H.B. 2, 2026.]

DEPOSIT PROTECTION CORPORATION AMENDMENT BILL, 2026

Memorandum

This Bill will make provision for the amendment of the Deposit Protection Corporation Act [*Chapter 24:29*], and provide for the insolvency regime for banking institutions. Zimbabwe has no separate, let alone specific, insolvency regime for banking institutions. The Insolvency Act [*Chapter 6:04*] was repealed and a new Insolvency Act [*Chapter 6:07*] was enacted. Section 13(1)(b) of the new Act states that the Act does not apply to banking institutions registered under the Banking Act [*Chapter 24:20*]. This created a lacuna for the insolvency of banking institutions. The Deposit Protection Corporation in its capacity as Liquidator of all banking institutions in terms of the Banking Act [*Chapter 24:03*] was left with no legal framework applicable to banking institutions in the unlikely event of their demise.

In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause amends various definitions used in the Act.

Clause 3

This clause provides for the addition of a new function of the Deposit Protection Corporation to act as a liquidator for failed contributory institutions.

Clause 4

This clause amends section 6 of the Act (Board of Directors) to align it with Public Entities Corporate Governance Act [*Chapter 10:31*] as well as the Constitution concerning its composition.

Clause 5

This clause provides for the declaration that microfinance banks be contributory institutions upon their registration and therefore liable to pay contributions in terms of the Act.

Clause 6

This clause provides for the powers of the Chief Executive Officer to issue directives in the exercise of his functions, including the power to issue directives with civil infringements and civil penalties.

Clause 7

This clause provides for the revocation or suspension of a contributory institution's status.

Clause 8

This clause provides for the method to be used in determining the contributions to be paid by a contributory institution.

Clause 9

This clause provides for the powers of inspectors to search contributory institution premises, these powers shall be exercised with the consent of the contributory institution unless there are reasonable grounds to believe that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence.

Clause 10

This clause sets out the penalty for failure to pay contributions.

Clause 11

This clause provides for the deletion of the word "surcharge" and the substitution of "civil penalty fee".

Clause 12

This clause provides for instances where a supplementary contribution may be required from a contributory institution, such as when there is a real risk of systemic failure in the banking system.

Clause 13

This clause provides for the deletion of "judicial manager" and the substitution of "curator".

Clause 14

This clause provides for the insertion of "under curatorship" after the words "the contributory institution".

Clause 15

This clause provides for a civil penalty when the contributory institution fails to comply.

Clause 16

This clause provides for the protection of deposits arising from the amalgamation of contributory institutions.

Clause 17

This clause provides for the insertion of a new Part to provide for the insolvency proceedings of contributory institutions.

Clause 18

This clause provides for a requirement for supervisory agencies to inform the Corporation when any corrective measures have been imposed on a contributory institution.

Clause 19

This clause stipulates that the Corporation may enter into agreements with relevant deposit insurers or responsible supervisory authorities in home countries for all foreign banks operating as subsidiaries in Zimbabwe.

Clause 20

This clause provides for the civil penalty for failure to provide information to depositors in the manner approved by the Corporation.

Clause 21

This clause prohibits any other person other than the Corporation from insuring deposit liabilities and guarantee payments to depositors of insured institutions operating in Zimbabwe.

Clause 22

This clause amends the First Schedule to align the Act to the Public Entities Corporate Governance Act [*Chapter 10:31*].

BILL

To provide for the amendment of the Deposit Protection Corporation Act [*Chapter 24:29*]; and to provide for matters connected with or incidental to the foregoing.

ENACTED by Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Deposit Protection Corporation (Amendment) Bill, 2026.

2 Amendment of section 2 of Cap. 24:29

Section 2 (“Interpretation”) (1) of the principal Act is amended—

(a) by the insertion of the following definitions—

“book” in relation to bookkeeping or the recording or storage of information, includes any electronic (including relevant passwords), or mechanical device by means of which the information in question is recorded or stored, and in relation to the production, the handing over or the attachment of any book, includes the production, the handing over or attachment of a print out or other version of the information produced by means of such device and books shall be construed accordingly;

““civil penalty” means a penalty governed by the provisions of the Fourth Schedule;

“curator” means a person as defined in terms of the Banking Act [*Chapter. 24:20*];

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"principal officer" means officer as defined in terms of the Banking Act [*Chapter. 24:20*];

(b) by the repeal of the definition of "contributory institution" and substitution with—

"contributory institution" means a banking institution registered under the Banking Act [*Chapter 24:20*], a deposit taking microfinance institution registered under the Microfinance Act [*Chapter 24:30*], a Building Society registered under the Building Societies Act [*Chapter 24:21*] and any other organisation which is a contributory institution in terms of Part IV and whose status as such has not been revoked in terms of section 27;

3 Amendment of section 5 of Cap. 24:29

Section 5 ("Functions and Objectives of Corporation") of the principal Act is amended in subsection (1) by the insertion of the following paragraph after paragraph (f)—

"(f1) to act as the sole liquidator of failed contributory institution;"

4 Substitution of section 6 of Cap 24:29

Section 6("Board of Directors) of the principal Act is repealed and the following is substituted—

"6. Board of Directors

(1) Subject to this Act, the operations of the Corporation shall be controlled by a Board of Directors consisting of not less than seven and not more than nine members who are appointed in terms of section 11(7)(c) of the Public Entities Corporate Governance Act [*Chapter 10:31*] as follows—

(a) one director to represent the Ministry responsible for finance; and

(b) one director to represent the Reserve Bank of Zimbabwe; and

(c) one director to represent contributory institutions; and

(d) one director to represent the Consumer Protection Commission;

(e) one shall be a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*];

(f) one shall be an accountant or an auditor registered in terms of the Public Accountants and Auditor's Act [*Chapter 27:12*];

(g) one shall be a person qualified in information technology;

(h) two shall be persons with knowledge and experience in any other relevant field;

(i) the Chief Executive Officer as *ex-officio* member and any other member of the executive whom shall not have the right to vote.

(2) The Corporate Secretary shall be the secretary to the Board.

(3) The Minister shall appoint one member appointed in terms of subsection (1) to be the Chairperson of the Board and appoint another

member appointed in terms of the same provision to be the vice chairperson of the Board:

Provided that the persons appointed to be chairperson or vice chairperson must not be a representative of the Ministry or the Reserve Bank of Zimbabwe or a representative of contributory institutions.

(4) In making appointments in terms of subsection (1) the Minister shall ensure that, in so far as is practicable—

(a) there are equal numbers of men and women; and

(b) all Zimbabwe's regions are fairly represented.

(5) The Directors referred to in subsection (1) shall be appointed by the Minister in accordance with the First Schedule.".

5 Amendment of section 23 of Cap 24:29

Section 23 ("Banks and building societies to be contributory institutions on registration") of the principal Act is amended as follows—

(a) in subsection (1) by the insertion of the following paragraph:—

"(c) deposit taking microfinance institution that is required to be registered under the Microfinance Act [*Chapter 24:30*]"

(b) in subsection (2) by the insertion of ,"deposit-taking microfinance institution" after "banking institution";

(c) in subsection (3)—

(i) in the chapeaux by the insertion of "deposit-taking microfinance institution" after "banking institution";

(ii) in the proviso by the insertion of "deposit-taking microfinance institution" after "institution";

(d) in subsection (4) by the insertion of "deposit-taking microfinance institution" after "banking institution".

6 New sections inserted in Cap. 24:29

Section 25 (Declaration of certain organisations to be contributory institutions) of the principal Act is amended by the insertion after section 25 of the following sections:—

"26 Power of Chief Executive Officer to issue directives for purposes of this Act

(1) The Chief Executive Officer may issue to contributory institutions written directives not inconsistent with this Act relating to the exercise of any functions conferred or imposed on contributory institutions by or under this Act which, in the Chief Executive Officer's opinion, are necessary or convenient to be so issued for the better administration and implementation of this Act.

(2) Any directive issued under this section—

(a) may be absolute or conditional;

(b) may be limited so as to expire on a specified date unless renewed;

(c) may be revoked or varied in the same way as it was issued.

(3) Without derogating from any criminal penalty that may be imposed by this Act, the Chief Executive Officer may issue civil penalty orders provided for in the Fourth Schedule.

(4) An Order made in terms of subsection (3) shall outline the basis of the civil infringement and stipulate the category of the civil penalty that the contributory institution or any of its respective directors, officers, partners, agents or employees are required to comply with.

(5) Any contributory institution which fails to comply with a directive addressed to it within the period specified in the directive (or such longer period as the Chief Executive Officer may, for good cause shown, allow in writing) shall be liable to a category 1 civil penalty specified in the Fourth Schedule.

26A Enforcement of civil penalties and accounting for proceeds thereof

(1) A civil penalty imposed in pursuance of an order under section 26 shall constitute a debt due to the Corporation and shall, at any time after it becomes due, be recoverable in a court of competent jurisdiction by proceedings in the name of the Corporation.

(2) The amount of a civil penalty shall be paid into and form part of the funds of the Corporation."

7 Amendment of section 27 of Cap 24:29

Section 27 ("Revocation or suspension of contributory institution's status") of the principal Act is amended—

(a) in subsection (3) by the deletion of "afford the institution reasonable opportunity" and substitution of "give the institution seven (7) days to make representations on the matter from the date of notification to the institution"

(b) by the insertion of a new subsection after subsection (7) as follows—

"(8) Where a registered institution's status is revoked and communication to that effect is effected, the institution must—

(a) not assume, hold out or in any other way give the impression that it is still a member of the Fund; or

(b) not solicit or take deposits;

from the point when it receives communication of the revocation.

(9) Where a contributory institution continues to act in contravention of subsection (8) its membership, the contributory institution, its Board and the principal officer shall be guilty of an offence and liable to fine not exceeding level 14 or to imprisonment for a period not exceeding (ten) 10 years or to both such fine and such imprisonment."

8 Amendment of section 29 of Cap 24:29

Section 29 (Contributions) of the principal Act is amended—

(a) by the repeal of subsection 4 and the substitution of—

"(4) The contribution payable by each contributory institution in terms of subsection (3) shall be such amount or rate as the Corporation may fix, having regard to such of the following factors as are appropriate in the circumstances—

(a) the institution's deposit liabilities less exemptions; and

(b) the volume of deposit business which the Corporation expects the institution to conduct in the period concerned; and

(c) the future estimated expenditure from the Fund, including any amounts payable by way of compensation; and

(d) the level of protection which the Corporation wishes to afford to depositors through the Fund and, so far as it is practicable to do so, the Corporation shall apply the same criteria when fixing the contributions payable by all contributory institutions of the same class."

(b) by the insertion after subsection (4) of the following—

"4A Exemptions referred in subsection (4)(a) include external lines of credit, Central Government deposits, interbank deposits and such further exemptions as maybe prescribed by the Corporation from time to time."

(c) by the deletion in subsection (5) of "twenty-one" and the substitution of "seven"—

(d) by the insertion of a new subsection after subsection (7)—

"(8) Notwithstanding subsections (1) and (5) and anything to the contrary in this section the Corporation shall require contributory institutions to pay their contributions on a monthly basis or from time to time and in a manner directed by the Chief Executive Officer.

(9) A contributory institution that fails without just cause to comply with the directive issued in terms of subsection (8) shall be liable to a category 3 civil penalty specified in the Fourth Schedule."

9 Insertion of a new section in Cap.24:29

The principal Act is amended by the insertion of new section after section 29—

"29A Powers of inspectors

(1) For the purposes of deposits verification inspection, an inspector may—

(a) at any time during normal office hours, without previous notice, enter any premises of the contributory institution or any premises in which it is believed on reasonable grounds that securities, books, records, accounts or documents pertaining to the institution's business are being kept;

(b) require any officer, employee or agent of the contributory institution to produce any of the institution's securities, books, records, accounts or documents;

(c) search any premises referred to in paragraph (a) for any moneys, securities, books, records, accounts or documents pertaining to the business conducted by the contributory institution;

(d) open or cause to be opened any strong-room, safe or other container in which it is suspected, on reasonable grounds, that there are any of the contributory institution's moneys, securities, books, records, accounts or documents;

(e) examine and make extracts from and copies of any of the contributory institution's securities, books, records, accounts or documents;

(f) remove any of the contributory institution's securities, books, records, accounts or documents from the institution's premises, for so long as may be necessary for the purpose of inspecting them or making extracts from or copies of them:

Provided that the inspector shall give a full receipt for any such securities, books, records, accounts or document so removed;

(g) require any officer, employee or agent of the contributory institution;

(i) to explain any entry in the institution's books, records, accounts or documents;

(ii) to provide the inspector with such information concerning the institution's management or activities as the inspector may reasonably require.

