

An Act to Provide for Insolvency Procedures

Preamble

Whereas, it is expedient to, immediately, make legal provisions to provide for the administration, insolvency procedures and restructuring of companies which have failed to pay the debts due to their creditors and have thus become or are likely to become insolvent, or which are facing financial difficulties, and, as there is no Parliament in session,

Now, therefore, the House of Representatives has, on the first year of the Proclamation of the House of Representatives 2006, enacted this Act.

Chapter 1

Preliminary

1. Short Title and Commencement: (1) This Act may be called as "(the) Insolvency Act, 2006."
 - (2) It shall come into force at once.
2. Definitions: Unless the subject or context, otherwise requires, in this Act;
 - (a) "Company" means a company incorporated under the law in force relating to companies, and the term includes a corporate body with limited liability specified by Government of Nepal by a notification published in the Nepal Gazette.
 - (b) "Insolvency" means a state in which a company has failed to pay or is found to be incapable of paying to its creditors any or all of its debts which are payable by it or payable in future, or a state in which the value of the liabilities of a company exceeds the value of its assets.
 - (c) "Financial Difficulty" means a state in which a company may become or likely to become an insolvent either immediately or in the near future if it is not restructured under this Act.
 - (d) "Deregistration of a Company" means a state in which a company is deregistered by fulfilling the procedures under this Act.
 - (e) "Restructure" means a process to be adopted under this Act to restructure a company which is likely to become an insolvent as a result of financial difficulties faced by it.
 - (f) "Restructure scheme" means a restructure scheme as provided for in Chapter 4.
 - (g) "Court" means the commercial bench of a court prescribed by Government of Nepal by a notification published in the Nepal Gazette in consultation with the Supreme Court.
 - (h) "Debt" means a certain amount which is payable immediately or which has been

claimed as payable.

- (i) "Creditor" means a person entitled to obtain payments from a company which has become or is likely to become insolvent and the term also includes a secured creditor.
- (j) "Security" means any or all of the property pledged as a collateral or any other kind of security against a debt.
- (k) "Secured Creditor" means a creditor who has extended debt to a company against a security.
- (l) "Company under Liquidation" means a state in which an order has been issued under this Act, for the liquidation of a company.
- (m) "Office" means the Insolvency Administration Office established under Section 65.
- (n) "Insolvency Practitioner" means a person who has obtained a license under Section 64 to practise insolvency profession.
- (o) "Investigating Officer" means an investigation officer appointed under Section 10.
- (p) "Restructure Manager" means a person appointed by an order of the court under sub-section (2) of Section 22 in order to operate and manage the restructure scheme of a company.
- (q) "Liquidator" means a person appointed by an order of the court or by a resolution adopted in a meeting of the creditors to conduct the liquidation proceedings of a company and the term also includes the Office.
- (r) "Associated Person" means a director, official, shareholder of an insolvent company or a director, official or shareholder of the holding or subsidiary company of such a company; and the term also includes the spouse, son, daughter, adopted son, adopted daughter, father, mother, step-mother, and elder and younger brothers and sisters of a director, official or shareholder of such a company or of the holding or subsidiary company of such a company.
- (s) "Prescribed" or "As prescribed" means prescribed or as prescribed in the rules framed under this Act.

Chapter 2

Insolvency Proceedings

3. No Insolvency Proceedings May be Initiated Without an Order of the Court: No one shall initiate insolvency proceedings against any company unless an order of the court is issued to that effect under this Act.
4. Petition to be Filed to Initiate Insolvency Proceedings: (1) Any of the following persons may, in case it becomes necessary to initiate insolvency proceedings against any company, file a

petition to the court in the prescribed format for that purpose:

- (a) The insolvent company itself,
- (b) One or more creditors from among the creditors of the insolvent company who have extended at least ten percent of the total debt,
- (c) One or more shareholders from among the shareholders of the company who hold at least five percent of the total shares,
- (d) One or more debenture-holders from among the debenture-holders of the company who hold at least five percent of the total debentures,
- (e) The liquidator appointed to liquidate the company, or
- (f) In the case of a company operating any particular type of business as referred to in Section 8, the entity authorized to administer and regulate such business.

(2) In order to file a petition under sub-section (1), a period of thirty five days shall have to complete from the date on which a notice to pay its debts issued under Section 5 is duly delivered to the concerned company.

(3) While filing a petition under sub-section (1), the following details shall also have to submit along with a statement of the reasons for filing the petition, a brief statement of the financial condition of the company, and evidence substantiating the insolvency of the company:

- (a) In case a petition has been filed by the insolvent company itself;
 - (1) A document certified by the board of directors of the company specifying therein the details of the insolvency of the company,
 - (2) A special resolution adopted by the board of directors to initiate insolvency proceedings under this Act; and
 - (3) Certified copies of the balance sheet and auditor's report available at the time of filing the petition for initiating insolvency proceedings.
- (b) In case a petition has been filed by the creditor of the insolvent company:
 - (1) Details of the principal and interest of the debt claimed by the creditor as due to him from the company,
 - (2) Date on which the company has borrowed the debt claimed by the creditor and the details along with the reason for borrowing such debt.
 - (3) Details of the amount due as referred to in sub-clause (1), and a statement that such an amount has become payable immediately.
 - (4) Details as to the creditor's belief that the company against which insolvency proceedings have been sought has become an insolvent, and the grounds of and the reasons for such belief.
- (c) In case a petition has been filed by the liquidator:

- (1) Evidence of the appointment of the liquidator made for its liquidation by the company in relation to which the petition for initiating insolvency proceedings has been filed, and
- (2) An opinion expressed by the liquidator on the insolvency of a company, against which a petition to initiate insolvency proceedings has been filed and the grounds thereof.

(4) Notwithstanding anything contained elsewhere in this Section, while filing a petition by a shareholder or debenture-holder for initiating insolvency proceedings against the company under Clauses (c) or (d) of sub-section (1), permission of the court shall have to obtain, and if the court so permits he may file a petition subject to the conditions prescribed by the court.

(5) The court shall not grant a permission under sub-section (4) unless an evidence sufficient to substantiate the insolvency of the company is submitted.

5. Notice to be served to pay Debts: (1) A notice issued in the prescribed format for the payment of the debt shall have to serve to the registered office of the company before filing a petition to the court for initiating insolvency proceedings under Section 4.

(2) The notice issued under sub-section (1) shall have to sign by the creditor himself or a person authorized by him.

6. A Petition may be Filed to Nullify the Notice Issued for Payment of Debts: (1) In case a notice received under Section 5 is not reasonable or the debt is not payable immediately for any other reason, the concerned company may, within a period of thirty five days from the date of receipt of the notice, file a petition to the court to nullify such a notice.

(2) On receipt of a petition under sub-section (1), the court shall issue a notice to the creditor who has sent the notice under Section 5 to appear before the court within a period of seven days, and while issuing such a notice it shall also be accompanied by a copy of such petition.

(3) The court may, within a period of seven days from the date on which the creditor appears before the court, if he appears before the court under in sub-section (2), or from the date of expiry of the time-limit by which the creditor had to present before the court, if the creditor fails to be appeared before the court, take a decision on whether or not to nullify the notice issued under Section 5.

(4) The court may order to nullify the notice issued under Section 5 in the following circumstances:

- (a) In case a clear dispute *is* found on whether or not the creditor had extended the debt to the company, or
- (b) In case the debt due by the company to the creditor is not found to be payable immediately.

(5) In case the court has issued an order under sub-section (4), no fresh notice may be given to the company to pay the debt or no petition may be filed to initiate insolvency proceedings on the same ground until the circumstance referred to in the said sub-section is existed.

