at any time before its dissolution, apply to the Court to review the amount of the liquidator's remuneration.

(2) On receiving an application under sub-paragraph (1), the Court shall, after reviewing the liquidator's remuneration, confirm the amount originally determined or vary that amount by substituting fixing such other amount as it considers fair and reasonable.

The Court's determination is final.

51. Act of liquidator valid despite defects in appointment or qualification of liquidator

(1) The acts of a liquidator are valid even if defects are subsequently discovered in the appointment or qualification of the liquidator.

(2) A disposition of a limited liability partnership's property made by a liquidator is, despite any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of a person who receives the property in good faith and for value and without notice of the defect or irregularity.

(3) A person who makes or authorises a disposition of property to a liquidator is not affected by any defect or irregularity concerning the validity of the winding up, or the appointment of the liquidator, if the person was not aware of the defect or irregularity at the time of the disposition.

(4) For the purposes of this paragraph, a disposition of property includes a payment of money.

52. Powers and duties of liquidator

(1) The liquidator of a limited liability partnership may do any of the following—

- (a) exercise any of the powers conferred by paragraph 20(1)(b), (c), (d) and (e) to a liquidator in a winding up by the Court—
 - (i) in the case of a partners' voluntary winding up, with the approval of a resolution of the partners; or
 - (ii) in the case of a creditors' voluntary winding up, with the approval of the Court or the committee of inspection;
- (b) exercise any of the other powers conferred on a liquidator by this Act in a winding up by the Court;
- (c) call meetings of the partners for the purposes of obtaining the approval of the partners by resolution in respect of any matter, or for any other purpose, that the liquidator considers appropriate.

(2) The liquidator shall pay the debts of the limited liability partnership and adjust the rights of the partners among themselves.

(3) When several liquidators are appointed, any power conferred by this Act on a liquidator can be exercised by one or more of them as is determined at the time of their appointment, or in default of such determination by any number not fewer than two.

53. Power of liquidator to accept shares, etc., as consideration for sale of property of limited liability partnership

(1) When it is proposed that the whole or part of the business or property of a limited liability partnership, the liquidator of the limited liability partnership be transferred or sold to a corporation—

- (a) may, with the approval of a resolution of the partners, receive in compensation or part compensation for the transfer or sale shares, debentures, policies or other similar interests in the corporation for distribution among the partners of the limited liability partnership; or
- (b) may enter into any other arrangement under which the partners of the partnership may, instead of, or in addition to, receiving cash, shares, debentures, policies or other similar interests, participate in the profits of, or receive any other benefit from, the corporation and

any such transfer, sale or transaction is binding on those partners.

(2) For the purposes of sub-paragraph (1), a resolution of the partners may confer on the liquidator either a general authority or an authority in respect of any particular transaction.

(3) If a partner of the limited liability partnership who has dissented from the resolution conveys that dissent in writing to the liquidator within seven days after the passing of the resolution, the partner may require the liquidator either—

- (a) to refrain from giving effect to the resolution; or
- (b) to purchase the partner's interest at a price to be determined by agreement, or by arbitration in the manner provided by this paragraph.

(4) If the liquidator elects to purchase the interest of a partner, the liquidator shall pay the purchase money before the limited liability partnership is dissolved and shall raise that money in such manner as is determined by resolution.

(5) A resolution is not invalid for the purposes of this paragraph only because it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if an order for winding up the limited liability partnership by the Court is made within twelve months after the passing of the resolution, the resolution is valid only if approved by the Court.

(6) For the purposes of an arbitration under this paragraph, the following provisions have effect—

- (a) the Arbitration Act, 1995 (No. 4 of 1995), applies as if there were a submission for reference to two arbitrators, one to be appointed by each party to the arbitration;
- (b) the appointment of an arbitrator may be made by the liquidator, or if there is more than one liquidator, by any two or more of the liquidators;
- (c) the Court may give any directions necessary for the initiation and conduct of the arbitration;
- (d) any such directions are binding on the parties to the arbitrator.

(7) In the case of a creditors' voluntary winding up, the powers of the liquidator under this paragraph can be exercised only if with the approval of the Court or the committee of inspection.