(2) The powers of inspection conferred by subsection (1) shall not be exercised except with the consent of the contributory institution or person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence or for the obtaining of evidence relating to an offence.

(3) A contributory institution that fails to comply with subsection (1) or refuses entry by an inspector during his or her course of business shall be liable to a category 3 civil penalty.

10 Amendment of section 33 of Cap.24:29

Section 33 (Contributions, surcharges and interest to be debts due to Fund) of the principal Act is amended by the deletion of "surcharge" and the substitution of "civil penalty fee".

11 Amendment of section 34 of Cap.24:29

Section 34 (Prohibition against payment of dividends while contribution unpaid) of the principal Act is amended by the deletion in subsection (1) of—

(a) "surcharge" and the substitution of "civil penalty fee".

(b) "guilty of an offence and liable to fine not exceeding level 7" and the substitution of "category 1 civil penalty"

12 Amendment of section 35 of Cap.24:29

Section 35 (Compensation payable to depositors on insolvency of contributory institution) of the principal Act is amended by the insertion of the following proviso after the existing proviso—

"Provided further that the Corporation shall pay depositors in the event that a contributory institution that is not yet insolvent is placed under curatorship".

13 Amendment of section 37 Cap.24:29

Section 37 (Judicial Management to notify Reserve Bank of Insolvency of contributory institution) of the principal Act is amended by the deletion of "judicial manager" and the substitution of "curator" wherever it appears.

14 Amendment of section 46 of Cap.24:29

The principal Act is "amended in section 46 (Subrogation of Corporation) by the insertion in subsection (2) (a) of "under curatorship" after the words "the contributory institution"

15 Amendment of section 49 of Cap.24:29

Section 49 (Information to be provided to Corporation by contributory institutions) of the principal Act is amended in subsection (4) by the deletion of "guilty of an offence and liable to a fine not exceeding level seven" and the substitution of "liable to a category 2 civil penalty".

16 New sections inserted in Cap 24:29

The principal Act is amended by the insertion after section 43 of the following sections—

"43A Deposits with amalgamating institutions

(1) For purposes of this section—

"amalgamated institution" means the contributory institution formed as a result of the merger of two or more contributory institutions; and

"amalgamating institution" means any of the contributory institution that merges with one or more other contributory institutions to form one contributory institution.

(2) For the avoidance of doubt—

(a) where a person has deposits in two or more contributory institutions that amalgamate but continue in operation as separate contributory institutions (whether as a holding or subsidiary company in relation to each other or in any other case) a deposit of that person with each institution so amalgamated shall be deemed to be a separate deposit;

(b) where a person has deposits in two or more institutions that are in the process of amalgamation and continue in operation as separate institutions, deposits of that person with the amalgamating institutions, shall be deemed to be separately insured until the amalgamating institutions become one amalgamated institution.

17 New parts inserted in Cap. 24:29

The principal Act is amended by the insertion of the following new Parts after Part VII—

"Part VIIA

Insolvency Proceedings

53A Interpretation

In relation to this Part—

"account" in relation to the Corporation means a liquidation account and plan of distribution, or any supplementary liquidation account and plan of distribution or of contribution;

"concurrent creditor" means a creditor to the extent that the creditor's claim is not that of a secured or preferrent creditor;

"date of liquidation" means the date of declaration and liquidation order by the Reserve Bank of Zimbabwe or the Master of High Court or the High Court or Supreme Court as the case may be;

"debtor" means a contributory institution whose estate has been liquidated and includes the estate of the contributory institution;

"disposition" means the transfer or abandonment of right to property and includes sale, mortgage, pledge, delivery, payment, release, compromise, donation, suretyship and security interest under the Movable Property Securities Interest Act [*Chapter14:35*] or any contract therefor;

"employee" means an employee defined in section 2 of the Labour Act [*Chapter 28:01*];

"free residue" in relation to an insolvent estate, means that portion of the estate which is not subject to any claim by a secured creditor;

"immovable property" means land and every right, title and interest in and to land and minerals which is registrable in any office in Zimbabwe tasked with the registration of title to land or the right to mine;

"insolvent estate" means an estate which is under liquidation;

"liquidator" means the Deposit Protection Corporation, appointed in terms of section 57 (6) of the Banking Act [*Chapter 24:20*] or in terms of this Act;

"liquidation order" means an order of the Reserve Bank of Zimbabwe under section 57 of the Banking Act [*Chapter 24:20*] putting a banking institution under liquidation and includes an order of the Master of the High Court where a contributory institution opts for voluntary winding up;

"liquidation resolution" means a special resolution to liquidate the contributory institution, passed in accordance with this Act;

"liquidator's notice" means notice or delivery by the liquidator by registered mail, email, or personal delivery supported by an affidavit by the liquidator with a list of the persons given notice or delivered to and the method used by the liquidator to send or deliver the notice;

"management of a debtor" means the directors, secretary or other officers of the company at the time of liquidation, or during 3 years before liquidation;

"Master" means the Master of the High Court appointed in terms of the Administration of Estates Act [*Chapter 6:01*];

"movable property" means every kind of property and every right or interest in property which is not immovable property;

"preferent creditor" means a creditor whose claim enjoys preference in terms of this Act or a provision in terms of any other Act;

"property" means movable or immovable property wherever situated and includes right of interest in property;

"Registrar" means the Registrar as defined in the Banking Act [*Chapter.24:20*];

"secured creditor" means a creditor of an insolvent estate to the extent that such creditor holds security for his or her claim against the estate;

"security" in relation to the claim of an insolvent estate, means property of the insolvent estate over which the creditor has a preferent right by virtue of a special bond, landlord's legal hypothec, pledge, including a cession of rights to secure a debt, right of retention, reservation of ownership, financial lease, or any such equivalent right over property in terms of the Movable Property Security Interests Act [*Chapter 14:35*], or any such right over property in terms of this Act;

"Sheriff" means the sheriff of the High Court referred to in section 2 of the High Court Act [*Chapter 7:06*];

"special bond" means any special bond hypothecating any immovable property, but excludes any other mortgage bond purporting to hypothecate movable property or any other rights in land;

"standard notice" means notice by registered mail, e-mail or personal delivery;

"relatives of the liquidator's employees" means the spouse, child, sibling, in-laws and parent.

53B Objective of insolvency proceedings

(1) The goal of the insolvency proceedings for contributory institutions is to secure in the shortest time practicable a fair satisfaction of the contributory institution's depositors and creditors.

(2) In the insolvency proceedings for a contributory institution, due regard shall be made for the depositors and remaining creditors of the contributory institution, as well as for the public interest in the stability of, and confidence in the financial system.

53C Liquidation of contributory institution by order of Reserve Bank

(1) Where the Corporation is appointed as the liquidator of the banking institution by the Reserve Bank in terms of section 57(6) it shall, without delay notify the Registrar of Deeds, Collateral Registrar, Registrar of Companies and the Sheriff.

(2) Every Registrar of Deeds and every sheriff who receives a copy of an order in terms of subsection (1) must note thereon the date and time when it was received by him or her.

(3) A Registrar of Deeds, who receives a copy of the liquidation order, must enter a *caveat* against the transfer of all immovable and movable property as the case may be or the cancellation or cession of every bond registered in the name of or belonging to the debtor.

53D General duties and powers of liquidator

(1) The liquidator of an insolvent estate must proceed forthwith to recover and take into his or her possession all the assets and property of the insolvent estate and must apply the said assets and property, in satisfaction of the costs of the administration of the estate and the claims of creditors of the estate and if any cash balance remains, he or she must deal therewith in accordance with section 53OO.

(2) The liquidator may perform any act which is necessary for the proper administration and distribution of the estate and, except where otherwise provided by this Act, he or she needs not obtain formal authorisation for the performance of any such act.

(3) The liquidator may, in particular—

(a) execute in the name of and on behalf of the estate all deeds, receipts and other documents;

(b) prove a claim in the estate of any debtor of the insolvent estate and receive payment or a dividend in respect thereof;

(c) draw, accept, make or endorse any bill of exchange or promissory note in the name of, or on behalf of the estate:

Provided that any such act by which the estate is burdened with additional liabilities requires the authorisation of the Master or the creditors of the estate;

(d) obtain credit for the payment of necessary expenses which he or she is obliged to incur before funds for the payment thereof are available;

(e) convene a meeting of creditors of the estate;

(f) take any other necessary measures for the protection and the administration of the estate.

(4) The liquidator may, if authorised thereto by the Master or by resolution of a meeting of creditors of the estate—

(a) institute or defend any legal steps in civil proceedings by or against the estate and to settle such proceedings;

(b) submit to determination of arbitrators any dispute concerning the estate;

(c) compromise or admit any claim lodged for proof at a meeting of creditors of the estate, including any unliquidated claim;

(d) disallow or reduce a claim in terms of section 53Y;

(e) carry on the business or part of the business of the debtor in accordance with the directions of the Master or the creditors of the estate;

(f) exercise his or her election in respect of contracts entered into before liquidation, including his or her election in terms of section 53N;

(g) sell or alienate property of the insolvent estate, subject to the directions of the Master or the creditors of the estate:

Provided that—

(i) if such property or a portion thereof is subject to rights of a secured creditor the secured creditor must give his or her consent in writing;

(ii) the liquidator must attempt to sell assets as a going concern if at all appropriate;

(h) engage the services of a legal practitioner or any other professional person or employ any other person to render services on behalf of the insolvent estate;

(i) dispose of a debt owing to the estate or accept payment of a reasonable part of a debt in full settlement of the debt or give a reasonable extension of time for payment of a debt or part thereof;

(j) draw, accept, make or endorse any bill of exchange or promissory note by which the estate is burdened with liabilities;

(k) in the case of a debtor who is a natural person make available to the debtor or his or her dependants a sum of money or assets for his or her maintenance or that of his or her dependants;

(l) make available to a debtor who is a natural person assets of the insolvent estate in excess of the values referred to in section 53E (6) or the amounts fixed in terms of section 53E (7).

(m) if the liquidator determines that preservation of the business as a going concern value by continued operation of the business will benefit creditors, obtain finance for the continuation of the business—

(i) payable as costs of liquidation; or

(ii) payable with security over the assets of the estate without priority ahead of any existing security interest over the same assets, unless the liquidator obtains the agreement of the existing secured creditor.

(5) The Master must authorise the liquidator only if the authority is required so urgently that the liquidator cannot obtain a resolution at a first meeting.

(6) Before a final order for the liquidation of a debtor's estate has been issued the powers set out in subsection (4) may only be exercised with the consent of the debtor, the management of the debtor or the Court.

(7) A liquidator or a debtor who disagrees with the assets made available in terms of subsection (4)(1) by resolution of a meeting of creditors may refer the matter to the Master for his or her decision.

(8) A liquidator may at any time approach the Court in regard to any matter arising from the liquidation and the Court may give directions or grant the liquidator the powers necessary for the proper administration, liquidation and distribution of the insolvent estate in question.

(9) Notwithstanding any law relating to taxes or duties, the liquidator of an insolvent estate may—

(a) inspect any return or other document submitted to the Zimbabwe Revenue Authority by or on behalf of a debtor or the spouse of a debtor, where applicable, in connection with taxes or duties;

(b) make copies of any such return;

(c) have any such copy, certified as correct by or on behalf of the Zimbabwe Revenue Authority;

(d) in writing request the Zimbabwe Revenue Authority to state the basis for any estimated assessment made in terms of any revenue law.

(10) A liquidator may, before or after the rehabilitation of a debtor who is a natural person, with the written consent of the Master, by standard notice to the officer charged with the registration of title to immovable property in Zimbabwe, cause a *caveat* to be entered against the transfer of immovable property, registered in the name of the debtor, or the cancellation or cession of a bond on such property.

(11) The notice referred to in subsection (10) must be accompanied by the written consent of the Master and must identify sufficiently the person in respect of whom and the property or bond in respect of which the caveat is to be entered.

(12) The *caveat* remains in force until the date indicated by the Master in his or consent.

(13) If any entry in a return contemplated in subsection (9) is relevant in any civil or criminal proceedings in which the debtor or the insolvent estate is involved, that return or a copy thereof, purporting to be certified as contemplated in subsection (9), is admissible in those proceedings on its mere production by any person and such certified copy has the same evidentiary value as the original return.