(6) In case the court does not issue an order under sub-section (4), the company shall have to pay the creditor's debt within a period of thirty five days from the date thereof.

7. Company to be Deemed an Insolvent: (1) Unless otherwise proved, a company shall be deemed to have become an insolvent in the following circumstances:

- (a) In case a general meeting of the shareholders adopts a special resolution that the company has become insolvent or the meeting of the board of directors of the company's takes such a decision,
- (b) In case the court issues an order to pay debts by the company and the company fails to do so within a period of thirty five days from the date of receipt of the order,
- (c) In case the company fails to pay the debts within a period of thirty five days from the date on which the creditor served it with a notice to pay the debt or in case the company does not file a petition to the court within the said time-limit to nullify the notice.

(2) In case it is proved in any other way that the value of the liabilities of the company exceeds the value of its assets, or in case the company itself admits that it has become an insolvent, nothing contained in this Section shall prevent to establish the fact that the company has become an insolvent.

8. No Petition for Insolvency Proceedings May be Filed: (1) Notwithstanding anything contained in Section 4, no petition for insolvency proceedings may be filed to the court with respect to the following companies without obtaining the prior approval of the following authorities:

- (a) In the case of a banking or financial institution operating a banking or financial business, the Nepal Rastra Bank,
- (b) In the case of an insurance company operating an insurance business, the Insurance Board constituted under the Insurance Act, 1992,
- (c) In the case of any company, other than those referred to in clause (a) or (b), which cannot be voluntarily liquidated without the approval of any particular authority in accordance with law in force, said authority.

(2) While filing a petition for initiating insolvency proceedings against any of the companies referred to in sub-section (1), a copy of the approval granted for that purpose by the authority referred to in the same sub-section shall have to submit along with the petition.

9. Action to be taken On Petition: (1) In case a petition is filed for initiating or causing to be

initiated insolvency proceedings against any company under Section 4, and in case the petition so submitted has been duly submitted as provided for in this Act, the court shall register it and prescribe a date for its hearing within a period of fifteen days.

(2) Except when a company itself has filed a petition for initiating insolvency proceedings, once a petition is registered under sub-section (1), a notice shall be issued in the name of the concerned company and delivered to its registered office, calling on it to submit within a period of seven days a written statement explaining the reason, if any, for not initiating such proceedings against it.

(3) If the court deems appropriate, it may, before conducting hearing of the petition submitted under this Section, issue an order, according to necessity, the authority referred to in sub-section (1) of Section 8 to present before the court the details of the reason, if any, for not taking any action as demanded by the petitioner before the date prescribed for hearing the petition, a notice thereof shall be published in national dailies for at least two times for the information of the shareholders or creditors of the concerned company or any other person having dealing with the concerned company or the stock exchange market if the securities of the concerned company are listed at the stock exchange market.

(4) Any company or individual receiving the notice issued or published under sub-section (2) or (3) shall, if there is any reason not to initiate insolvency proceedings against the company, submit the same to the court, along with the grounds thereof, in writing within the time-limit as specified by the court.

10. Continuity of Hearing and Decision to be Taken: (1) Notwithstanding anything contained in the law in force, the court shall continue hearing the petition filed under this Chapter once it is started on the date prescribed for that purpose until the court arrives at a decision.

Provided that in case the court is unable to complete the hearing or arrive at a decision on the very day on which it has started the hearing due to lack of time, nothing contained in this provision shall be deemed to have been prevented the court from continuing the hearing on the next day when the court sits.

(2) The court shall, after the completion of the hearing under in sub-section (1), issue an order as to whether or not to commence insolvency proceedings with respect to the company.

(3) While issuing an order under sub-section (2), the court shall issue an order to appoint any insolvency practitioner as investigating officer for the purpose of conducting investigations into insolvency proceedings.

(4) While appointing an investigating officer under sub-section (3), the court shall appoint a person deemed appropriate by it from among persons whose names are recorded in the list approved by the Office for that purpose.

11. Interim Orders May be Issued: (1) In case any of circumstances under below, which may

adversely affect the interests of the creditors or any other person having dealing with the company, is found to be existed in the company at the time of hearing on the petition filed to the court under Section 4, the court may, on the petition of the concerned party, or at its own discretion, issue an interim order:

- (a) In case the assets of the company have been or are likely to be sold in an irregular manner,
- (b) In case the management of the company has not been run properly,
- (c) In case any legal action which may have an adverse effect on the assets of the company is being taken or is likely to be taken such an action or may be occurred such a situation.

(2) The court may, while issuing an interim order under sub-section (1), issue an order prohibiting any or all of the following actions:

- (a) Transferring, selling or otherwise mortgaging or pledging as collateral any of the assets of the company, except carrying on those business that the company is carrying on in the ordinary course of its business;
- (b) Transferring the shares of the company in any way, or effecting any change in the status of the shareholders of the company;
- (c) Freezing or enforcing any of the assets of the company by anyone; or
- (d) Taking, initiating or continuing any legal or other actions against, or enforcing the assets of the company, or any of the assets which is under ownership or possession or occupation of the company, by any creditor or any other person.

(3) In case the court issues an order under in sub-section (2), information thereof shall be given to the concerned company, the Company Registrar, and the Office, and if the court so deems appropriate, it may also issue an order to publish a notice of the order in the national dailies in such a manner as to make it known to the public in-general.

(4) The court may, if it deems appropriate, for the interim management of the company, issue an order to appoint any appropriate person as the interim administrator of the company for the period of validity of the interim order.

(5) The functions, duties and powers of the interim administrator appointed under sub-section (4) shall be as prescribed by the court at the time of so appointing him.

(6) Notwithstanding anything contained elsewhere in this Section, in case the court orders investigations into insolvency proceedings or nullifies the petition, the interim order issued under this Section shall, *ipso facto*, become inoperative.

12. Petition not to be withdrawn: Notwithstanding anything contained in the law in force, no

petition filed for initiating insolvency proceedings under Section 4 may be withdrawn, except when permitted by the court.

Chapter 3

Investigations into Insolvency Proceedings

13. Insolvency Proceedings to be Investigated: (1) In case the court has made an order for investigations into insolvency proceedings under sub-section (3) of Section 10, the investigating officer shall independently conduct investigations into the financial condition of the concerned company in order to determine the following matters:
- (a) Whether or not a liquidation order needs to be issued forthwith on the ground that the financial condition of the company cannot be improved,
 - (b) Whether or not the time-limit fixed for investigations under Section 14 needs to be extended,
 - (c) Whether or not to issue an order to restructure the company on the basis of a restructure scheme needs to be issued,
 - (d) Whether or not the company has already become insolvent or is likely to become insolvent forthwith.
- (2) The investigating officer shall conduct investigations under sub-section (1) and submit a report thereof to the court within the time-limit as specified by the court, and such a report shall contain, inter alia, the resolution adopted by the creditors' meeting, if any, the proposal of the company, and evaluation and recommendations made by the investigating officer.
14. Period for Investigations Into Insolvency Proceedings may be Extended: (1) In case the investigating officer submits an application to the court specifying the reason that the investigation on the financial conditions of the company cannot be completed within the period as specified under sub-section (2) of Section 13 and requests to extend such a period therefor and the court may, if it deems the reasons to be appropriate, extend the period by any appropriate period.
- (2) If the period for investigation is extended under section (1), information thereof shall be given to the concerned company.
15. Management of the Company during the Investigation: (1) Notwithstanding anything contained in law in force, the management and regular business of the company during the period of investigations relating to insolvency proceedings shall be operated by the board of directors of the company under the general supervision of the investigating officer.

(2) Notwithstanding anything contained in sub-section (1), in case the investigating officer submits to the court a report to the effect that the board of directors of the company has not operated the company properly, the court may order to remove the board of directors and to operate the management and regular business of the company by the investigating officer him/herself.