54. Liquidator to call annual meeting of partners or of partners and creditors

(1) If the winding up continues for more than twelve months, the liquidator shall

-
- (a) convene a meeting—
 - (i) of the partners in the case of voluntary winding up by the partners; or
 - (ii) of the partners and the creditors, in the case of a creditors' voluntary winding up,

to be held within three months after the end of the first year after the commencement of the winding up, and within three months after the end of each subsequent year after that commencement; and

- (b) lay before the meeting an account of the liquidator's activities in relation to the winding up during that first year and each subsequent year.

(2) The liquidator shall ensure that the notices of the meeting of creditors are sent by post to the creditors simultaneously with the sending of the notice of the meeting of the limited liability partnership.

(3) A liquidator who, without reasonable excuse, fails to comply with a requirement of this paragraph commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

(4) If, after being convicted of an offence under sub-paragraph (3), the liquidator still fails to do the act that gave rise to the offence, the liquidator commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

55. Liquidator to prepare statement of accounts and call final meeting of partners or partners and creditors on completion of winding up; dissolution of partnership

(1) As soon as the affairs of the limited liability partnership are fully wound up, the liquidator—

- (a) shall prepare a statement of accounts showing how the winding up has been conducted and the partnership property has been disposed of; and
- (b) shall, after doing so, call—
 - (i) a general meeting of the partnership; or
 - (ii) in the case of a creditors' voluntary winding up, a meeting of the partnership and the creditors,

for the purposes of laying before the meeting the statement of accounts, together with an explanation setting out how the accounts were prepared and the basis for the conclusions arrived at.

(2) The liquidator shall call the meeting by advertisement published in at least one local daily newspaper circulating generally throughout Kenya.

(3) The liquidator shall ensure that the advertisement—

- (a) specifies the time, place and object of the meeting; and

(b) is published at least one month before the meeting.

(4) However, if a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding up nor since that date has the limited liability partnership had trade creditors, the advertisement referred to in sub-paragraph (2) need only be published in a newspaper that circulates only within the area where the partnership's registered office is located.

(5) Within seven days after the meeting is held, the liquidator shall lodge with the Registrar and the Official Receiver a return of the holding of the meeting, together with a copy of the statement of accounts.

(6) The return lodged under sub-paragraph (5) shall specify the date on which it is made.

(7) The quorum—

(a) for a meeting of the limited liability partnership is two; and

(b) for a meeting of the partnership and creditors is two partners and two creditors.

(8) If a quorum is not present at the meeting, the liquidator shall, instead of the return referred to in sub-paragraph (5), lodge a return, together with the relevant statement of accounts, to the effect that—

(a) the meeting was called; and

(b) no quorum was present

When such a return and statement are lodged, the liquidator is taken to have complied with sub-paragraph (5).

(9) At the end of three months from the date on which the return is lodged with the Registrar and with the Official Receiver, then, except as provided by sub-paragraph (10), the limited liability partnership is dissolved.

(10) The Court may, on the application of the liquidator or of any other person who appears to the Court to be interested in the matter, make an order deferring the date at which the dissolution of the limited liability partnership is to take effect for such period, or until such time, as the Court considers appropriate in the circumstances.

(11) If the Court makes an order under sub-paragraph (10) the dissolution of the partnership is deferred for the period or until the time specified in the order.

(12) Within fourteen days after an order is made under sub-paragraph (10), the person who made the application shall lodge a copy of the order with the Registrar and office copy of the order with the Official Receiver.

(13) If the person referred to in sub-paragraph (12) fails to comply with the sub-paragraph, that person commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(14) If, after being convicted of an offence under sub-paragraph (13), a person still fails to lodge with the Registrar or Official Receiver a copy or office copy of the relevant order of the Court, the person commits a further offence for each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

(15) A liquidator who—

(a) fails to call a meeting as required by this paragraph; or

(b) fails to lodge a return in accordance with sub-paragraph (5) or (8),

commits an offence and is liable on conviction to a fine not exceeding two hundred shillings.