(14) No provision in any contract, including the Memorandum or Articles of Association of a company, which purports to regulate the manner in which property belonging to a debtor may be disposed of on or after his or her insolvency, or which on his or her insolvency limits a person's power to dispose of his or her rights to property as he or she wishes, binds the liquidator of such person's insolvent estate.

53E Effect of liquidation on debtor's property

(1) The issuing of a liquidation order, in respect of a debtor has the effect that—

(a) all the property of the debtor in question must be regarded as being in the custody and under the control of the liquidator; and

(b) the provisions of the Movable Property Security Interests Act [*Chapter 14:35*] relating to the creation, perfection or enforcement of security interests under Parts II, III and VII respectively, shall cease to apply for as long as the debtor remains in liquidation.

(2) The estate of the debtor remains in the custody and under the control of the liquidator or until the property is re-vested in the debtor or the debtor's estate because of the setting aside of the liquidation order.

(3) After the expiry of every *caveat* entered in respect of the property of a debtor, any act of registration in respect of such property brought about by such debtor is valid in spite of the fact that the property formed part of the insolvent estate.

(4) If a debtor who is or was insolvent unlawfully disposes of immovable property which forms part of its insolvent estate, the liquidator may recover the value of the property so disposed of—

(a) from the debtor, where possible; or

(b) from any person who, knowing such property to be part of the insolvent estate, acquired such property from the debtor; or

(c) from any person who acquired such property from the debtor without giving sufficient value in return, in which case the amount so recovered must be the difference between the value of the property and any value given in return.

(5) The execution of a judgment in respect of property of the debtor, or the enforcement of a security interest by a creditor under Part VII of the Movable Property Security Interests Act [*Chapter 14:35*] must be stayed as soon as the sheriff or creditor becomes aware of the issuing of a liquidation order against the debtor, unless the Court orders otherwise.

(6) If costs in connection with the sale in execution of assets of the debtor have already been incurred when the execution of a judgment or enforcement of the security interest is stayed as contemplated in subsection (5), the Master may on the application of the liquidator, on the conditions he or she finds just and subject to confirmation of the sale price by the Master or by resolution of a meeting of creditors of the estate, approve the continuation of the sale for the benefit of the insolvent estate, in which case the costs of the sale before or after liquidation must be deducted from the proceeds.

(7) The liquidator of an insolvent estate is entitled to recover from a creditor of the debtor the net amount of any payment in pursuance of the execution of any judgment made or in pursuance of the enforcement of any security interest to such creditor after the granting of the liquidation order.

(8) For the purposes of this section, all other property of the debtor at the date of the issuing of the liquidation order, including property or the proceeds thereof which are in the hands of the sheriff under a writ of attachment or a warrant of execution, or in the hands of a creditor under the enforcement of a security interest under the provisions of the Movable Property Security Interests Act [*Chapter 14:35*], and, all property acquired by or which accrued to the debtor during the liquidation proceedings, forms part of the debtor's estate.

53F The effect of liquidation on civil proceedings by or against debtor

(1) The issuing of a liquidation order in respect of a debtor, has the effect that all civil proceedings instituted in a Court by or against the debtor are stayed, subject to section 21(8) (Rights and obligations of insolvent debtor).

(2) Proceedings that have been stayed in terms of subsection (1) may, with the consent of the Court or liquidator or with three weeks' standard notice to the liquidator, be continued against the insolvent estate:

Provided that the opposite party may apply to the registrar to substitute the liquidator for the debtor in the proceedings.

(3) The liquidator may, by giving liquidator's notice to all parties and to the registrar, substitute himself or herself as party for the debtor in proceedings by or against the debtor, other than proceedings contemplated in section 21(8).

(4) The Court may on application by the liquidator, or a creditor who has proved a claim against the insolvent estate, prohibit the continuation of proceedings against the insolvent estate if the Court is of the opinion that the institution or continuation of the proceedings was delayed unreasonably and that the continuation of the proceedings will unreasonably delay the finalisation of the insolvent estate.

(5) No person may institute legal proceedings against the insolvent estate in respect of any liability that arose before the date of liquidation after the confirmation of the liquidator's first account by the Master and more than three months after the conclusion of the first meeting: Provided that the Court may, subject to section(100) (53zz) and subject to such conditions as the Court may impose, permit the institution of such proceedings if it is of the opinion that there was a reasonable excuse for the delay in instituting the proceedings.

53G Obligations of Liquidator in winding up contributory institution

(1) A liquidator in winding up a contributory institution shall exercise his or her powers with care and skill and place the creditors' interests above his or her own and meet the requirements of this Act and any other applicable law.

(2) A liquidator shall open an account into which all funds received on behalf of the debtor are deposited and from which obligations of the debtor are settled.

53H Restrictions

(1) A liquidator may not enter into contracts or agreements in the name of the debtor either with itself or its agent or with any other entity that it may have interest in.

(2) The liquidator or its employees or relatives of the liquidator's employees shall not in any way acquire, whether directly or through another entity, any property or right from the debtor's estate.

(3) Transactions effected in violation of this section shall be null and void.

53I Liquidator may obtain search warrant

(1) If the liquidator suspects that any book, document or record relating to the affairs of the debtor or any property belonging to the debtor is being concealed or otherwise unlawfully being withheld, the liquidator may apply to the magistrate within whose area of jurisdiction such book, document, record or property is suspected to be, for a search warrant.

(2) If it appears to a magistrate to whom such application is made on the ground of an affidavit, that there is substantial reason to believe that such book, document, record or property belonging to the insolvent estate is concealed or otherwise unlawfully withheld the magistrate shall issue a search warrant.

(3) Sections 50, 54, 56 and 57 of the Criminal Procedure and Evidence Act [*Chapter 9:07*, are applicable with the necessary changes with regard to the execution of a warrant referred to in subsection (2).

53J Liquidator's report

(1) The liquidator must investigate the affairs of the debtor and the business transactions entered into by him or her before the liquidation of his or her estate and must at the first meeting of creditors of the insolvent estate or, if that is not possible, at a special meeting of creditors, submit a full written report on those affairs and transactions and on any matter of importance relating to the debtor or the insolvent estate.

(2) The liquidator in the report referred to in subsection (1) must in particular report on—

(a) the assets and liabilities of the insolvent estate;

(b) whether there is a risk of a contribution by creditors;

(c) the cause of the debtor's insolvency;

(d) whether the debtor has contravened any provision of this Act, the Banking Act [*Chapter 24:20*], Companies and Other Business Entities Act [*Chapter 24:03*] or the Income Tax Act [*Chapter 23:06*] or to have committed any other offence.

(e) any business carried on by or on behalf of the insolvent estate and the result thereof;

(f) any legal proceedings instituted by or against the debtor which were suspended by the liquidation of the estate and any other legal proceedings that are pending or may be instituted against the insolvent estate;

(g) any transaction entered into by the debtor before the liquidation of the debtor's estate in respect of the acquisition of immovable property which was not transferred to the debtor, or any transaction entered into by the debtor as lessee;

(h) the names of secured creditors with the amounts of the secured claims and steps taken or envisaged to investigate the validity of the security;

(i) any other matter relating to the administration or the realisation of the assets of the insolvent estate requiring the direction of the creditors;

(j) whether or not any trustee, director, officer or member or former trustee, former director, officer, member or any other person appears to be personally liable for damages to the debtor or for any debts or liabilities of the debtor as provided for in this or any other Act;

(k) whether or not further enquiry is desirable in regard to any matter relating to the promotion, formation or failure of the debtor or the conduct of its business; or

(l) any other matter relevant to the liquidation process.

53K Recovery of debts due to estate

(1) The liquidator must call upon all persons indebted to the estate to pay their debts within the stipulated period and at the place stated in the notice which notice must be published in—

(a) the *Gazette;* and

(b) any local newspaper widely circulating within the area; and

(c) any other media, where necessary.

(2) If any person fails to pay a debt due to the estate timeously the liquidator must recover payment from him or her if need be by legal process.

53L Liquidator's Remuneration

(l) A liquidator is entitled to a reasonable remuneration for services and for expenses incurred by the liquidator in the administration of an insolvent estate.

(2) The remuneration and expenses referred to in subsection (1) must be taxed by the Master in accordance with the Remuneration of Liquidator, Interim Liquidator, Corporate Rescue Practitioner and Council of Estate Administrator's levy, 2023 published in statutory instrument 126 of 2023.

(3) The liquidator must keep time sheets with the level of experience and expertise of persons doing the work and lodge them with the Master if the amount of the remuneration becomes an issue.

(4) The liquidator may apply to the Master for an increase in remuneration after giving at least 14 days liquidator's notice to proved creditors who will be affected by the increase.

(5) The Master may for good cause increase or decrease the liquidator's remuneration, in particular to compensate the liquidator for the time spent in assisting with criminal prosecutions or investigating the affairs of the debtor, or disallow the remuneration either wholly or in part, by reason of any failure of or delay in the discharge of the liquidator's duties or on account of any improper performance of duties.

(6) Any employee who is ordinarily in the employment of the liquidator is not entitled to any remuneration out of the insolvent estate for services rendered to the estate, and the liquidator is not entitled to remuneration out of the estate for services rendered to the estate, except the remuneration to which he or she is under this Act entitled as a liquidator.

(7) A liquidator is not entitled to receive any remuneration before the liquidation account making provision for the remuneration has been confirmed by the Master.

53M Effects of liquidation on Contracts

(1) The contracts of service of employees whose employer has been liquidated are terminated with effect from the date of liquidation.

(2) Where a contributory institution applies for voluntary liquidation, an employee whose contract of service is terminated in terms

of subsection (1), is entitled to claim compensation from the insolvent estate of his or her former employer for loss suffered by reason of the termination of a contract of service prior to its expiration.

(3) An employee whose contract of service has been terminated in terms of this section is entitled to claim termination benefits from the estate of the insolvent employer in accordance with the Labour Act [*Chapter 28:01*].

(4) A lease of movable or immovable property is not terminated by the liquidation of the estate of the lessee, but the liquidator of the insolvent estate may terminate the lease by notice to the lessor.

(5) If the liquidator does not within three months of appointment notify the lessor by notice that the liquidator continues the lease on behalf of the insolvent estate, the liquidator is regarded as having terminated the lease at the end of the said three months.

(6) The rent due in terms of the lease from the date of liquidation of the estate of the lessee to the termination of the lease by the liquidator, must be included in the cost of the liquidation.

(7) The termination of the lease by the liquidator in terms of this section deprives the insolvent estate of any right to compensation for improvements, other than improvements made in terms of an agreement with the lessor, to the leased property during the period of the lease.

53N Uncompleted acquisition of immovable property by debtor

(l) If before the date of liquidation, a debtor had entered into a contract for the acquisition of immovable property and such property had not yet been transferred to the debtor's estate at the date of liquidation, the liquidator of the insolvent estate may elect either to abide by the contract or to abandon it.

(2) The other party to the said contract may call upon the liquidator by written request to exercise its choice and if the liquidator fails to exercise its choice and to notify the other party thereof by standard notice within six weeks after it has received the written request, the other party may apply to the court for an order for the cancellation of the contract and for restoring the immovable property which came in possession or under the control of the debtor or the liquidator by virtue of the contract.

(3) The court may, in respect of an application referred to in subsection (2), make any order it finds just.

(4) This section does not affect any right that the other party may have to establish against the insolvent estate a concurrent claim for any loss suffered by him or her as a result of the non-fulfilment of the contract.

53O Securities Market Transactions

(1) In this section—

"rules" has the definition given to it in section (2) of the Securities and Exchange Act [*Chapter 24:25*];

"transaction" means any securities market transaction to which the rules apply;

(2) If upon the date of liquidation of the estate of a market participant the obligations of such market participant in respect of any

securities market transaction entered into prior to the date of liquidation have not been fulfilled, market infrastructure (stock exchange, Central Securities Depository, wired transfer or electronic transfer)in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall be completed in accordance with the applicable market rules.

(3) The market infrastructure shall in accordance to the rules applicable to any such transaction be entitled to terminate transactions or revoke settlement and the liquidator of the insolvent estate of the market participant is bound by such termination or revocation.

(4) No claim as a result of the termination of any transactions as contemplated in subsection (1) may exceed the amount due upon termination or revocation in terms of the rules in question.

(5) Any rules and the practices there under which provide for—

(a) the netting of a market participant's position; or

(b) set-off in respect of transactions concluded by the market participant; or

(c) the opening or closing of a market participant's position; or

(d) the revocation of settlement instructions;

are upon the date of liquidation of the estate of the market participant binding on the liquidator in respect of any transaction or contract concluded by the market participant prior to such date of liquidation or settlement which was overdue on the date of liquidation.