(3) In case the court makes an order to order the investigating officer to operate the management and regular business of the company under sub-section (2), the investigating officer shall operate the business accordingly.

(4) In case it becomes necessary in the course of operating the business of the company under sub-section (3), to execute any special deal such as selling any of the assets or undertakings of the company, the investigating officer shall submit an application to the court for its permission, specifying the reasons therefor and in case the court issues an order to grant permission to act accordingly, the investigating officer may execute such deals.

16. Directors to Submit Reports: The person holding the office of a director of the company at the time when the court makes an order for investigations into the insolvency proceedings under sub-section (3) of Section 10, or within a year prior to that time, shall have to submit to the court a report in the prescribed format on the financial condition and business of the company as of the date until which he remained in office.

17. Loans May be obtained: (1) The investigating officer may, if he/she deems the need for any funds to run the company or to operate its regular business, obtain loans from any person with or without necessary security.

(2) The loans obtained under sub-section (1) shall be considered to be expenses incurred during the period of investigating into insolvency proceedings and such amounts shall be paid as per the priority order provided for in this Act.

Provided that in case any security pledged for obtaining any such loan had already been pledged before as security to any other person, the order of priority with respect to the claims on such security shall not be maintained except in the case when the investigating officer has concluded an agreement in that connection with the other person.

18. Investigating Officer to Submit a Report: (1) The investigating officer shall have to investigate into the financial and business condition of the company and submit a report thereof to the court within the period prescribed for investigations.

(2) The report referred to in sub-section (1) shall contain, inter alia, the actual financial condition of the company, details of investigations found by the Investigating Officer and, opinion and concluding opinion of the investigating officer, and also recommendation stating grounds and reasons therefor, after determining the action to be taken from among the actions referred to in sub-section (1) of Section 13.

(3) In case the recommendation referred to in sub-section (2) had been presented before a meeting of the creditors, the fact as to whether or not a majority of the creditors present at the meeting approved it shall also be contained therein.

(4) A copy of the report submitted under sub-section (1) shall also be sent to the concerned company and the Office

each, and the concerned company and the Office shall make arrangements to keep the report so received in such a manner so that it shall be possible to inspect by the shareholders, directors and creditors of the company.

19. Automatic Stay: (1) Notwithstanding anything contained in the law in force, in case the court issues an order to commence insolvency proceedings with respect to any company under sub-section (2) of Section 10, none of the transactions under below may be executed without the permission of the court, and all such transactions as have already been initiated but are yet to be completed shall be stayed:

- (a) Transfer, sale of the shares of the company, or change in the status of its shareholders,
- (b) Transfer, sale, otherwise pledging or mortgaging as collateral any asset of the company,
- (c) Attachment of any asset of the company or enforcement of a collateral according to any judgement or order, as the case may be,
- (d) Repossession by the lessor of any property leased out to the company or taking any legal action with respect thereto,
- (e) Payment of any debt whose payment was outstanding or which had become payable at the time when the court issued an order for the commencement of insolvency proceedings under sub-section (2) of Section 10, or pledging of a security in consideration thereof, and
- (f) Transfer or withdrawal of funds from the company's fund.

(2) Notwithstanding anything contained in sub-section (1), in case any person files a petition to the court claiming that the automatic stay of any transaction under the said sub-section will cause a loss to him/her, the court may, if it deems that the arguments of the petitioner are reasonable and that it may have no adverse effect to the interests of the company or its creditors, issue an order to execute the transaction.

20. Essential Services May not be Discontinued: Notwithstanding anything contained in the law in force, in case the court issues an order to commence the insolvency proceedings with respect to any company under sub-section (2) of Section 10, no person or institution providing such essential services as electricity, water supply, drainage, gas and telephone or any other telecommunication service shall discontinue or suspend to the concerned company until

completion of the said proceedings without the permission of the court.

21. Creditors' Meeting to be convened: (1) The investigating officer shall, before submitting his report to the court, convene a meeting of the creditors of the company to discuss on report and ascertain the creditors' views on the future plans of the insolvent company and every person identified as a creditor of the company from the company's accounts and other records shall also be invited to attend the meeting.

(2) Notice of the meeting, specifying its venue, date, time and agenda, shall be furnished to every person identified as a creditor under sub-section (1) giving at least seven days time limit and a notice of such a meeting shall also be published in national dailies for at least two times.

(3) While giving a notice under sub-section (2), it may be given through a letter or telex, telefax, e-mail or any other means of electronic communication whose records can be maintained.

(4) In case any person other than those referred to in sub-section (1) shows any claim against the company as a creditor, the investigating officer may ask him/her to submit evidence thereof along with the detailed particulars of the claim against the company.

(5) The claim of a person who fails to submit evidence or particulars as referred to in sub-section (4) may be nullified by the investigating officer, and in case any such claim is so nullified, the concerned person may not attend the creditors' meeting.

Provided that mere by participation by any person in the creditors' meeting shall not be recognized such a person as a creditor.

(6) The creditors' meeting shall be presided over by the investigating officer.

(7) Decisions at the creditors' meeting shall be taken on the basis of a simple majority. In the event of a tie, the matter shall be decided by lottery system. The investigating officer may prescribe the voting procedure after determining the voting rights of the creditors in proportion to the claims made for the debts to be paid or payable by the company immediately.

(8) The Company's directors or the officers invited by the investigating officer may participate in the creditors' meeting.

Provided that they shall not be entitled to cast votes.

(9) Except when any concerned person files a petition to the court stating the reasons and grounds for his/her claim that the creditors' meeting has done injustice to him, no question may be raised in any court about the creditors' meeting and the business transacted by it.

22. The Court May Issue an Order: (1) The court may, if it deems appropriate, issue any of the

following orders within seven days from the date of receipt of the report submitted by the investigating officer under sub-section (1) of Section 18, the resolution adopted by the creditors' meeting, or the restructure scheme presented by the company or any other resolution adopted by the company:

- (a) To liquidate the company immediately;
- (b) To implement the restructure scheme of the company;
- (c) If there is possibility of an improvement in the situation, not to liquidate the company immediately, but to wait for the period as specified by the court;
- (d) To extend the time-limit prescribed for investigations into insolvency proceedings as prescribed by the court in order to have a report submitted after conducting further investigations; or
- (e) To revoke the order issued under sub-section (2) of Section 10.

(2) In case an order for liquidating the company immediately or implementing the restructure scheme is issued under sub-section (1), the court shall in order to liquidate the company or implement the restructure scheme, issue an order to appoint an insolvency practitioner as liquidator or restructure manager as the case may be, and the person so appointed shall have to accomplish the task within the time-limit as specified by the court at the time of appointing him/her.

(3) Notwithstanding anything contained elsewhere in this Section, in case the investigating officer files a petition requesting for any of the following orders stating therein the reasons that the company has already become insolvent or required to be liquidated immediately and pursuant to the agreement entered into between the company and its creditors or that a proposal concerning the restructure scheme prepared for improving the condition of any company, even if it has already become an insolvent, may be considered at a meeting of its creditors to be convened under Chapter 4, and in case the court deems it appropriate to issue any order, the court may issue such an order:

- (a) To terminate investigations relating to insolvency proceedings before the expiry of the prescribed term;
- (b) Not requiring the investigating officer to convene the creditors' meeting; or
- (c) To liquidate or restructure the company.

(4) The court may, in addition to any order referred to in sub-section (1) or (3), also issue any other order deemed appropriate by it.

Chapter 4

Restructure Scheme of the Company

23. Restructure Scheme to be prepared: (1) In case the court issues an order to restructure a company under sub-section (2) of Section 22, the restructure manager shall prepare in writing a restructure scheme of the company.