(16) If, after being convicted of an offence under sub-paragraph (15), a liquidator still fails to call the required meeting in accordance with this paragraph, or to lodge the return referred to in sub-paragraph (5) or (8), the liquidator commits a further offence for each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

56. Circumstances in which arrangement is binding on creditors

(1) Any arrangement entered into between a limited liability partnership that is about to be, or is in the course of being wound up, and its creditors are, subject to the right of appeal provided for under sub-paragraph (4), binding—

- (a) on the partnership if approved by a resolution passed by the partners; and
- (b) on the creditors if acceded to by seventy five percent in value and fifty percent in number of the creditors (with every creditor for an amount less than ten thousand shillings being reckoned in value only).

(2) For the purpose of sub-paragraph (1)(b), the value of a creditor's credit is to be determined on an account fairly stated, after allowing for—

- (a) the value of security or liens held by the creditor; and
- (b) the amount of any debt or set-off owing by creditor to the debtor appears to be the balance due to the creditor.

(3) The Court shall, on application by the limited liability partnership, the liquidator or a creditor, resolve any dispute with regard to the value of any such security or lien, or the amount of such debt or set-off, referred to in sub-paragraph (2).

(4) A creditor or partner may, within twenty one days after the arrangement is entered into, appeal to the Court against it, and on the hearing of appeal, the Court may make an order either confirming the arrangement or varying the arrangement to such extent as it considers fair and reasonable.

57. Court empowered to determine questions relating to voluntary winding up of limited liability partnership or to exercise its compulsory winding up powers

(1) The liquidator, or a partner or a creditor, of a limited liability partnership may apply to the Court to—

- (a) determine a question arising in the winding up of the partnership; or
- (b) exercise all or any of the powers that the Court could exercise if the partnership were being wound up by the Court.

(2) On the hearing of an application under sub-paragraph (1), the Court may, if satisfied that the determination of the question, or the exercise of the power, will contribute to the just and beneficial winding up of the partnership, accede wholly or partially to the application on such terms and conditions as it thinks fit or may make such other order on the application as it considers appropriate.

58. Liquidation costs payable out of partnership assets in priority to other claims

All proper costs, charges and expenses of, and incidental to, the winding up of a limited liability partnership (including the remuneration of the liquidator) are payable out of the assets of the partnership in priority to all other claims.

59. Limited liability partnership not to be wound up voluntarily if application made for its winding up because it cannot pay its debts

If an application has been made to the Court to wind up a limited liability partnership on the ground that it is unable to pay its debts, the partnership may not, without the leave of the Court, resolve that it be wound up voluntarily.

PART IV – PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**60. Liquidator to keep proper records of proceedings relating to winding up of limited liability partnership**

(1) A liquidator of a limited liability partnership shall keep—

- (a) proper accounting records of all transactions relating to the winding up of the partnership's affairs; and
- (b) other records in which must be recorded minutes of proceedings of relevant meetings and of such other matters as are prescribed.

(2) A creditor or partner of the limited liability partnership or any other person who has an interest in the winding up is, subject to and in accordance with any relevant order of the Court, entitled to inspect the records kept under sub-paragraph (1), either personally or by an agent.

(3) The Court shall monitor the conduct of liquidators and—

- (a) if, in the opinion of the Court, a liquidator has not performed, or is not performing, the duties of a liquidator; or
- (b) if a creditor, a partner or the Official Receiver makes a complaint to the Court about the performance of those duties by the liquidator,

the Court shall inquire into the matter and take such action as it considers appropriate.

(4) Either the Registrar or the Official Receiver may report to the Court any matter that, in the opinion of the Registrar or the Official Receiver, is a misfeasance by the liquidator.

(5) On considering such a report, the Court may order the liquidator to make good any loss that the partnership has sustained in consequence of the misfeasance and make such other orders as the Court considers appropriate.

(6) The Court—

- (a) may examine the liquidator or any other person on oath concerning the winding up of a limited liability partnership's affairs; and
- (b) may direct an investigation to be made of the liquidator's records.

(7) If, at any time the Court so requires, the liquidator shall answer any question relating to the winding up.