(6) If upon the liquidation of the estate of a debtor who is a licensed market participant, the assets held in nominee accounts or any such assets managed on behalf of third parties, shall not form part of the assets of the debtor.

53P Setoff

(1) Where—

(a) any person has entered into a transaction with a contributory institution the result whereof is a set off, wholly or in part, of debts which they owe one another and the estate of the contributory institution is liquidated within a period of six months after the taking place of the set off; or

(b) debtor has ceded a claim to setoff transaction to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is liquidated, then the liquidator of the insolvent estate may in either case abide by the set off or may, if the set off was not effected in the ordinary course of business, disregard it and call upon the person in question to pay to the estate the debt which he or she would have owed it but for the set off, and thereupon that person is obliged to pay that debt and may prove a claim against the estate as if no set off had taken place.

53Q Disposition without value

(1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by the debtor within two years before the liquidation order by the Reserve Bank if the disposition was made in favour of an associate:

Provided that if it is proved by someone opposing the setting aside of the disposition that the liabilities of the debtor at any time after the making of the disposition exceeded its assets by less than the value of the property disposed of, the disposition may be set aside only to the extent of such excess.

(2) A disposition of property not made for value, which was set aside under subsection (1) or which was not completed by the debtor, does not give rise to any claim in competition with the creditors of the debtor's estate:

Provided that in the case of a disposition of property not made for value, which was not completed by the contributory institution, and which —

(a) was made by way of suretyship, guarantee or indemnity; and

(b) has not been set aside under subsection (1);

the beneficiary in question may compete with the creditors of the insolvent estate for an amount not exceeding the amount by which the value of the debtor's assets exceeded his or her liabilities immediately before the making of that disposition.

53R Voidable preferences

(1) Every disposition of property made by a debtor which has the effect that any one of its creditors receives a benefit to which he or she would not have been entitled had the debtor's estate been under liquidation at the time of the making of the disposition, may be set aside by the court if —

(a) the debtor's liabilities exceeded the value of his or her assets immediately after the making of the disposition; and

(b) the disposition was made within six months before the liquidation order by the Reserve Bank or within twelve months before the said presentation in the case where the disposition was made to an associate of the debtor;

unless the person for whose benefit the disposition was made proves that it was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above the other, and if he or she is an associate of the debtor, also proves that he or she was not aware and had no reason to suspect that the debtor's liabilities would exceed the value of his or her assets immediately after the making of the disposition.

(2) For the purposes of subsection (1) it is presumed, unless the contrary is proved, that a disposition was made not in the ordinary course of business if—

(a) it was made by way of payment of a debt that was not due and payable or not legally enforceable;

(b) it embodied payment in an unusual form or a form other than that originally agreed upon.

(3) Any disposition of property by a debtor at a time when its liabilities exceed its assets, made with the intention of preferring one of its creditors above another, may be set aside by the court if the application for the liquidation of the estate of the debtor is presented to the Registrar within three years after the making of the disposition.

(4) For the purposes of this section a surety of a debtor, or a person by law in a position analogous to that of a surety, is deemed to be a creditor of the debtor.

(5) Every disposition of property made under a power of attorney, whether revocable or irrevocable is, for the purposes of this section, deemed to have been made at the time at which the transfer or delivery or mortgage of such property took place.

53S Collusive dealings for prejudicial disposition of property

(1) Any transaction entered into by a debtor before or after the liquidation of its estate in collusion with another person for disposing of property belonging to the debtor or the estate in a manner which had the effect of prejudicing its creditors or preferring one creditor above another, may after the liquidation of his or her estate be set aside by the court.

(2) Any person who was a party to such collusion is liable to make good any loss thereby incurred by the insolvent estate and must pay for the benefit of the estate, such sum as the court may determine, which sum may not be more than the amount by which he or she would have benefited if the disposition had not been set aside, and if he or she is a creditor he or she also forfeits his or her claim against the insolvent estate.

(3) The compensation referred to in subsection (2) may be recovered in any proceedings for the setting aside of the transaction in question.

53T Attachment of property in possession of associate

(1) If a liquidator suspects that a disposition of property by the debtor to an associate of the debtor may be liable to be set aside, the liquidator may instruct the sheriff to attach such property.

(2) The sheriff shall —

(a) take into his or her personal custody all cash, share certificates, bonds, bills of exchange, promissory notes and other securities and compile a specified list thereof;

(b) without delay deposit in a debtor’s account opened by the liquidator for the insolvent estate;

(c) as soon as possible leave all other movable property which he or she has attached, other than animals, in a secure storage or appoint a suitable person to keep the said property in his or her custody, in which case he or she shall hand to such person a copy of an inventory of the property left in his or her custody.

(3) The sheriff must release the property if instructed to do so by the liquidator.

(4) The liquidator must instruct the sheriff to release the property as soon as it is evident that attachment of the property is not required to safeguard the interests of the estate in the setting aside of a disposition of property.

(5) An associate may apply to the court for appropriate relief if property of the associate is attached or held under attachment without reasonable cause.

(6) The costs of attachment of the property shall form part of the costs of liquidation, unless the court orders otherwise.

53U Certain rights not affected by improper disposition

(1) A person who, in return for any disposition which is liable to be set aside in terms of this Act has parted with any property or security which he or she held or who has lost any right against another person may not, if he or she acted in good faith, be obliged to restore any property, or other benefit received under such disposition, unless the liquidator has indemnified him or her for parting with such property or security or for losing such right.

(2) The rights of any person who acquired property in good faith and for value from any person other than a person whose estate was subsequently liquidated shall not be prejudiced.

(3) The setting aside of a disposition made by a debtor shall not discharge a surety for the debtor.

53V Institution of proceedings on behalf of insolvent estate

(1) Proceedings for the setting aside of any disposition of property made by a debtor or for the recovery of any debt, asset, compensation, penalty or benefit of whatever kind for the benefit of the insolvent estate of the debtor may be instituted by the liquidator and, if the liquidator fails to take any such steps, they may be taken by any creditor on behalf of the insolvent estate upon having indemnified the liquidator against all costs thereof to the reasonable satisfaction of the liquidator.

(2) If any creditor has taken proceedings under subsection (1), no creditor who was not a party to the proceedings may derive any benefit from any moneys or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every creditor who was a party to such proceedings have been paid in full.

(3) In any such proceedings the debtor, or the management of a debtor, may be compelled to give evidence on a *subpoena* issued on the application of any party to the proceedings, or he or she may be called upon by the court to give evidence.

(4) In any such proceedings under this section it is presumed, until the contrary has been proved, that the liabilities of the debtor exceeded the value of his or her assets at any time within one year before the date of the presentation of the application for liquidation.

(5) When the court sets aside any disposition of property it must declare that the liquidator is entitled to recover the alienated property, or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher, and the court may in any case where the court sets aside a disposition

order that interest must be paid at the rate, on the amount and for the period ordered by the court.

53W Suspension of judicial and execution proceedings and termination of employee contracts

(1) Upon the opening of liquidation proceedings against a debtor, all judicial, arbitration and execution proceedings in property, civil or commercial cases against the debtor shall be suspended.

(2) Proceedings so suspended shall only be resumed upon granting of leave by the court to sue a debtor in liquidation by the High Court.

53X Proof of Claims

(1) In this section —

"presiding officer" means the Master or any person authorised by him or her;

(2) Any person who has a liquidated claim against an insolvent estate, the cause of which arose on or before the date of liquidation of the estate or the authorised agent of that person, may at any time before the final distribution of the estate prove that claim against the estate before the Master:

Provided that any employee of a debtor shall not be required to prove his or her remuneration which he or she was entitled before the date of liquidation of the estate.

(3) A claim against an insolvent estate must be admitted at a meeting of creditors of the estate if it has been proved to the satisfaction of the presiding officer on the face of the claim form, documents in connection with the claim submitted by the creditor or another person, if any, and on the evidence, if any, by the creditor.

(4) If the claim has not been proved in this manner, the presiding officer must reject it, unless it is a depositor`s claim which has been verified by the liquidator.

(5) Depositor's bank balances shall be deemed to be provisionally accepted by the liquidator based on the deposit register.

(6) The liquidator shall publish a notice in the *Gazette*, newspaper widely circulating in the district in which business is being carried and any other media, notifying the depositors that they need not appear before the Master to prove their claims, except where they have a query.

(7) The rejection of a claim does not debar the claimant from proving the claim at a later meeting of creditors or by an action at law.

(8) Every claim other than that contemplated in terms of the proviso in subsection (2) and subsection (5) must be proved by an affidavit with contents as indicated in the Third Schedule.

(9) The affidavit contemplated in subsection (8) and all documents submitted in support of the claim must be lodged with the person who is to preside at the meeting of creditors a day before the time and day advertised for the commencement of the meeting, failure which the claim may not be admitted at that meeting unless the presiding officer is satisfied that the creditor had a reasonable excuse for his or her failure to lodge the claim timeously.

(10) Where appropriate the amount of a claim may be expressed in a foreign currency, but all claims in a foreign currency must be paid in its equivalent local currency at the official exchange rate on the date of payment.

(11) A claimant who has proved a claim that is deficient in any respect may at a subsequent meeting of creditors prove a corrected claim.

(12) Any person who has an unliquidated claim against an insolvent estate may tender such claim for proof at a meeting of creditors, but such claim may not be admitted to proof until it has been accepted by the liquidator by way of compromise or proved in an action at law.

(13) When such claim is compromised or proved in an action at law it must be regarded as having been proved and admitted against the estate at the meeting where it was lodged for proof, unless the creditor informs the liquidator by notice within 7 days of the compromise or judgment that he or she abandons the claim.

(14) The presiding officer at the meeting of creditors may on his or her own motion or at the request of the liquidator or his or her representative or any creditor who has proved a claim at a meeting of creditors or the representative of such creditor, call upon any person present at the meeting who wishes to prove a claim or who has proved a claim against the estate to submit to examination by the presiding officer, the liquidator or his or her representative or any such creditor or his or her representative in regard to such claim, and for purposes of such examination the presiding officer must administer to the said person the oath or take from him or her a solemn declaration to speak the truth:

Provided that a creditor who is yet to have his or her claim proved at a meeting may not question a creditor who wishes to prove a claim at the same meeting before the claim of such creditor has been admitted or rejected.

53Y Liquidator shall examine claims

(1) The person who presided at a meeting of creditors must if he or she is not the liquidator, after the meeting deliver to the liquidator every claim proved against the insolvent estate at that meeting and every document submitted in support of any claim.

(2) The liquidator must examine the claims and supporting documents referred to in subsection (1) and all available books, documents or records relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed, and the liquidator may require the claimant to submit additional supporting proof of his or her claim and, in the case where the claim is based on an estimate, the basis on which the estimate was arrived at.

(3) If the liquidator disputes a claim after it has been proved at a meeting of creditors, he or she may, with the authority of the Master or creditors in terms of section 53X and after having afforded the claimant the opportunity of substantiating his or her claim or any part thereof, reduce or disallow the claim, and he or she must forthwith notify the claimant and the Master by notice of such reduction or disallowance of the claim.

(4) The reduction or disallowance of a claim in terms of subsection (3) does not debar a claimant from establishing his or her claim by means of an action at law.

53Z Late proof of claims

(1) Where a creditor of an insolvent estate files their claim after the first meeting of creditors, the liquidator shall—

(a) provisionally accept or reject the claim; and

(b) after examination of the claim notify the Master of High Court of decision made by the liquidator on such claim.

(2) The Master may set aside or vary the decision of the liquidator made in terms of subsection (1).

(3) The liquidator may, 14 days after his report has been accepted by the Master, by notice in the *Gazette,* fix a date after which creditors who have not proved claims against the insolvent estate shall be excluded from participation in any distribution in terms of an account lodged with the Master.

(4) If the Master is satisfied that a creditor referred to in subsection (1) has a reasonable excuse for the delay in proving his or her claim, the Master may permit him or her to prove the claim. A creditor of an insolvent estate who has proved a claim against the estate and who was not in terms of subsection (1) permitted to share in the assets reflected on an account is, in so far as available funds allow, entitled to be awarded out of any subsequent distribution account the amount to which he or she would have been entitled under the earlier distribution account if he or she had proved his or her claim in time.

53AA First meeting of creditors

(1) A liquidator appointed must by notice in the *Gazette*, in a newspaper widely circulating in the district in which the business is carried on and any other media and after consultation with the Master regarding the time and place of the meeting, convene a first meeting of creditors to be held within 60 days of his or her appointment.