(2) The scheme prepared under sub-section (1) shall include the following schemes:

- (a) To change the structure of the capital of the company by capitalization of its debt;
- (b) To sell any portion of the assets of the company and settle the claims of the creditors;
- (c) To change in the nature of the claims of the creditors of the company and issue securities in consideration thereof;
- (d) To issue shares to the creditors of the company in consideration of their claims and enlist their participation in the capital investment;
- (e) To amalgamate the company with any other company;
- (f) To change the management of the company; or
- (g) To take any other necessary act deemed appropriate by the court for restructuring the company.

24. Meetings of Creditors to be Convened: (1) The restructure manager appointed by an order of the court to restructure the company under sub-section (2) of Section 22 shall, within a period of fifteen days after he commences his work, send a notice to all creditors of the company by fulfilling the formalities laid down in sub-sections (2) and (3) of Section 21, to present their claims along with evidence and shall also publish the notice in national dailies for at least two times, and such a notice may be put in the website as well.

(2) All creditors, who have a debt claim against the company with or without security shall submit to the restructure manager the details of their debt claim along with evidence to substantiate such claim within a period of fifteen days from the date of issuance of such a notice under sub-section (1).

(3) The restructure manager shall, within a period of fifteen days after receiving the details of the claims of the creditors under sub-section (2), convene a meeting of the creditors by fulfilling the formalities laid down in sub-sections (2) and (3) of Section 21, and while so convening the meeting, the notice shall be accompanied by a copy of the restructure scheme.

(4) The meeting convened under sub-section (3) shall be presided over by the restructure manager.

(5) The creditors' meeting may be conducted and adjourned according to need.

Provided that no such a meeting may be adjourned for a time exceeding restructuring

time limit without an order of the court.

(6) The directors of the company may attend the creditors' meeting and furnish replies to queries made by the creditors on issues concerning the business and financial condition of the company.

(7) The creditors' meeting convened under sub-section (3) shall discuss on the details of the restructure scheme presented by the restructure manager and adopt a resolution on any of the following issues subject to sub-section (7) of Section 21:

- (a) To adopt the resolution for restructure presented by the restructure manager with or without any amendment; or
- (b) To liquidate the company immediately without adopting the resolution under Clause (a).

(8) Notwithstanding anything contained in sub-section (7), a secured creditor shall not cast a vote.

(9) The restructure scheme adopted and approved or the resolution for liquidating the company adopted by rejecting the resolution for restructuring the company under sub-section (7) shall be presented before the court for its approval, and if the court issues an order to approve the said resolution, such a resolution shall be implemented accordingly.

25. Restructure Manager to Submit a Report: (1) The restructure manager shall submit a report to the court on the business, assets and financial condition of the company, including the details of the restructure scheme, if any, during the period of restructure.

(2) In case a restructure scheme has been proposed in the report referred to in sub-section (1), the following matters shall also be specified in such a scheme:

- (a) Brief particulars and analysis of the proposed scheme,
- (b) Details of the possible effects on the creditors of the company, if the proposed scheme is implemented,
- (c) A comparative statement between the returns that the creditors may get if the company is liquidated immediately and the returns that they may get if the restructure scheme is implemented, along with the effects,
- (d) Details of the conviction of the restructure manager that the company will not become insolvent if the restructure scheme is implemented, along with the *opinion*.

(3) A restructure scheme prepared under sub-section (1) shall have no formal form and format except the following:

- (a) Full details of the schemes to be implemented by the company in the future, and details in writing of the relevant proposals,

- (b) A statement to the effect that the creditors of the company may derive more benefits if the restructure scheme is implemented instead of liquidating the company immediately,
- (c) A statement to the effect that none of the parts of the proposed scheme is illegal or prohibited by *the law* in force,
- (d) A statement to the effect that if the scheme is implemented it will rescue the company from the state of insolvency, or that it will not become insolvent.

(4) A restructure scheme prepared under this Section shall also contain the details regarding the payment of expenses during the period of investigations into insolvency proceedings or the period of restructure, and of the remunerations of the investigating officer or the restructure manager, as the case may be.

26. Information to be Furnished in case Particulars of the Restructure Scheme Cannot be Submitted: (1) In case the particulars of the restructure scheme cannot be submitted to the court within the restructure period, the restructure manager shall file a petition to the court explicitly specifying the reasons therefore.

(2) In case a petition is filed under sub-section (1), the court may, if it deems reasonable, revoke the restructure order and issue an order to liquidate the company.

27. Objections May be Filed Against an Approved Restructure Scheme: (1) Any creditor who disagrees with the restructure scheme approved under sub-section (7) of Section 24 may file a petition against it within a period of seven days specifying any of the following grounds and reasons:

- (a) The restructure scheme approved by a majority in the creditors' meeting is not in the interests of creditors other than those of the secured creditors,
- (b) Serious irregularities had been committed while convening or conducting the creditors' meeting, and the scheme approved by the meeting is not in the interest of creditors other than those the secured creditors,
- (c) False or misleading information had been furnished, or the substantial information had been concealed about the company or the restructure scheme of the company.

(2) In case a petition is filed under sub-section (1), the court shall order the company and the restructure manager to submit a written statement in that connection within a period of seven days.

(3) On receipt of a written statement or after the expiry of the time-limit prescribed for submitting a written statement under sub-section (2), the court shall initiate a hearing on the petition filed under sub-section (1), and, if it finds the contention made in the petition is to be justifiable, nullify the resolution concerning the restructure scheme adopted in the creditors'

meeting declared to be invalid.

(4) In case the resolution adopted and approved at the creditors' meeting is nullified and declared to be invalid under sub-section (3), the court shall order immediate liquidation of the company.

(5) Information about the order issued under sub-section (3) or (4) shall be given to the concerned company and to the restructure manager.

28. Consequence of Approval of Restructure Scheme by the Court: In case the court issues an order approving the restructure scheme adopted by the creditors' meeting under sub-section (9) of Section 24, such a scheme shall be binding on all the creditors, excluding the secured creditors of the company, as well as on the directors and shareholders of the company, and the restructure period shall be terminated from the same day.

29. No Effect on the Interest of Secured Creditors: (1) A restructure scheme adopted by the creditors' meeting and approved by the court under this Chapter shall not prevent the secured creditors from using the collateral or dealing with it in any other way except in the following circumstances:

- (a) In case the secured creditor has voted in favor of the restructure scheme or has given his consent to it in any other way, thus making it acceptable to him; or
- (b) In case the court issues an order to the effect that the said scheme will be binding on the secured creditor.

(2) The court may issue an order referred to in Clause (b) of sub-section (1), if it is satisfied that:-

- (a) The use of the collateral obtained by the secured creditor may have a substantial adverse effect on the achievements of the implementation of the restructure scheme,
- (b) Such a scheme sufficiently protects the secured creditors' interest in the collateral, and the collateral itself.

30. No Effect on the Interest of Owner or Lessor of any Property: (1) A restructure scheme adopted by the creditors' meeting and approved by the court under this Chapter shall not prevent the owner or lessor of any property, if such property is taken on lease, being used, occupied or possessed by the company, to enforce the rights over it or to have it returned, except in the following circumstances:

- (a) In case the owner or the lessor of the property has voted in favor of such a scheme or given his consent to it in writing, thus making it acceptable to him,
- (b) In case the court issues an order to the effect that the said scheme will be binding on the owner or lessor of the property, as the case may be.

(2) The court may issue the order under Clause (b) of sub-section (1), if it is satisfied that -

- (a) In case the property is returned by its owner or lessor , as the case may be, it may have a substantial adverse effect on the achievements of the implementation of the restructure scheme,
- (b) In case the restructure scheme sufficiently protects the property and the interests of its owner or lessor, as the case may be.