(8) On being required to do so by the Court, a partner, trustee, receiver, banker, agent or officer of a limited liability partnership shall pay or deliver to the liquidator or provisional liquidator, either immediately or within such period as the

Court specifies, any money, property or documents in the possession, or under the control, of that person to which the partnership appears to the Court to be entitled.

(9) In this paragraph, “duties of a liquidator” include a duty to comply with any prescribed requirement or a requirement imposed by the Court.

61. Powers of Official Receiver where no committee of inspection

(1) If a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing that is by this Act authorised or required to be done by the committee.

(2) If the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may do any act or thing that is by this Act authorised or required to be done or given by the committee.

62. Right to appeal to Court against decisions of liquidator

(1) A person who is dissatisfied with an act or decision of the liquidator relating to the winding up of a limited liability partnership may apply to the Court for an order to quash or vary the act or decision.

(2) On the hearing of an application made under sub-paragraph (1), the Court may make an order confirming the act or decision of the liquidator or order quashing or varying it and may make such other ancillary orders as it considers appropriate.

(3) The liquidator is entitled to receive notice of any appeal lodged under sub-paragraph (1) and to be heard as respondent at the hearing of the appeal.

63. Liquidator to notify appointment and location of office to Registrar and Official Receiver

(1) A liquidator shall, within fourteen days after being appointed, lodge with the Registrar and with the Official Receiver a notice notifying the liquidator’s appointment and specifying the location of the liquidator’s office.

(2) If, during the period of the liquidator’s appointment, the location of the liquidator’s office changes, the liquidator shall, within fourteen days after the change, lodge with the Registrar and with the Official Receiver a notice notifying the change.

(3) A liquidator shall, within fourteen days after the liquidator’s resignation or removal from office, lodge with the Registrar and with the Official Receiver notice of the resignation or removal.

(4) A notice required to be given under this paragraph shall be in the prescribed form.

(5) A liquidator who fails to comply with sub-paragraph (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(6) If, after being convicted of an offence under sub-paragraph (5), the liquidator still fails to lodge with the Registrar or the Official Receiver a document required to be lodged under sub-paragraph (1), (2) or (3), the liquidator commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

(7) Service of any document required or permitted to be served on the liquidator or the limited liability partnership in respect of which the liquidator is appointed may be made—

- (a) by delivering the document to; or
- (b) by sending it by post addressed to,

the address of the office of the liquidator given in the most recent notice lodged with the Registrar.

(8) A document served in accordance with this sub-paragraph is taken to be service on both the liquidator and the partnership.

64. Liquidator to lodge with Official Receiver statement of accounts periodically

(1) In this section, “relevant period”, in relation to a liquidator appointed to wind up the affairs of a limited liability partnership, means—

- (a) the period of six months after the date of appointment of the liquidator;
- (b) each subsequent period of six months; or
- (c) when the liquidator’s appointment ceases, the period from the end of the last relevant period (as determined in accordance with sub paragraph (a) or (b) as appropriate) to the date on which that appointment ceases.

(2) Within one month after the end of each relevant period, the liquidator shall—

- (a) prepare a statement of accounts setting out the liquidator’s receipts and payments during that period and the position with respect to the winding up as at the end of that period; and
- (b) lodge that statement with the Official Receiver.

(3) A statement of accounts required to be lodged under this paragraph shall be in the prescribed form and be verified by statutory declaration.

(4) The Official Receiver may arrange for the liquidator’s accounting records to be audited by a public accountant.

(5) For the purpose of the audit—

- (a) the liquidator shall provide the public accountant with such vouchers and information as that accountant reasonably requires; and
- (b) that accountant may at any time require the production of and inspect any accounting or other records kept by the liquidator.

(6) The Official Receiver shall fix the costs of an audit under this paragraph and costs so fixed shall form part of the expenses of winding up.

(7) The liquidator shall keep copies of statements of accounts prepared under sub-paragraph (2) open for inspection by any creditor, partner or of any person interested at the office of the liquidator.

(8) When next forwarding to a creditor or partner a report, notice or other document after preparing and lodging a statement of accounts in accordance with sub-paragraph (2), the liquidator shall—

- (a) give to the creditor or partner notice that the statement of accounts has been prepared and lodged; and
- (b) inform in writing the creditor or partner at what address and at what times the statement may be inspected.