(2) The notice referred to in subsection (1) must state the time and place of the meeting and the matters that will be dealt with and must be published in the *Gazette*, in a newspaper widely circulating in the district in which the business is carried on and any other media not less than 14 days before the date fixed for the meeting.

(3) The liquidator must, at least 14 days before the date determined in the *Gazette* for the holding of the first meeting of creditors of the estate, send to every creditor whose name and address are known to him or her or which he or she can reasonably obtain a copy of—

(a) the notice of the meeting;

(b) the report contemplated in section 53J;

(c) any document that may need to be considered at the meeting.

(4) The liquidator must lodge with the Master or magistrate who is to preside at the meeting on or before the second working day before the date determined for the meeting of creditors—

(a) the notice of the meeting;

(b) a copy of the report contemplated in section 53J (1); and

(c) an affidavit containing a list of the names and addresses of the creditors to whom the documents referred to in subsection (3) have been sent.

(5) If the liquidator is unable to commence a meeting within 60 days contemplated in subsection (1), the liquidator must obtain the Master's permission to convene the meeting within the time determined by the Master.

(6) If the liquidator fails to convene a meeting as contemplated in subsections (1) and (5), the Master may take any steps he or she considers necessary to force the liquidator to convene a meeting of creditors of the insolvent estate.

(7) If the majority in value or number of creditors voting at the meeting reject the liquidator's report the liquidator must submit a report to an adjourned or subsequent meeting or refer the report to the Master who may give such directions in regard to the report as the Master considers appropriate.

53BB Special meeting of creditors

(1) The liquidator may at any time and must, if requested thereto by not less than one quarter in value of creditors who have proved claims against the estate, or at the request of the Master, or whenever a composition has to be considered, convene a special meeting of creditors of the estate:

Provided that the liquidator must convene a special meeting for the proof of claims if requested to do so by a creditor who tenders payment of the costs occasioned by the meeting.

(2) The procedure for conducting a special meeting shall be in terms of section 53AA.

53CC Voting at meeting of creditors

(1) Every creditor of an insolvent estate who has proved a claim against the estate is, subject to subsection (3), entitled to vote at a meeting of creditors of the estate.

(2) A creditor may vote on all matters relating to the administration of the estate but may not vote on matters relating to the distribution of the assets of the estate or the payment of costs of liquidation.

(3) A creditor, except for the Corporation and any agency responsible for debt assumption on behalf of the estate may not vote—

(a) in respect of any claim which was ceded to him or her after commencement of the proceedings for the liquidation of the debtor's estate, or after the giving of notice of the issuance of a liquidation order; or

(b) on the question as to whether steps should be taken to contest his or her claim or preference.

(4) Voting by creditors takes place according to the value of claims.

(5) A secured creditor is entitled to vote on the full value of his or her claim in respect of any matter affecting his or her security.

(6) A secured creditor may vote only if he or she had placed a monetary value on his or her security when proving his or her claim.

(7) If a secured creditor's security has been realised, the creditor may vote on the amount by which his or her claim exceeds the proceeds of the realisation of the security.

(8) If the security has not been realised, the secured creditor may vote on the amount by which his or her claim exceeds—

(a) the value placed by him or her on the security; or

(b) the valuation of the security obtained by the liquidator;

whichever is the greater.

(9) A creditor may vote personally or through an agent appointed thereto by him or her by power of attorney.

(10) No person may vote as an agent of a creditor, unless he or she submits proof of his or her mandate.

(11) Every resolution taken at a meeting of creditors and the result of the voting on any matter must be recorded in the minutes of the meeting and in so far as a resolution contains a directive to a liquidator, it is binding upon the liquidator.

(12) Any directive of creditors that infringes the rights of any creditor may be set aside by the—

(a) Court on application by the creditor; or

(b) liquidator with the consent of the Master,

within 90 days or such further period as the Court or Master may allow for good cause shown.

(13) No resolution of creditors that a specific attorney, auctioneer or any other person be employed in connection with the administration of an insolvent estate is binding upon the liquidator, but creditors may by resolution recommend the employment of any such person and if the liquidator does not accept the recommendation the Master's decision in respect of such employment is final.

53DD Summons to attend meeting of creditors and notice to produce document

(1) If the liquidator or the Master, has reasonable grounds for believing that a person—

(a) has or had in his or her possession or custody property belonging to the insolvent estate; or

(b) is indebted to the insolvent estate; or

(c) is able to give material information on any matter relating to the debtor or his or her business or affairs, whether before or after the liquidation of his or her estate, or concerning any property which at any time belonged to the insolvent estate; or

(d) has in his or her possession or custody any book, document, or record relating to the debtor's affairs or property;

he or she may summon the said person to appear at a meeting of creditors of the insolvent estate at a time stated in the summons, in order to be questioned and, where applicable, to produce the books, documents, or records specified in the summons.

53EE Examination of debtor and other persons

(1) The liquidator or the Master may call upon the debtor, or any person for questioning or the production of any book, document or record, to appear before him or her and to give evidence, on all matters relating to the debtor or his or her business affairs, whether before or after the liquidation of the estate and the liquidator or Master must administer to such person an oath or affirmation.

(2) A person who in terms of subsection (1) is called upon to testify or to produce a book, document, or record may be questioned by the liquidator or the Master or the representative of any of them and the presiding officer may allow any other creditor to put questions to that person through the presiding officer to the extent that the presiding officer allows such questions.

(3) The proceedings in terms of this section shall be held in public:

Provided that if it is necessary for the effective questioning of a person or for the maintenance of good order or the protection of the public interest, the presiding officer may order that the proceedings or any part thereof take place behind closed doors, or that any particular person or persons may not be present during any particular stage of the proceedings, or that the evidence given at proceedings or any part thereof may not be published.

(4) Any person summoned, and ordered to produce books, documents, or statements or give information relating to the insolvent estate shall, notwithstanding the law relating to privilege, be obligated to produce such, books, documents or statements or give such information.

(5) Notwithstanding the provisions of any other law or the common law, but subject to the Court's power to avoid the examination being conducted in an oppressive, vexatious or unfair manner, no person questioned in terms of this section may refuse to answer a question on the grounds that the answer may prejudice him or her in any criminal or disciplinary proceedings which have been or may be instituted against him or her, or apply for a postponement of the examination until the criminal or disciplinary proceedings have been finalised:

Provided that evidence given by a person in terms of this section is not admissible against him or her in criminal or disciplinary proceedings, except in criminal proceedings where such person is charged in connection with evidence given during the examination with perjury, or the giving of false evidence under oath or affirmation, or a contravention of section 53FF (3) for refusal or failure to answer lawful questions put to him or her fully and satisfactorily.

(6) The debtor or its management may at an examination under this section be required to declare that he or she has disclosed all his or her affairs or the affairs of the debtor fully and correctly.

53FF Enforcing summons and giving of evidence

(1) If a person summoned under this Part fails to appear at a meeting of creditors or examination in answer to summons, or if a debtor or management of such debtor fails to attend a hearing or a meeting of creditors, or fails to remain in attendance at that hearing or meeting, any magistrate for the district where the meeting, questioning or hearing was scheduled to be held who may hold a Court under the Magistrates Court Act [*Chapter 7:10*], may issue a warrant, authorising any member of the police force to apprehend the person summoned or the debtor, as the case may be, and to bring him or her before the said magistrate.

(2) Unless the person summoned or the debtor, as the case may be, satisfies the said magistrate that he or she had a reasonable excuse for his or her failure to appear at or attend such meeting, examination or hearing, or for absenting himself or herself from the meeting, hearing or examination, the said magistrate may commit him or her to prison to be detained there until such time as the said magistrate may determine, and the officer in charge of the prison to which the said person or debtor was committed, must detain him or her and produce him or her at the time and place determined by the magistrate for his or her production.

(3) If a person summoned as aforesaid appears in answer to the summons but fails to produce any book, document or record which he or she was summoned to produce, or if any person who may be examined at a meeting of creditors in terms of section 53MM refuses to be administered the oath or make an affirmation to speak the truth at a meeting of creditors, examination or hearing at which he or she is called upon to give evidence, or refuses to answer any question lawfully put to him or her under the said sections or does not answer the question fully and satisfactorily, the said magistrate may issue a warrant committing the said person to prison, where he or she must be detained until he or she has undertaken to do what is required of him or her, but subject to subsection (5).

(4) If a person who has been released from prison after having undertaken in terms of subsection (3) to do what is required of him or her, fails to fulfil his or her undertaking, the magistrate may commit the person to prison as often as may be necessary to compel him or her to do what is required of him or her.

(5) Any person committed to prison under this section may apply to the Court for his or her discharge from custody, and the Court may order the discharge if it finds that the person was wrongfully committed to prison or is being wrongfully detained.

(6) The magistrate who issued the warrant of apprehension or committal to prison under this section enjoys the same immunity enjoyed by a judicial officer in connection with any act performed by him or her in the exercise of his or her functions.

(7) The magistrate may upon the request of the liquidator, the Master, or a proved creditor, and after giving the witness or the debtor the opportunity to be heard, order the witness or the debtor to pay costs occasioned by failure contemplated in subsection (1) and the costs to have him or her brought before the magistrate in the amount determined by the magistrate.

53GG Banking accounts and investments

(1) The liquidator of an insolvent estate—

(a) must open a bank account in the name of the estate with a bank within Zimbabwe into which all deposits and withdrawals on behalf of the debtor are effected; and

(b) may place moneys deposited in an account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a bank within Zimbabwe.

(2) The Master may request the liquidator to furnish him or her with the following—

(a) the bank and the office; or

(b) branch office; or

(c) agency of the bank; or

(d) bank statement; or

(e) any particulars the Master may require;

in relation to the accounts which he or she has opened or placed a deposit referred to in subsection (1).

(3) All cheques or orders drawn upon an account referred to in subsection (1) must contain the name of the payee and the cause of payment and must be drawn to order and be signed by every liquidator or his or her authorised agent.

(4) The Master and any surety for the liquidator, or any person who authorised such surety, has the same right to information in regard to an account referred to in subsection (1) as the liquidator himself or herself has, and may examine all vouchers relating thereto, whether in the hands of the bank or the liquidator.

(5) The liquidator of an insolvent estate must immediately after appointment open a record in which all moneys, goods, accounts and other documents received by it on behalf of the estate are recorded.

(6) The Master may at any time direct the liquidator in writing to produce the said record for inspection and every creditor who has proved a claim against the estate and, if the Master so orders, every person claiming to be a creditor or surety for the liquidator, may inspect the said record at all reasonable times.

53HH Public Disposition of Property and Property Rights

(1) The property and property rights in the estate shall be liquidated by the liquidator of the debtor by way of a public auction, except where the sale is conducted in terms of section 53II.

(2) The property or right being liquidated shall be sold 'as is' at the time of the sale.

(3) Where the sale is completed through auction, it shall be valid even where only one purchaser participates in the auction, provided that the price offered is not lower than the reserve value (being, for the purposes of this Act, 70 *per centum* of average of three market valuations).

(4) The liquidator shall place an advertisement in a widely circulating newspaper and any other appropriate medium determined by the liquidator for the sale of property by public auction, 14 days before the auction day.

53II Special Cases of Sale

(1) In the event of an asset being co-owned by a debtor in liquidation and another entity or person, the portion owned by the debtor shall be offered for sale to the co-owner at a price equal to the reserve value and, where the co-owner agrees in writing to pay the price, the liquidator shall specify the payment deadline. The property shall be transferred to the co-owner upon payment of the price through an assignment order.

(2) Shares owned by the debtor shall be sold on the stock exchange, or other regulated securities market, unless the articles of association of the company that issued the shares provide otherwise.

(3) The liquidator may sell financial assets through an intermediary within the country and abroad.

(4) The liquidator shall collect and sell any pledged property held by a creditor or a third party and distribute the proceeds of such sale in terms of this Act.

53JJ Cost of liquidation

(1) The costs of liquidation include—

(a) the sheriff's charges incurred since the date of liquidation;

(b) fees payable to the Master in connection with the liquidation;

(c) the remuneration of the liquidator, including the costs incurred by the liquidator in giving security for the proper administration of the estate;

(d) any expenses incurred by the Master or by a presiding officer in carrying out the provisions of this Act;

(e) the salary, wages or fees of any person who was engaged or appointed by the liquidator in connection with the administration of the estate;

(f) all other costs of the administration and the liquidation of the estate of the debtor, including legal fees and forensic investigation fees.