31. Restructure Manager to Operate the Company: (1) The restructure manager shall operate the company for the entire duration of the restructure period.

(2) The restructure manager may, while operating the company under sub-section (1), exercise the following powers:

- (a) To manage and control the business, property and transactions of the company,
- (b) To terminate or sell away any business or property of the company,
- (c) To exercise any power or discharge any function that the company or its official may exercise or discharge.

(3) While exercising the powers under sub-section (2), the restructure manager shall have the power to inspect all the books and accounts, records and documents of the company.

(4) The restructure manager shall, in performing acts or exercising the powers under this Section, Act in the capacity of an agent of the company.

(5) The directors and other officials of the company shall have to extend all necessary cooperation to the restructure manager if he/she requests for the same for the management and control of the company.

(6) A director or an official of the company may not discharge any functions or exercise any powers in the company in that capacity without the written directions of the restructure manager.

(7) The directors of the company shall furnish all information about the company and its business, property and transactions as per the demands of the restructure manager.

32. Restructure Manager May Obtain Loans: (1) The restructure manager may, while functioning as the manager of the company, if he deems necessary any funds, obtain loans with or without pledging any asset of the company as collateral, to keep the company running, or to operate the business and transactions of the company.

(2) Amount of the loans obtained under sub-section (1) and the terms and conditions thereof shall be as provided for in Section 17.

33. Limits of Writing Off of Company's Loans: In case the restructure scheme provides for, with the consent of the creditors, writing off any unsecured debts or any part thereof, or effecting any alteration therein, it shall be written off or altered according to such a scheme.
34. Restructure Scheme to implement: (1) It shall be the responsibility of the company to implement the restructure scheme adopted by the creditors' meeting and approved by the court under this Chapter.
- (2) The court may designate the restructure manager as the authority to supervise and manage the implementation of the scheme referred to in sub-section (1).
35. Restructure Scheme may be Altered and Changed: (1) In the course of implementing a restructure scheme, if it is found that the entire or any part of the said scheme cannot be implemented in its existing form but that it may be implemented by effecting alterations or changes in it, the restructure manager shall convene a creditors' meeting to make a alteration or change in such a scheme.
- (2) In case the creditors' meeting convened under sub-section (1) adopts a resolution to effect an alteration or change in the scheme, it shall be presented before the court for its approval.
- (3) The court may issue an order approving the scheme presented under sub-section (2), if it deems appropriate in the interests of the creditors.
- (4) The scheme approved under sub-section (3) shall be implemented accordingly to its alteration or change.
36. Termination of restructure scheme: (1) The restructure scheme shall be terminated if it is already implemented by the company or if the court issues an order to terminate the restructure scheme as per the petition filed by the restructure manager specifying that the company has failed to implement the scheme.
- (2) If the court issues an order to terminate a restructure scheme on the ground of the failure of the company to implement it as referred to in sub-section (1), the court shall also issue an order to liquidate the company.

Chapter 5

Liquidation of a Company

37. Company to be Liquidated if an Order is issued for Liquidation: (1) If the court issues an order to liquidate the company under this Act, it shall also issue an order at the time of issuance of such an order to appoint a liquidator from among the persons licensed to work as insolvency practitioners.

(2) The process of liquidating a company shall be deemed to have been commenced, once the court issues an order under sub-section (1).

38. Consequence of Commencement of Liquidation Proceedings of a Company: (1) Once the proceedings of liquidation a company is commenced, the following matters in respect to such a company shall be as follows:

- (a) If the directors and Officials of the company are relieved from their office, all the powers to be exercised by the directors and officials of such a company in regard to the management of the company shall be exercised by the liquidator,
- (b) The liquidator shall take under his/her custody and control all the assets, excluding the assets under the possession of the secured creditors, books and records and accounts of the company,
- (c) Except when otherwise ordered by the liquidator, the services of all the employees of the company appointed by the company shall be terminated.

(2) The provisions concerning automatic stay referred to in Section 19 shall be applicable throughout the period of liquidation proceedings, except in respect to the following matters:

- (a) Implementation of the secured creditors' right to enforce the collateral under this Act, or
- (b) Implementation of the lessor's right to get back the property leased by the company under this Act.

39. Liquidation of a Company may be Converted into a Restructure Scheme: (1) The liquidator may, if he so deems, following a study and examination of the business and assets of the company, the nature of the goods or services to be produced by the company and market feasibility that restructure scheme of the company may be adopted and approved by the creditors' meeting, file a petition to the court specifying reasons thereof for its order to suspend for a specified period the order issued by the court to liquidate the company under this Act and for an order to implement a restructure scheme under this Act.

(2) In case the court is satisfied with the contents of the petition filed under sub-section (1), the court may order to implement a restructure scheme by suspending for a specified period the order issued by it earlier to liquidate the company.

(3) In case an order is issued under sub-section (2), such an order shall be implemented under this Act.

40. Functions, Duties and Powers of a Liquidator: (1) The functions, duties and powers of a liquidator, in addition to other provisions referred to in this Act, shall be as follows:

- (a) To institute any lawsuit or to initiate any other legal proceedings on behalf of the

company or defend it;

- (b) To appoint employees to assist him/her in performance of his/her business;
- (c) To make calls for payment of amounts due on shares from the shareholders in case such amounts for shares of the company are not fully paid-up;
- (d) To discharge all functions and execute all deeds or documents to be discharged or executed on behalf of or in the name of the company, or cause to do so and to use the seal of the company for that purpose;
- (e) To obtain loans with security by pledging the assets of the company;
- (f) In case the liquidator considers that any sale and disposal of any property or the termination of any contract or obligation will benefit the company, to sell and dispose of any property or terminate such a contract or obligation, as the case may be;
- (g) To effect a compromise with any creditor or any person claiming to be a creditor of the company in relation to his/her claim;
- (h) To effect a compromise with any person in relation to any loan, obligation or any other claim that the company may claim against such a person;
- (i) To sell the assets of the company and distribute the proceeds thereof under this Act; and
- (j) To discharge or cause to be discharged all other functions or actions required for liquidation of the company.

(2) It shall be the duty of the liquidator to discharge the following duties in addition to those referred to in sub-section (1):

- (a) To collect, protect and sell the assets of the company;
- (b) To examine the business and financial condition of the company;
- (c) To accept the creditors' debt claim, subject to Chapter 6;
- (d) To distribute the proceeds of the sale of the assets of the company subject to the order of priority fixed for the settlement of liabilities under this Act;
- (e) To convene and conduct creditors' meetings;
- (f) To prepare a report of his/her functions and activities and submit to the court and the Office;
- (g) To facilitate the deregistration of the company; and
- (h) To conduct inquiries to find out whether or not any director, employee, shareholder or any other person of the company has committed any act of fraud

against or cheating or misleading the company or its creditors, and to initiate necessary legal action against such a person.

(3) In addition to the functions and duties and powers referred to in sub-section (1) or (2), the liquidator may also secure the return of any asset of the company if it is being used by anyone, or initiate legal action to get back any such assets or obtain refunds of amounts due from any transaction that has been declared void, and also discharge similar other functions.

Provided that he/she shall not incur such expenses which cannot be paid from the assets of the company.

(4) The liquidator shall exercise the powers or discharge the duties under sub-sections (1), (2) or (3) even if the company lacks sufficient funds to meet the expenses required by the liquidator for that purpose or to pay remunerations to the liquidator.

(5) In case the liquidator faces any difficulties out hindrances in the course of exercising any power or discharging any duty under this Act, he/she may file a petition to the court to remove such difficulties and hindrances and in case such a petition is filed, the court may, if it finds to be reasonable, remove such difficulties and hindrances.