(9) A liquidator who fails to comply with sub-paragraph (2), (3), (7) or (8) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings.

(10) If, after being convicted of an offence under sub-paragraph (9), a liquidator still fails to do the act the failure to do which gave rise to the conviction, the liquidator commits a further offence on each day or part of a day during which the failure continues and is liable on conviction to a fine not exceeding five thousand shillings for each such offence.

65. Power of Court to order liquidator to rectify certain failures

(1) If a liquidator who is failing, or has failed, to perform any act or do anything that the liquidator is required by this Act to perform or do, does not rectify the failure within fourteen days after being served with a notice requiring the liquidator to do so, the Court may, on the application of a partner or creditor of the partnership or the Official Receiver, make an order directing the liquidator to rectify the failure within such period or by such date as is specified in the order.

(2) An order made under sub-paragraph (1) may provide that the liquidator is required to bear all costs of and incidental to the application.

(3) Sub-paragraph (1) does not limit the operation of any enactment that provides for the imposition of penalties on a liquidator in respect of a failure referred to in that sub-paragraph.

66. Limited liability partnership that is being wound up to ensure that words “in liquidation” appear on its invoices and other documentation

(1) This paragraph applies to the following documents of a limited liability partnership whose affairs are being wound up and in which the partnership’s name appears—

- (a) invoices;
- (b) orders for goods;
- (c) business letters sent or issued by or on behalf of the partnership.

(2) The liquidator of a limited liability partnership whose affairs are being wound up shall ensure that all documents to which this paragraph applies has the words “in liquidation” inserted after the name of the partnership where it first appears in the document.

(3) A liquidator who fails to comply with sub-paragraph (2), and each receiver or a manager who knowingly authorises or contributes to the failure, commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings.

67. Evidentiary value of records of limited liability partnership and disposal of those records after dissolution of the partnership

(1) In this paragraph, “partnership records”, in relation to a limited liability partnership that is being or has been wound up, means all records of, or relating to, the partnership at or subsequent to the commencement of the winding up.

(2) All partnership records of or relating to a limited liability partnership that is being wound up are, as among the partners of the partnership, evidence of the truth of the contents of the records.

(3) When the winding up of a limited liability partnership has been completed, the liquidator shall, except as provided by sub-paragraph (4), retain the partnership records for two years after the date of dissolution of the partnership and may then destroy them.

(4) The records of a limited liability partnership that has been wound up can be destroyed within the two year period referred to in sub-paragraph (2)—

- (a) in the case of a winding up by the Court, if the Court so orders;
- (b) in the case of a partners' voluntary winding up, if the partners by resolution so direct; or
- (c) in the case of a creditors' voluntary winding up, if the committee of inspection (or, where there is no committee of inspection, the creditors of the partnership) by resolution so direct.

(5) If a record is destroyed in accordance with this paragraph, neither the limited liability partnership nor the liquidator incur liability only because the record can no longer be made available to a person who claims to have an interest in it.

(6) A liquidator who, without lawful authority or excuse, fails to comply with sub-paragraph (3) commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings.

68. Power of committee of inspection or liquidator to invest excess funds of limited liability partnership

(1) In this paragraph "responsible authority", in relation to a limited liability partnership that is in liquidation, means—

- (a) the committee of inspection; or
- (b) if there is no committee of inspection, the liquidator.

(2) Whenever the cash balance standing to the credit of a limited liability partnership in liquidation exceeds the amount that, in the opinion of the responsible authority, is required to meet the demands in respect of the partnership property, the responsible authority may, unless the Court on application by a creditor otherwise orders—

- (a) invest all or any part of the excess in securities issued by the Government; or
- (b) place it on deposit at interest with any bank.

(3) Any interest derived from the investment or deposit becomes part of the assets of the partnership on receipt.

(4) If the responsible authority referred to in sub-paragraph (2) is the committee of inspection, the liquidator shall exercise the power conferred by that sub-paragraph if the committee so directs.