(2) The taxed fees of the sheriff in connection with proceedings stayed in terms of this Act must be regarded as costs of liquidation of the estate.

(3) The costs of liquidation referred to in subsections (1) and (2) rank *paripassu* and abate in equal proportion, if necessary.

53KK Application of free residue

(1) For the purposes of this section —

"salary and wages" includes all cash earnings which the employee is entitled to receive from the employer, but excludes other benefits;

"tax" means any tax payable under the Income Tax Act [*Chapter 23:06*], other than any additional amounts of tax payable under section 46 of that Act.

(2) The free residue of winding up must be applied in the first place to defray the costs of liquidation.

(3) In the second place the balance of the free residue must be applied to pay—

(a) the claims by depositors;

(b) the claims of the Reserve Bank in respect of any fees and expenses incurred in the exercise of their functions during winding up of an insolvent estate;

(c) employees who were employed by the debtor in the following manner—

(i) any salary or wages for a period not exceeding 3 months, due to an employee;

(ii) any payment in respect of any period of leave or holiday due to the employee which has accrued as a result of his or her employment by the debtor in the year in which liquidation occurred and the previous year, whether or not payment thereof is due at the date of liquidation;

(iii) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract, wage regulating measure or as a result of termination; and

(d) any contributions that were payable by the debtor, including contributions which were payable in respect of any of his or her employees, and which were, immediately prior to the liquidation of the estate, owing by the debtor, in his or her capacity as employer, to any pension, provident, medical aid, sick pay, holiday, unemployment or training scheme or fund, or any similar scheme or fund under any law or to such a fund administered by a bargaining or statutory council recognised in terms of the Labour Act [*Chapter 28:01*], and which does not exceed the prescribed amount in respect of any individual employee.

(4)The claims contemplated in subsection (3) (c) may not exceed the amount to be prescribed by the Minister by notice in the *Gazette*.

(5) The claims referred to —

(a) in subsection (3)(a) must be preferred to the claims referred to in subsections (3)(b) and (c) ;

(b) in subsection (3)(b) and (c) must be preferred to the claims referred to in subsection (3)(d) and must rank equally and abate in equal proportions, if necessary;

(c) in subsection (3)(c)(i) must be preferred to the claims referred to in subsections(3)(c)(ii) and (iii);

(d) in subsection (3)(c)(ii) and (iii) must be preferred to the claims referred to in subsection (3)(d), and must rank equally and abate in equal proportions, if necessary.

(6) The Minister may by notice in the *Gazette* exclude from the operation of this section a category of employees, schemes or funds specified in the notice by reason of the fact that there exists another type of guarantee which affords the employees, schemes or funds protection which is equivalent to the protection provided by this section.

(7) A principal officer, (as defined in terms of section 2 ("Interpretation") of the Banking Act [*Chapter 24:20*]) of a debtor, is not entitled to payment in terms of this section.

(8) In the third place any balance of the free residue may be applied to—

(a) any tax due from the insolvent estate in respect of any period prior to the date of liquidation of his or her estate, whether or not that tax has become due and payable after that date; and

(b) any amount due from the insolvent estate in terms of the Capital Gains Tax Act [*Chapter 23:01*] in respect of any capital gain received by or accrued to or in favour of the insolvent prior to the date of liquidation of his or her estate, whether or not that amount has become due and payable after that date;

(c) any amount due from the insolvent estate in terms of the Value Added Tax Act [*Chapter 23:08*], in respect of any transaction made within the period of 18 months immediately preceding the date of the liquidation of his or her estate, whether or not that amount has become due and payable after that date.

(9) The claims referred to in subsection (8) (a) to (c) rank equally and abate in equal proportions if necessary.

(10) In the fourth place the balance of the free residue must, subject to any maximum amount in terms of a bond, be applied to pay the proved claims of creditors who are holders of a general bond over movables, notarial bond registered in the deeds registry, in their order of preference with simple interest from the date of liquidation to the date of payment at the rate of interest prescribed under the Prescribed Rate of Interest Act [*Chapter 8:10*], or a higher rate of interest by virtue of a lawful stipulation agreed upon in writing.

(11) In the fifth place any balance of the free residue must be applied to pay the concurrent claims of creditors proved against the estate, in proportion to the amount of each claim.

(12) In the sixth place any balance of the free residue must be applied to pay simple interest from the date of liquidation to the date of payment on the claims paid in terms of subsections (1) to (6) in their order of preference at the rate of interest prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8:10*].

53LL Secured creditors

(1) A secured creditor of an insolvent estate shall notify the liquidator by notice of the nature and extent of his or her security and the amount of his or her claim as soon as he or she becomes aware of the liquidation of the estate.

(2) If the property consists of securities as defined in section 38 of the Securities and Exchange Act [*Chapter 24:25*], which are listed, the creditor may, subject to subsection (4)(b), after giving the notice mentioned in subsection (1) and subject to the provisions of the Securities and Exchange Act [*Chapter 24:25*], sell the listed securities through an authorised user as defined in section 38 of that Act or if the creditor is an authorised user, sell it through another authorised user.

(3) A creditor who has realised property contemplated in subsection (2) must forthwith pay over to the liquidator the proceeds after deduction of the reasonable costs of realisation and furnish the liquidator with vouchers in support of the realisation of the property and the costs of realisation.

(4) A secured creditor with—

(a) security other than property contemplated in subsection (2), must as soon as possible after liquidation place the liquidator in possession of the security;

(b) security contemplated in subsection (2) which has not been realised by the creditor before the first meeting of creditors, must within five days after the commencement of that meeting or within such longer period as the liquidator may allow, place the liquidator in possession of the security;

(5) The liquidator must cause the security to be valued by any three valuers registered in terms of the Valuers Act [*Chapter 27:18*], and the liquidator must supply the Master with a copy of the valuation.

(6) A creditor who has placed the liquidator in possession of property held by him or her as security does not thereby lose the security to which he or she is entitled in respect of such property.

(7) Subject to subsection (8), the liquidator must realise the property made available to him or her pursuant to subsection (6) for the benefit of a creditor whose claim is secured by such property.

(8) A liquidator may, if authorised thereto by the Master or by resolution at a meeting of creditors of the estate, sell property constituting the security of a creditor whose claim ranks first in preference and who has proved his or her claim against the estate, to such creditor at a value agreed upon between the liquidator and the creditor.

(9) After proof of his or her claim and the realisation of the security, a secured creditor is entitled to payment of his or her secured claim if he or she has furnished security to the satisfaction of the liquidator for the repayment of interest at the rate prescribed in terms of the Prescribed Rate of Interest Act [*Chapter 8: 10*], if according to the confirmed account the creditor is not entitled to the payment or a part thereof.

(10) A secured creditor may request the Court to grant permission to sell security for the claim, subject to proper accounting to the liquidator for the sale, on grounds that—

(a) the security is not necessary in respect of a prospective reorganisation or sale of the debtor's business; and

(b) the value of the security is diminishing as a result of the commencement of insolvency proceedings; and

(c) the secured creditor is not protected against that diminution of value.

(11) Contractual interest (in respect of secured creditors) will cease to accrue on the date of liquidation and the liquidator shall be obliged to pay the capital amount plus the contractual interest as at the date of liquidation as a secured claim. Thereafter, interest will accrue at the prescribed rate.

53MM Attachment of property upon failure to deliver to liquidator

(1) If a creditor has failed to place the liquidator in possession of the property constituting his or her security, the liquidator shall send to him or her demand by direct notice to place the liquidator in possession within seven days after such demand.

(2) If the creditor fails to comply with the demand the liquidator may obtain from the magistrate of the district where the property is situated a warrant directing the sheriff to attach that property and to place the liquidator in possession thereof.

(3) The creditor in question is liable for all costs resulting from his or her failure to place the liquidator in possession of the property, and if such costs cannot be recovered from the said creditor they form part of the costs of realising the security.

53NN Security in respect of landlord's hypothec

(1) A landlord's hypothec confers a preference with regard to the property which is subject to the hypothec for rent due in respect of the period immediately prior to the date of liquidation, but not exceeding rent for a period of—

(a) three months, if the rent is payable monthly or at shorter intervals than one month; or

(b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months; or

(c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months; or

(d) fifteen months, if the rent is payable at intervals exceeding six months.

(2) A tacit or legal hypothec other than a landlord's hypothec in subsection (1) does not confer any preference against an insolvent estate.

53OO Distribution Account

(1) Subject to subsections (4), (5) and (6), a liquidator must within six months from the date of appointment as liquidator lodge—

(a) a liquidation account and a distribution account with the Master of the proceeds of the property in the insolvent estate available for payment to creditors; or

(b) if any surplus is required for the payment of claims, costs and charges or interest, a distribution account of such surplus; or

(c) if all realisable property in the insolvent estate has been realised and brought into account and the proceeds are insufficient to cover the costs and charges referred to in section 53HH, a contribution account apportioning the liability for the deficiency among creditors who are liable to contribute.

(2) The accounts referred to in subsection (1) must be substantially in the form set out in the Third Schedule.

(3) If a liquidation account is not a final account the liquidator must, at six monthly intervals or from time to time as the Master may direct, lodge with the Master periodical accounts in the form and in all other respects similar to the accounts mentioned in subsection (2).

(4) If a liquidator is unable to lodge an account to the Master within the period of six months as required by subsection (1) or (3), or within the further period that the Master may allow, he or she must send to the Master an affidavit in which he or she sets out—

(a) the reasons for his or her inability to lodge the account in question; and

(b) the amount of money available for payment to creditors or, if there is no free residue or if the free residue is insufficient to meet all costs, the deficiency that the creditors are liable to make good where necessary.

(5) The Master may, after considering the affidavit, extend such period to a date determined by him or her.

(6) If the Master extends the period in terms of subsection (5) the liquidator must inform proved creditors of the extension by notice and enclose a copy of the affidavit in terms of subsection (4).

(7) If a liquidator fails to lodge an account within the period required by subsection (1) or before the date determined by the Master in terms of subsection (5), the Master may, subject to subsection (8), send a notice to the liquidator in which the liquidator is required to lodge the account in question to the Master or if the liquidator is unable to lodge such account, to send an affidavit contemplated in subsection (5) to the Master, within a period of fourteen days from the date of the notice.

(8) The Master may, if the account in question is not lodged or the said affidavit is not sent to him or her, after the expiration of the said fourteen days extend such period to a date determined by him or her.

(9) If the Master refuses to extend the period as contemplated in subsection (8), the liquidator may apply by motion to the Court, after having given the Master direct notice of his or her intention to make the application, for an order extending the said period and the Court may thereupon make such order as it considers appropriate.

(10) If, before the expiration of the period contemplated in subsection (l) or (2), a liquidator has funds in hand which, in the opinion of the Master, ought to be distributed and the liquidator has not lodged with the Master a plan for the distribution of those funds, the Master may direct him or her in writing to lodge such a plan.

(11) If the liquidator fails to lodge an account to the Master as and when required by or under this Act, or to lodge any vouchers in support of such account upon the request of the Master, or to perform any other duty imposed upon him by this Act or to comply with any reasonable demand of the Master for information or proof required in connection with the

liquidation or distribution of an estate, the Master or any person having an interest in the liquidation or distribution of the estate may, after giving the liquidator not less than fourteen days' notice, apply to the Court for an order directing the liquidator to lodge such account or any vouchers in support thereof or to perform such duty or to comply with such demand.

(12) The costs awarded to the Master or to such person having an interest as provided in subsection (11) must, unless otherwise ordered by the Court, be payable by the liquidator *de bonis propriis*.

53PP Copies of liquidator's accounts to be open for inspection

(1) A liquidator must within five days after he or she has lodged an account with the Master as contemplated in section 53OO give notice by publication in the *Gazette* that the account will lie open for inspection by any person having an interest in the estate at the place and for a period of not more than fourteen days from the date of publication.

(2) The liquidator must give notice to each creditor who has proved a claim against the estate.

(3) The Master must cause a notice referred to in subsection (1) to be affixed on a public place at his or her office.

(4) After the expiration of the fourteen day period referred to in subsection (1) the Master must endorse upon the account a certificate that the account was open for inspection at his or her office as provided for in subsection (3).

53QQ Objections to liquidator's account

(1) The creditor or any person having an interest in the estate may at any time after the commencement of the period contemplated in section 53PP and until the liquidator's account is confirmed lodge with the Master in writing any objection to that account, stating the reasons for such objection.