41. Creditors May Supply Loan: (1) In case it is found that the execution of any function by a company which is in liquidation will serve the interests of or will be beneficial to its creditors, the creditors of the company may supply funds to the liquidator as loan to execute such a function.

(2) The funds obtained under sub-section (1) shall be repaid from the very proceeds acquired from execution of such function and activities.

(3) Any creditor may file a petition to the court for an order for settling a debt claim amount which is confirmed by the company from the amount received under sub-section (1).

(4) In case a petition is filed under sub-section (3), the court may, if it deems appropriate to settle the debt claim from the amount referred to in sub-section (1), issue an order for that purpose.

42. Liquidator to Submit Report: (1) The liquidator shall, within three months from the date of his appointment, prepare a progress report relating to the functions performed and actions taken by him in relation to the liquidation of the company, and submit the same to the Court and the Office.

(2) The report referred to in sub-section (1) shall contain, inter alia, the following matters:

- (a) The issued capital of the company, the capital under taken to subscribe by shareholders and the amount of paid-up capital,
- (b) Estimated values of the assets and liabilities of the company,

- (c) The liquidator's opinion on the reasons for the financial failure of the company,
 - (d) The liquidator's opinion on the need for additional inquiries and investigations into the promotion or incorporation of the company or on the activities of the company, its directors and shareholders,
 - (e) Other necessary matters deemed appropriate by the liquidator.
43. Creditors' Meeting to be convened: (1) The liquidator shall convene a meeting of the creditors of the company before preparing his report referred to in Section 42 and thereafter, from time to time, according to need.
- (2) While calling a meeting referred to in sub-section (1), the Procedures as laid down in sub-sections (2) and (3) of Section 21 shall have to follow.
- (3) The liquidator shall preside over the meeting of the creditors.
- (4) The provisions contained in Section 24 shall, mutatis mutandis, be applicable in respect to other matters concerning the creditors' meeting.
44. Creditors' Committee may be Formed: (1) A creditors' meeting held under Section 43 may form a creditors' committee consisting of not exceeding five creditors in order to assist the liquidator in regard to liquidation of the company.
- (2) The scope of the work, procedure concerning the meetings or other necessary matters concerning the committee formed under sub-section (1) shall be as specified by the creditors' meeting at the time of forming of such a committee.
45. Time-Limit to be Granted to Submit Debt Claims: (1) The liquidator shall have to grant a fifteen days notice to all creditors of the company which is being liquidated, to file their claims in the prescribed format.
- (2) The notice granted under sub-section (1) shall be published in national level newspapers for at least two times.
- (3) The liquidator may not accept the claims of creditors who fail to file their claims within the time-limit as referred to in sub-section (1).
- Provided that in case the concerned creditor submits an application to the liquidator stating an appropriate reason for his/her failure to file his claim within the said time-limit, the liquidator may, if he deems the contents of the application to be reasonable, accept such a claim.
46. The Court may Issue an Order in Relation to Liquidation of a Company: Notwithstanding anything contained elsewhere in this Chapter, the court may issue any of the following orders at any time in relation to any company which is in the process of liquidation:
- (a) To suspend or terminate the liquidation proceedings of the company,

- (b) To cause to hand over the assets of the company to the liquidator,
 - (c) To pay the amounts due on calls made for payment,
 - (d) To prohibit the use of any asset of the company by anyone, if anyone is suspected to use it,
 - (e) To arrest any person who obstructs the liquidator in discharging his functions and duties or exercising his powers.
47. Deregistration of a Company: A liquidator appointed to liquidate a company under this Chapter shall, in the course of liquidating the company, have to deregister a company by adopting the procedure as stipulated by this Act or by other laws in force.

Chapter 6

Creditors' Claims and Mode of Payment

48. Creditors to File their Claims: (1) A creditor of an insolvent company shall file in the prescribed format and within the time-limit as prescribed by the restructure manager or the liquidator, as the case may be, his/her claim on any debt due or payable to him by the company.
- (2) While filing a claim under sub-section (1), a creditor shall also submit evidence, if any, to substantiate his claim, if so demanded by the restructure manager or the liquidator, as the case may be.
- (3) The restructure manager or liquidator, as the case may be, may, after conducting inquiries and investigations into a claim filed under sub-section (2), accept or reject it either fully or partially.
- (4) In case the restructure manager or liquidator, as the case may be, rejects fully or partially any debt claim as referred to in sub-section (3), he/she shall furnish information thereof to the concerned creditor in writing, along with the reasons therefor, within a period of seven days.
- (5) Any creditor dissatisfied with the information obtained by him/her under sub-section (4) may file a petition to the Appellate Court within a period of fifteen days for its review.
- (6) Even in the case of a foreign creditor who has extended debt to the company according to the law in force may file his/her debt claim, if any, against the concerned company under this Section.
49. Claim for Interest may be Made: In case any insolvent company had obtained any debt on the condition of paying interest on it according to the contract executed at the time of borrowing, a claim to such interest may also be included in the claim to be filed under sub-section (1) of

Section 48.

Provided that no interest may be claimed for the period after the date of the order of the court to liquidate a company or to implement a restructure scheme of the company, as the case may be.

50. Claims on Undetermined or Contingent Obligations: (1) In addition to the claim referred to in section 48, any claim on any obligation of an undetermined value which has resulted from any loss caused by an insolvent company, or from any compensation to be paid by the company to anyone as a result of its failure to comply with any contract or for having breached any contract, or from any other action which creates a civil liability, or any claim on any contingent obligation of the company which value is yet to be determined but which has resulted from the failure of a debtor to fulfill any obligation for which the company had provided a guarantee under any guarantee agreement, may also be filed under sub-section (1) of Section 48.

(2) In case a claim is filed under sub-section (1), the restructure manager or liquidator, as the case may be, shall either accept or reject it under sub-section (3) of Section 48, and notify about the same under sub-section (4) of the said Section.

(3) In case such a claim is accepted under sub-section (2), the restructure manager or liquidator, as the case may be, shall also determine the estimated value of such a claim.

(4) Notwithstanding anything contained in sub-section (3), the restructure manager or liquidator, as the case may be, may file a petition to the court to determine the value of any such claim and in case any such a petition is filed, the court shall determine the estimated value of such a claim.

(5) Any person who is dissatisfied with the decision to reject his/her claim under sub-section (2) or with the value of his claim determined under sub-section (3), may lodge a complaint with the court within a period of fifteen days from the date of receipt of the notice thereof.

51. Prematured Claims: The restructure manager or liquidator, as the case may be, may allow discount as prescribed for claims relating to prematured debts filed against the company, time for payment of which is not yet matured.

52. Claims Involving Foreign currency: Claims in respect to debts supplied or other obligations incurred in the foreign currencies under this Act shall be settled by calculating their value in the Nepali currency according to the exchange rate fixed by the Nepal Rastra Bank for the day on which the petition relating to the liquidation, insolvency or restructure of the company, as the case may be, is filed to the court.

53. Adjustment of Debts To be Made: (1) In case there is any other transaction between an insolvent company and any creditor who has made a debt claim against the company, the concerned debt or such a debt claim or transaction may be adjusted as follows:

- (a) To determine the amount due to be paid by one party to another,
- (b) To deduct amount payable by one party to another from the amount determined under clause (a),
- (c) To fix only the balance amount calculated by deducting under clause (b), the debt amount as claim payable by the company.

(2) Notwithstanding anything contained in sub-section (1), any person who has supplied to or obtained a credit from the company even while knowing or having reasonable ground to know that a company has already become an insolvent shall not make a claim to have the amount to be paid by him/her to the company deducted from the amount due to him/her from the company.