(2) If the Master is of the opinion that any such objection is well founded or if, apart from any objection, he or she is of the opinion that the account is in any respect incorrect or that it contains any improper charge or that the liquidator acted *malafide,* negligently or unreasonably in incurring any costs included in the account and that the account should be amended, he or she may direct the liquidator to amend the account or in addition may give such other direction in connection therewith as he or she may think fit.

(3) Any person, including the liquidator, who is aggrieved by the direction of the Master or by the Master's refusal to sustain an objection so lodged, may within fourteen days from the date of the Master's direction apply to the Court for relief and the Court may consider the merits of the matter and make any order it considers appropriate.

53RR Confirmation of liquidator's accounts

When a liquidator's account has been open to inspection as prescribed by this Act and —

(a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection, if necessary, and no application for relief has been made to the Court in terms of section 53QQ (3); or

(c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to Court for relief;

the Master must confirm the account and his or her confirmation, notwithstanding mistakes in the account, is final.

53SS Distribution of estate and collection of contributions

(1) Immediately after the confirmation of a liquidator's account the liquidator must publish notice of the confirmation in the *Gazette* and must state in that notice that a dividend is in the course of payment or that a contribution is in the course of collection from creditors, as the case may be.

(2) If any contribution is payable the liquidator must specify fully in that notice the address at which payment of the contribution is to be made and send a copy of the notice to every creditor who is liable to contribute.

(3) Immediately after the confirmation of a liquidator's account, but not later than two months after such confirmation, the liquidator must distribute the estate or collect from each creditor who is liable to contribute, the amount for which he or she is liable.

(4) The liquidator shall within three months after the confirmation of the account lodge with the Master the receipts for dividends paid to creditors and, if there is a contribution account, the vouchers necessary to complete the account.

(5) If after the confirmation of a final account there is a free residue in an insolvent estate that is not required for the payment of claims, costs, charges or interest, the liquidator must distribute such free residue among the shareholders according to their rights and interests in the insolvent estate:

Provided that before paying any shareholder creditors who incurred loss of value on their claims due to currency change or currency redenomination shall be compensated for loss of value as determined by the liquidator.

53 TT Contribution by creditors towards cost of liquidation

(1) Where there is no free residue in an insolvent estate, or where the free residue is insufficient to meet all the costs mentioned in section 53JJ, the rules set out in this section apply with regard to the liability of creditors to pay contributions towards defraying any such deficiency.

(2) Any creditor who has a proved claim against the estate, is liable to contribute not less than the amount he or she would have had to contribute if he or she had proved a claim for the amount stated in his or her application for liquidation and where he or she is a secured creditor, without reliance on his or her security.

(3) Each concurrent creditor is liable to pay a contribution in proportion to his or her concurrent claim.

(4) If a creditor has withdrawn his or her claim, he or she is liable to pay a contribution only so far as his or her *pro rata* share of the costs of liquidation up to the date when the notice of withdrawal was received by the liquidator, and if a creditor withdraws his or her claim within five days after the date of any resolution of creditors he or she must be regarded as having withdrawn the claim before anything was done in pursuance of that resolution.

(5) If a creditor who is liable to contribute in terms of an account has failed to pay the amount of his or her liability within a period of thirty days after the date of the sending or delivery to him or her of a notice referred to in section 53SS (1) the liquidator may take out a warrant of execution for the amount of the creditor's liability in the magistrate's Court in which the creditor could have been sued for the contribution in question.

53UU Conclusion of the Liquidation Proceedings

(1) When the affairs of an insolvent estate have been completely liquidated, the Court shall, upon the application of the liquidator, make an order that the debtor be dissolved from the date of the order and the debtor shall be dissolved accordingly.

(2) A copy of the order shall forthwith be transmitted by the Registrar of the Court—

(a) to the Reserve Bank which shall forthwith enter the Register of banking institutions a note of the dissolution of the contributory institution and shall publish notice thereof in the *Gazette*; and

(b) to the Master; and

(c) the Registrar of Companies.

(3) An application made by the liquidator under subsection (1) may be by way of a report submitted to the court through the Registrar thereof.

(4) Notwithstanding any dissolution in terms of this section, in the event of any property thereafter becoming available which would have accrued to the contributory institution if not dissolved the Master shall give instructions for the realisation thereof and for the distribution of the proceeds, less the cost of realisation and distribution, to such persons as would have been entitled thereto in the winding up; and the same shall apply to any moneys becoming so available.

(5) Unasserted claims and unexercised rights in the liquidation proceedings shall be extinguished.

(6) Claims that are not satisfied in the liquidation proceedings shall be extinguished.

53VV Reopening the liquidation Procedure

(1) Closed liquidation proceedings may be reopened with an order of the Master, within two years after the liquidation proceedings if —

(a) amounts allocated for disputed claims are released;

(b) property that was not known at the time of closing the proceedings is discovered.

(2) Where the allocated amounts released and the newly discovered properties are insufficient to cover the costs of the proceedings, the court may refuse to reopen the case, unless an interested party pays the necessary amount in advance.

(3) The liquidation proceedings may be reopened upon written petition by the liquidator or the Reserve Bank or a creditor with an accepted claim.

(4) The judgment to reopen the liquidation proceedings shall reinstate the powers of the liquidator.

(5) The proceedings reopened shall continue from the final distribution account, which shall be deemed to be partial.

53WW Offences

(1) A debtor or the management of a debtor is guilty of an offence if he or she —

(a) conceals or parts with or intentionally destroys any book or accounting record relating to the affairs of the debtor or intentionally erases the information contained therein or makes it illegible or permits any other person to perform any such act with regard to any such book or accounting record; or

(b) alienates property, obtained by him or her or the estate on credit and not paid for, otherwise than in the ordinary course of business; or

(c) despite having been expressly asked about his or her or the debtor's financial standing and credit worthiness, falsely conceals his or her or the debtor's insolvent status; or

(d) offers or promises to any person a reward in order to procure the acceptance by a creditor of an offer of compromise or to give up any investigation with regard to the estate or to conceal any information in connection therewith, to induce a creditor not to oppose an application for rehabilitation; or

(e) at any time within two years before the date of liquidation of his or her estate, with intent to obtain credit or the extension of credit, gave false information or concealed any material fact in connection with his or her assets and liabilities to anyone who became his or her creditor; or

(f) at any time before the date of liquidation of the estate of the debtor deducted an amount from salary paid to an employee for payment to someone other than the debtor and fails to pay the amount to the person entitled thereto when required; or

(g) failed to keep proper accounting records of all business transactions, income, expenditure, assets and liabilities and to retain the accounting records for a period of at least three years; or

(h) if at any time when his or her liabilities exceeded his or her assets or at any time within six months immediately prior to the date of liquidation of his or her estate he or she reduced his or her assets through gambling, betting or risky speculation or contracted debts which were not reasonably necessary in connection with business or occupation or for his or her own maintenance or that of his or her dependents; or

(i) without good cause fails to submit a statement of his or her affairs o as required by this Act; or

(j) without lawful cause fails to attend any meeting or continuation of a meeting of creditors of his or her estate of which he or she has been notified; or

(k) knows that any person has proved a false claim against his or her estate and fails to inform the Master and the liquidator in writing of that fact within 14 days as from the date upon which he or she acquired that knowledge.

(2) Any person who —

(a) without lawful cause fails to attend at the time and place determined in summons or notice as contemplated in this Act or having appeared, without lawful cause fails to remain in attendance until he or she is excused from further attendance by the presiding officer of the meeting in question; or

(b) has been called up for questioning and refuses to be sworn as a witness or to take an affirmation or without lawful cause refuses or fails to answer any question lawfully put to him or her or without lawful cause refuses or fails to produce any book, document, or record which is in his or her possession or custody and which he or she is obliged to produce in terms of the summons or a direction of the presiding officer of the meeting; or

(c) without lawful cause fails to comply with a written order; or

(d) receives any benefit or accepts any promise of a benefit as a reward for keeping or undertaking to keep in abeyance or stopping or undertaking to stop any action for the liquidation or inquiry connected with the liquidation of the estate of the debtor or for agreeing or undertaking to agree to a composition or rehabilitation or for not opposing or agreeing not to oppose it for concealing or undertaking to conceal particulars of a debtor; or

(f) conceals, parts with, damages, destroys, alienates or otherwise disposes of property belonging to the debtor with intent to frustrate the attachment of such property by virtue of a liquidation order, or with intent to prejudice creditors of the insolvent estate; or

(g) has in his or her possession or custody or under his or her control property belonging to an insolvent estate and intentionally fails to notify the liquidator of the insolvent estate as soon as possible of the existence and whereabouts of such property and to make it available to the liquidator; or

(h) intentionally impedes or hinders a liquidator or any person acting under his or her command, in the execution of his or her duties;

shall be guilty of an offence.

(3) A liquidator of an insolvent estate who fails to submit to the Master an account or to pay over a sum of money within 30 days from the date on which it became obliged to submit such account or pay over such sum of money, or fails to comply with the duties of a liquidator within 30 days from the date of liquidation is guilty of an offence.

(4) Any person who is convicted of an offence contemplated —

(a) in subsection (1)(a) or (b) or subsection (2)(f), (g) or (h) is liable to a fine not exceeding level 14 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment;

(b) in subsection (l)(c), (d), (e), (e), (f), (g), (h), (i) or u) or subsection (2) (e) is liable to a fine not exceeding level 10 or to imprisonment for a period not exceeding 24 months or to both such fine and such imprisonment;

(c) in subsection (2) (a), (b), (c) or (d) is liable to a fine not exceeding level 5 fine or to imprisonment for a period not exceeding twelve months or to both a fine and such imprisonment."

(d) in subsection (3) is liable to a fine not exceeding level 14."

18 Amendment of section 59 of Cap 24:29

Section 59 of the principal Act ("Co-operation between Corporation and registering and supervisory agencies") (2) is amended by the insertion after paragraph (b) of the following paragraph—

"(c) corrective measures imposed on any contributory institution."

19 New section inserted in Cap. 24:29

The principal Act is amended by insertion after section 59 of the following section—

"59A. Cooperation with other Jurisdictions

(1) The Corporation may enter into agreements with relevant deposit insurers or responsible foreign supervisory authorities for all foreign banks operating as subsidiaries in Zimbabwe and Zimbabwean banks operating branches or subsidiaries for the purposes of—

(a) exchanging information on the basis of reciprocity on any matter that may affect the condition of a contributory institution operating in Zimbabwe emanating from the foreign country;

(b) co-operation and consultations in areas of expertise and common interests;

(c) sharing of information about the financial condition of any foreign parent banks on an ongoing basis;

(d) sharing of information about the resolution of failing or failed institution;

(e) facilitating regular communication of accurate and timely information between the Corporation and other deposit insurers or supervisory authorities.

(2) The Corporation may further enter into agreements with relevant deposit insurers of other countries for purposes of co-operation and consultations in areas of expertise and common interests.

20 Amendment of section 61 of Cap.24:29

Section 61 (Publicity for deposit insurance scheme) of the principal Act is amended by the insertion of a new subsection after subsection (2)—

"(3) A contributory institution that fails to comply with subsections (1) and (2) shall be liable to a category 1 civil penalty".

21 New section inserted in Cap. 24:29

The principal Act is amended by insertion after section 66 of the following section—

"67 Prohibition against proliferation of Deposit Insurance Scheme

(1) Notwithstanding any provision contained in any other law, no person other than the Corporation shall insure deposit liabilities or guarantee payments to depositors of insured institutions operating in Zimbabwe.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine of ten times level 14 or imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment and forfeiture of the proceeds of such transactions he or she it has engaged in.

22 Amendment of First Schedule to Cap 24:29

The First Schedule ("Provisions relating to Directors, and to procedure and staff of Corporation") to the principal Act is amended—

(a) in paragraph 6 by repeal of subparagraph (1) and (2) and the substitution of the following subparagraph—

(1) The Chairperson of the Board of Directors shall hold office as such for a period of four years unless he or she resigns as Chairperson or ceases to be a director, and upon expiry of his or her term, he or she shall be eligible for reappointment for one further term."

(b) in paragraph 7(1) by deletion of "three" and the substitution of "four"

(c) in the proviso to paragraph 7(3) by the deletion of "twelve" and the substitution of "eight"

(d) in paragraph 7(4)(a) by the insertion after "fix" of ", with the approval of the Minister."