Explanation: For the purposes of this Section "a company has already become an insolvent" means a state when a petition has already been filed to the court to restructure or liquidate the company

54. Secured Creditors May Make a Claim: (1) A secured creditor may file a debt claim against the company at any time, and the restructure manager or liquidator, as the case may be, may accept or reject any such claim under sub-section (3) of Section 48.

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

(3) In case there is a dispute between the concerned creditor and the insolvent company on the issue of the difference between the value of the secured asset and the amount due and payable, calculated under sub-section (2), any party who is dissatisfied with the matter may file a petition to the court, and the court shall review the petition and determine the difference.

55. Shareholders' Claim: In case any creditor who is also a shareholder of an insolvent company files a claim against the company, and in case he/she has not paid any amount due on his share and the situation requiring him to pay the concerned amount has already emerged or is likely to emerge, his/her claim against the company shall not be accepted to the extent of the amount he/she has or likely to pay.

56. Deemed as a Creditor if Debt Claim is Accepted: (1) In case a debt claim made by a person against the insolvent company is accepted under this Chapter, he/she shall gain the status of a creditor.

(2) A person who gains the status of a creditor under sub-section (1) shall acquire the rights to participate in the creditors' meeting, exercise the voting right to the extent of his/her approved debt claim, and receive payment of the debt amount under this Act.

57. Order of Payment of Liabilities: (1) While settling the liabilities of a company which is being

liquidated under this Act, the liquidator shall pay the liabilities from the available funds according to the following order of priority:

- (a) All expenses connected with the functions discharged by the interim administrator appointed under sub-section (4) of Section 11 and remunerations,
- (b) Other amounts to be settled under Chapter 2,
- (c) All expenses connected with the functions discharged by the investigating officer appointed under sub-sections (3) and (4) of Section 10 and remunerations,
- (d) All expenses connected with the functions discharged by the restructure manager appointed under sub-section (2) of Section 22 and remunerations,
- (e) All loans of the company obtained during the period of investigations into its insolvency proceedings,
- (f) All loans of the company obtained during the period of its restructure scheme,
- (g) All expenses connected with the functions discharged by the liquidator appointed under sub-section (1) of Section 37 and remunerations,
- (h) Wages and remunerations due to the workers or employees of the company at the time of the issuance of the order under this Act to liquidate or restructure the company, as the case may be.

Provided that no director of the company shall be entitled to such an amount,

- (i) Amounts payable to the workers or employees of the company in consideration of home leave, sick leave, gratuity and employees' provident fund, if any, at the time of the issuance of the order under this Act to liquidate or restructure the company, as the case may be,

Provided that no director of the company shall be entitled to such an amount.

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

(2) Every liability coming under any order of priority under sub-section (1) shall be treated on an equal basis, and all liabilities coming under the concerned order shall be fully settled.

Provided that if such liabilities cannot be fully settled, they shall be settled on a pro-rata basis.

(3) In case any liability of the company is insured, the amount received under the insurance contract shall be paid to those who are entitled to it.

(4) In case all the liabilities under sub-section (1), (2) or (3) are fully settled, the surplus

amount shall be used by the liquidator to pay interest payable on debts from the date of the order issued to liquidate or restructure the company to the date of acceptance of the debt claim and the amount remained thereafter shall be distributed among the preference shareholders of the company and the amount left even thereafter shall be distributed among the other shareholders on a pro-rata basis.

58. Procedure for Settling Liabilities: While settling the liabilities of the creditors under this Chapter, the liquidator may settle them at one or in different lots.

Chapter 7

Voidable Transactions

59. Void Transactions: (1) In case a company has become an insolvent, the following transactions shall be void:

- (a) Preferential transactions entered into immediately before six months of the commencement of the insolvency proceedings or within a period of six months after the commencement of such a proceedings,
- (b) Preferential transactions entered into with the associated persons of the company immediately one year before the commencement of the insolvency proceedings, or within a period of one year after the commencement of such proceedings,

Explanation: For the purposes of Clauses (a) and (b), the term "preferential transaction" shall mean a transaction entered into with a provision to entitle a payment exceeding the payment which a creditor of the company, other than the secured creditors, would have been entitled to get had he made a claim against the company at the time of its liquidation.

- (c) In case there has been any under-valued transaction within one year immediately before the commencement of the insolvency proceedings, or within a period of one year after the commencement of such proceedings and in case the company has become insolvent as a result thereof or any other under-valued transaction made after the commencement of the insolvency proceedings,

Explanation: For the purposes of this clause, the term "under-valued transaction" means any transaction in relation to which the company has received a value lower than the prevailing market value, or no value at all, for any consideration given by the company to the other party operating the transaction.

- (d) Fraudulent transactions entered into immediately two years before the commencement of the insolvency proceeding, or within a period of two year after the commencement of such proceedings,

Explanation: For the purposes of this clause, the term "fraudulent transaction"

means a transaction relating to any asset of the company which has been entered into with the malafide intention of cheating the creditors of the company or delaying payments to them or causing an adverse impact on their interests.

(2) The liquidator shall have to file a petition to the court in order to have the transactions referred to in sub-section (1) declared to be void.

(3) While filing a petition under sub-section (2), the liquidator shall have to prove that those transactions had taken place when the company was insolvent or that the company has become insolvent by the reason of such transactions.

(4) In case any associated person of the company is found, in the course of proceedings a voidable transaction to be declared void, to be involved in the voidable transaction, it shall be assumed that the company was insolvent at the time of the transaction, or that the company has become insolvent by the reason of such transaction.

60. Void Transactions May be Defended: (1) An associated person may prove the following matters in his/her defense:

- (a) That the company was not insolvent at the time of the transaction,
- (b) That he/she has not derived any benefit from the transaction,
- (c) That there was no reasonable ground to suspect that the company was insolvent at the time of deriving any benefit from the transaction, or that the company may become insolvent as a result of such transaction.

61. Powers of the Court in Relation to Void Transactions: (1) In case the court is satisfied that any transaction is void, the court may issue the following orders:

- (a) To order the concerned person to pay to the liquidator some or all of the amounts paid by the company in connection with the transaction,
- (b) To order the concerned person to hand over to the liquidator the asset so transacted or the value equivalent to that,
- (c) To order that the debt obtained by the company through the means of such transaction or the security or guarantee furnished by the company for that debt, be fully or partly remitted or released,
- (d) To order that any remission or assignment made or agreement executed between the company and any other person as a consequence of the voidable transaction will be void, ineffective or non-enforceable.

(2) In case any such an additional order is required to enforce the order referred to in sub-section (1), the court may also issue any such an order.

62. Claim May be Made against Payment done in Consideration of Preferential Transactions: Any

creditor who pays any amount to the liquidator according to the order of the court or for any other reason connected with any preferential transaction made with the company may file a claim for that amount as a debt claim against the company that is being liquidated.

Chapter 8

Insolvency profession and Regulation and Administration Thereof

63. Prohibition On Practicing Insolvency Without a License: (1) No one shall act as an insolvency practitioner without obtaining a license from the Office under this Act.

(2) No person who has not obtained a license under sub-section (1) shall be appointed as an investigating officer, restructure manager or liquidator, as the case may be, in the course of conducting insolvency proceedings under this Act. In case any person other than a licensed person is appointed as investigating officer, restructure manager or liquidator, as the case may be, such an appointment shall, *ipso facto*, be void.

64. Application to be Filed for a License: (1) A person desirous of obtaining a license under sub-section (1) of Section 63 shall submit an application to the Office in the prescribed format along with the prescribed fee.

(2) A person submitting an application under sub-section (1) shall have to meet the following conditions:

- (a) One has to attain thirty five years of age,
- (b) One should be a member of the prescribed professional association,
- (c) One shall have to acquire at least a bachelor's degree in commercial law, commerce, management or accounts or any other subject as prescribed from a recognized university,
- (d) One has to reside within the state of Nepal,
- (e) One should be competent to operate insolvency practice under this Act.

(3) On receipt of an application under sub-section (1), the Office shall, if it deems appropriate, issue a license in the prescribed format to the applicant to operate insolvency practice.

(4) The license issued under sub-section (3) shall be renewed as prescribed.

65. Establishment of an Insolvency Administration Office: (1) Government of Nepal shall, after the commencement of this Act, establish an Insolvency Administration Office by a notification

published in the Nepal Gazette. Government of Nepal may, for the period until the establishment of such an Office, designate any of its offices to work as the Insolvency Administration Office.

(2) The Office established under sub-section (1) shall discharge the following functions:

- (a) To administer the insolvency practice,
- (b) To register insolvency practitioners, issue licenses to them, and renew such licenses,
- (c) To operate general supervision of the management of the company that has become an insolvent,
- (d) To investigate into the official conduct to be complied with by the insolvency practitioners,
- (e) To maintain records of each insolvent companies, and
- (f) To discharge such other functions as are prescribed.

66. Licence May be Suspended or Revoked: (1) The court may order to suspended or revoke a license obtained under subsection (5) of section 64 by a licensee, in case a complaint is filed to the effect that the licensee has not acted in accordance with the license, or in case the Office submits a report to that effect or in case the court itself considers to that effect, after initiating action on the matter.

(2) Before issuing an order under sub-section (1), such a person shall be granted an opportunity to submit explanations in his defense.

(3) The court may issue an order referred to in sub-section (1) on the basis of the following:

- (a) In case the licensee commits an act that is prohibited under this Act,
- (b) In case the licensee performs an act negligently or improperly which he/she is required to perform under this Act,
- (c) In case the person licensed to practice insolvency himself becomes an insolvent,
- (d) In case the person licensed to practice insolvency is convicted by a court of corruption, cheating, forgery or fraud.

67. Vacancies to be Filled by the Court: In case the office of a restructure manager or liquidator, as the case may be, appointed under this Act falls vacant as a result of the suspension or revocation of the license under sub-section (1) of Section 66, or for any other reason whatsoever, the court may issue an order to appoint any other person qualified under this Act to fill the vacancy by fulfilling the required process as fulfilled at the time of the initial

appointment.

68. Remuneration: (1) The remuneration of an investigating officer, restructure manager or liquidator, as the case may be, appointed under this Act shall be as specified by the creditors' meeting, from time to time.

(2) In case such remuneration could not be specified under sub-section (1), the court may, on the basis of the report submitted by the Office, specify such remuneration.

69. Separate Account to be Maintained: (1) A restructure manager or liquidator, as the case may be, appointed under this Act shall, while taking actions in respect to insolvency proceedings under this Act, open and operate a separate bank account for each company to which he is appointed.

(2) All amounts received by him/her shall be deposited with the bank account opened under sub-section (1).

(3) Any surplus amount in the bank account opened under sub-section (1) shall be invested only in the field as the prescribed.

(4) A restructure manager or liquidator, as the case may be, shall, in addition to the provision as provided for in sub-section (1), keep other accounts and book of records in such a manner so that it clearly demonstrates the full and actual particulars of the insolvency proceedings of every company that has become an insolvent and he/she shall also submit to the Court or the Office, as the case may be, according to need, the statements of such accounts and book or records.

(5) After discharging his/her duties, the restructure manager or liquidator, as the case may be, shall cause the accounts and book of records kept by him/her, as well as the statements thereof, to be audited in accordance with the law in force and hand over them to the Office.

70. May be Removed through the Order of the court: (1) In case a complaint to the effect that a restructure manager or liquidator, as the case may be, appointed under this Act has, while discharging any proceedings relating to the insolvency of any company, entrusted to him/her, failed to work in accordance with this Act or in case his/her conduct is found contrary to this Act, the court may issue an order to remove him/her.

(2) The concerned person shall not be deprived of an opportunity to submit explanations in his/her defense before issuing an order referred to in sub-section (1).

71. Replies to be Furnished: A restructure manager or liquidator, as the case may be, appointed under this Act shall promptly furnish replies to any query made by the Court or the Office, as the case may be, in connection with any acts done or action taken by him/her.

Chapter 9

Miscellaneous

72. Offenses and Punishments: (1) In case any person commits or causes others to commit any of the following acts, it shall be deemed to have been committed an offense under this Act:
- (a) In case a person holding the office of the director of a company does not submit to the court a report on the financial condition and business of the company in the prescribed format under Section 16,
 - (b) In case any person operates insolvency practice without obtaining a license from the Office under this Act,
 - (c) In case a director of a company deliberately conceals the fact that the company has become or is likely to become an insolvent,
 - (d) In case an insolvency practitioner fails to discharge in good faith any function to be discharged under this Act,
 - (e) In case a director, employee, shareholder or any other person of a company commits any act of fraud or forgery against or cheats or misleads the company or its creditors.
- (2) The court may punish any director who commits the offense referred to clause (a) with a fine not exceeding fifty thousand Rupees.
- (3) The court may punish any person who commits the offense referred to in clause (b) with a fine from ten thousand to fifty thousand Rupees.
- (4) The court may punish any director who commits the offense referred to in clause (c) with a fine not exceeding twenty thousand Rupees and a director shall have to pay such fine personally.
- (5) In case an insolvency practitioner fails to discharge any act to be discharged under clause (d) in good faith and cause thereby any losses to a company or creditor or concerned party, such a person shall be liable with a fine not exceeding five hundred thousand Rupees and compensation for such loss shall also be recovered from him/her.
- (6) In case the offense referred to in clause (e), is committed by any director, employee, shareholder or any other person the court may punish such a person with imprisonment for a term from one year to two years and with a fine from One hundred thousand to five hundred thousand Rupees having recovered the claimed amount from such a person.
73. Power To File Lawsuits: In case it is found to have been committed any offense referred to in Section 72, the liquidator, the Office or the concerned party may file a lawsuit to the court along with the grounds thereof.

74. Expenses and Compensation May be Recovered: (1) In case any person files an appeal to the concerned court against any order issued or decision made by the court in relation to the insolvency proceedings initiated under this Act, and the concerned order or decision, as the case may be, of the court, is also upheld by the appellate level when an appeal was made, the other party shall be entitled to reimburse all the expenses incurred by it in connection with that action from the appellant.
- (2) In case any action initiated by any person under sub-section (1) has led to the prolongation of the insolvency proceedings, and thereby it is found that any loss or damage is caused to the concerned company or its creditors or shareholders, the court may also cause to recover compensation for the actual loss or damage from such a person.
75. Power to Frame Rules: Government of Nepal may, in order to implement the objectives of this Act, frame necessary rules.
76. Power to Frame Manual: The Office may, in order to facilitate insolvency proceedings, frame necessary manual.
77. Consequences of (the) Insolvency Ordinance after becoming it Inoperative: Unless different intention appears, as and when (the) Insolvency Ordinance, 2006 becomes inoperative such an inoperation shall not:
- (a) Revive anything not in force or existing at the time at which the in operation takes effect,
 - (b) Affect the previous operation under the Ordinance or anything duly done or suffered there under,
 - (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance,
 - (d) Affect any penalty, punishment or forfeiture incurred in respect of any offence committed against the Ordinance,
 - (e) Affect any legal proceeding or remedy in respect of such right privilege, obligation, liability or penalty and punishment as aforesaid and any such legal proceeding or remedy may be instituted, continued or enforced, and such penalty and punishment may be imposed as if the Ordinance is in operation.

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