23 Insertion of New Schedule in Cap 24:29

The principal Act is amended by the insertion (after the Second Schedule) of the following Schedule—

"THIRD SCHEDULE (*section 53X*)

FORM A STATEMENT OF DEBTOR'S AFFAIRS

FAILURE TO SUBMIT THIS FORM TO THE MASTER AND THE LIQUIDATOR WITHIN SEVEN DAYS IS A CRIMINAL OFFENCE

PART I BALANCE SHEET OF .... *

* Here insert the name in full of the debtor

Liabilities	$ ¢	Assets	$ ¢
Debts due		Immovable property as per part 2 .... Movable property as per Part 2 .... Outstanding claims, etc, as per Part 3 .... Deficiency/surplus	
Total		Total	

PART 2

IMMOVABLE PROPERTY

	Description of property	Situation and extent other	Mortgages and secured claims	Estimated values
Property situate in Zimbabwe Property situate elsewhere				$ ¢
			Total	

PART 3

ANY MOVABLE PROPERTY WHATSOEVER WHICH IS NOT INCLUDED IN PART 4OR PART 5

	Description of property	Estimated values
Property situate in Zimbabwe Property situate elsewhere		$ ¢
	Total	

Note: Movable property includes assets such as insurance policies and credit balances in accounts with contributory institutions or other institutions or persons. Any merchandise mentioned in this part shall be valued at its cost price or at its market value at the time of the making of this statement, whichever is the lower, and the statement shall be supported by detailed stock sheets relating to such merchandise.

PART4

OUTSTANDING CLAIMS, BILLS, BONDS AND OTHER SECURITIES

	Names and residential and postal address of the debtor	Particulars of claim	Estimated amount good	Estimated amount bad or doubtful
In Zimbabwe .... Elsewhere			$ ¢	$ ¢
		Total		

PART 5

LIST OF CREDITORS

Name and address of creditor	Nature and value of Security for claim	Nature of claim	Amount of claim
			$ c
		Total	

PART 6

MOVABLE ASSETS PLEDGED, HYPOTHECATED, SUBJECT TO A RIGHT OF RETENTION OR UNDER ATTACHMENT IN EXECUTION OF A JUDGMENT

Description of asset	Estimated value of asset	Nature of charge on asset	Amount of debt to which charge relates	Name of creditor in whose favour charge is

The nominal amount of unpaid capital liable to be called up is $* ....

*This information to be provided by a company debtor

PART 7

ENUMERATION AND DESCRIPTION OF EVERY BOOK OR DOCUMENTING RECORD IN USE BY THE DEBTOR AT TIME OF THE LIQUIDATION OR AT TIME WHEN THE DEBTOR CEASED CARRYING ON BUSINESS

PART 8

DETAILED STATEMENT OF CAUSES OF DEBTOR'S INSOLVENCY

PART 9

AFFIDAVIT/SOLEMN DECLARATION

I, ... declare under oath/solemnly and sincerely declare* that to the best of my knowledge and belief the statements contained in this Schedule are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

Signature of declarant ……………………………….........

Sworn/solemnly declared before me on the ....day of ……......

……………………………………

Commissioner of Oaths"

Fourth Schedule (*section 34, 49 and 61*)

Civil Penalty Orders

ARRANGEMENT OF PARAGRAPHS

Section

Interpretation

1. In this Schedule, unless the context otherwise requires—

"citation clause", in relation to a civil penalty order, is the part of the order in which the CEO names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;

"civil penalty register" means the register referred to in paragraph 6("Evidentiary provisions in connection with civil penalty orders");

"continuing default" means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;

"corporate defaulter" means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (5));

"date of issuance", in relation to the service of a civil penalty order, means the date on which it is served in any of the ways;

"defaulter" means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;

"level", in relation to a fine, means a level on the standard scale;

"officer", in relation to a corporate defaulter, means the CEO or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;

"standard scale" means the standard scale of fines referred to in section 280 of the Criminal Law Code the First Schedule thereto;

"penalty clause", in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and "fixed penalty clause" and "cumulative penalty clause" shall be construed accordingly;

"remediation clause "in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;

"show cause clause" in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

Power of CEO to issue civil penalty orders and categories thereof

2. (1) Where default is made in complying with any provision of this Act or of any regulations or order made under this Act for which a civil penalty is specified to be leviable, the CEO may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for—

(a) a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable default (that is to say a default in respect of which no remediation is sought by the CEO or is possible), of which—

(i) the fixed penalty shall be the maximum amount specified for level 7 (or the penalty specified in paragraph 3, as the case may be); and

(ii) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under paragraph (a);

(b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the CEO why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

(i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error the CEO shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(3) A category 2 civil penalty order provides for—

(a) a cumulative civil penalty for a specified completed but remediable default which—

(i) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her);

(ii) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);

(b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the CEO why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

(i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error the CEO shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(4) A category 3 civil penalty order provides—

(a) for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—

(i) the fixed penalty shall be the maximum amount specified for level five; and

(ii) the cumulative penalty—

A. relating to subparagraph (i) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and

B. relating to the taking of the specified remedial action—

I. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and

II. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;

(b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the CEO why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

(i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error, the CEO shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(5) A category 4 civil penalty order provides for—

(a) a cumulative penalty for a continuing default which—

(i) must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;

(ii) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days;

(b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the CEO why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

(i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error the CEO shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

(6) A category 5 civil penalty order provides for—

(a) a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—

(i) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is, within 24 hours of the issuance of the order, or a lesser specified time specified in the order);

(ii) which, upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide—

A. a fixed penalty of the maximum amount for level seven for not meeting the specified deadline; and

B. a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days during which the defaulter fails to pay the amount of the fixed penalty specified in —

I. subparagraph (i); and

II. subparagraph A;

(b) the suspension of the operation of the civil penalty order for a period of 24 hours from the date of its issuance to enable the alleged defaulter to show cause to the CEO why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

(i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;

(ii) if within that period it is shown that the order was issued in error the CEO shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

Service and enforcement of civil penalties and destination of proceeds thereof

3. (1) References to the CEO serving upon a defaulter any civil penalty order in terms of this Act, are to be interpreted as requiring the CEO to serve such order (or such notice) in writing to the defaulter concerned in the following manner —

(a) hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person (or through an inspector or other person employed in the office of the CEO, or a police officer), or to a responsible individual at the place of business of the defaulter; or

(b) delivery through a commercial courier service to the defaulter's place of province concerned or his or her principal office in Zimbabwe or other place of business of the defaulter; or

(c) electronic mail address furnished by the defaulter to the CEO; or

(d) if after diligent inquiry service of the civil penalty order by any of the foregoing means has not been made, the defaulter shall be deemed to be notified of the civil penalty order if the CEO posts a copy of it for fourteen continuous days on the notice board at his or her Office (in which event the civil penalty order shall be deemed to be served on the defaulter on the first date of such posting):

Provided that in this case the CEO shall also depose in an affidavit to the following facts, namely that—

(i) service of the civil penalty order could not be made by any of the means referred to in subparagraphs (a), (b) , (c) or (d); and

(ii) the first date on which the copy of the civil penalty order was posted on the notice board of his or her Office;

and the CEO shall file such affidavit for record.

(2) The CEO shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the CEO in the civil penalty register.

(3) The CEO may, if the defaulter is a corporate defaulter—

(a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned;

(b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the CEO shall note in the civil penalty register, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

(4) The CEO may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question —

(a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or

(b) arose in connection with the same set of facts.

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the CEO may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

(a) summons is issued to the accused person for the prosecution of the offence; or

(b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or

(c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the CEO to pay the civil penalty in the event that the defaulter does not pay.

(7) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officer is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(8) The amount of any civil penalty shall—

(a) be payable to the CEO and shall form part of the Deposit Protection Corporation Fund;

(b) be a debt due to the State and shall be sued for in any proceedings in the name of the CEO acting for the State in any court of competent civil jurisdiction:

Provided that for this purpose, the court of the provincial magistrate for the province concerned shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction.

(9) If the CEO in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the CEO may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

(a) were all served within the period of twelve months preceding the institution of the proceedings; and

(b) were served—

(i) on the same defaulter; or

(ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or

(iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(10) Unless the CEO has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the CEO for the amount of any outstanding civil penalty due from the convicted defaulter.

Limitation on issuance and enforcement of civil penalty orders

4. (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur.

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable to a penalty or combined penalties in excess of the equivalent of one hundred and twenty thousand dollars, the CEO may select one or any combination of those defaults which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

(3) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*].

When hearings on question whether to serve civil penalty orders may be held

5. (1) If, in response to a show cause clause, an alleged defaulter satisfies the CEO, that it is not possible within 48 hours to demonstrate that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control, the CEO shall afford the alleged defaulter an opportunity to be heard by making oral representations before the CEO, for which purpose—

(a) no later than 96 hours after the issuance of the civil penalty order, the alleged defaulter must furnish to the CEO an affidavit sworn by him or her giving reasons to show that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;

(b) within a reasonable period from the receipt of an affidavit referred to in paragraph (a) the CEO—

(i) may serve copies of the affidavit on any person who, in the CEO's opinion, is affected by or may be a party to the default, together with an invitation to the parties to attend at the meeting to be presided over by the CEO (giving particulars of its time and venue) to enable the parties to make oral and written representations at that meeting on the question whether the civil penalty order was issued in error to the alleged defaulter and whether it should be issued to some other defaulter or not issued at all;

(ii) post an invitation to interested persons to attend at the meeting referred to in subparagraph (i) (giving particulars of its time and venue) to enable them to make oral and written representations at that meeting on the question whether to grant or refuse the order:

Provided that in such invitation (referred to in subparagraph (i) or (ii)) or at the meeting the CEO may restrict the parties to submitting written representations only, before or no later than 48 hours after the conclusion of the meeting.

(2) The following provisions apply to every hearing in connection with the issuance of a civil penalty order—

(a) if the alleged defaulter fails to attend at the hearing the CEO will generally decide the issue against him or her and proceed to issue the civil penalty order, unless doing so, given the specific facts and circumstances of the case, would be contrary to this Act or result in injustice;

(b) the alleged defaulter bears the burden of showing on a balance of probabilities that the civil penalty order was issued in error due to a material dispute of fact, or because the alleged default in question was not wilful or was due to circumstances beyond the alleged defaulter's control;

(c) at the conclusion of the hearing CEO may—

(i) in the presence of the parties (if any) at the meeting announce his or her decision verbally whether or not to issue a civil penalty order, and if so to upon whom, and if the CEO decides to issue the civil penalty order the CEO shall do so within twenty-four hours:;

(ii) cancel the civil penalty order or re-issue it with effect from the date of his or her decision on the same or another defaulter, or re-issue it with effect from the date on which it was initially issued if the CEO finds that the defaulter's objections to its issuance were baseless, vexatious or frivolous:

Provided that the CEO may defer making a decision by no more than 48 hours after the conclusion of the hearing and give notice of his or her decision, and the reasons for it (together with the civil penalty order, if any), to the alleged defaulter to be liable for the civil penalty, and post a copy of the decision together with the civil penalty order, if any) and the reasons for it on the public notice board of the Deposit Protection Corporation office.

(3) An alleged defaulter or substituted alleged defaulter who wishes to appeal against the CEO's decision in terms of subsection (2)(c) must—

(a) lodge an appeal in writing with the High Court, no later than seven working days he or she has received notification decision under the proviso to subsection (2)(c); and

(b) incorporate in the appeal grounds justifying why the CEO's decision should be set aside and what decision ought to be substituted for it.

(4) The effect of lodging an appeal shall be to suspend the decision appealed against until the appeal is determined by the High Court.

(5) Upon receiving an appeal in terms of subsection (3) the High Court shall promptly (and in any event no later than fourteen working days of receiving it)—

(a) dismiss the appeal by upholding the decision of the CEO; or

(b) refer the decision back to the CEO for reconsideration (whether with or without directions on how the decision is to be reconsidered, including a direction to the CEO to investigate the matter further and make a further report and recommendations) on any one or more of the following grounds—

(i) allowing extraneous or irrelevant considerations to affect the decision, or

(ii) failure to take into account relevant considerations in arriving at the decision, or

(iii) any material mistake of fact or law that tainted the decision;

or

(c) uphold the appeal and substitute any other decision for that of the CEO, if the High Court finds that there was interest in the cause, bias, malice or corruption on the part of any person involved in making or contributing to the decision:

Provided that the High Court shall not make a finding on this ground without affording the CEO an opportunity to respond to the proposed finding.

Evidentiary provisions in connection with civil penalty orders

6. (1) For the purposes of this Schedule the CEO shall keep a civil penalty register wherein shall be recorded—

(a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty there under was recovered as the case may be;

(b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—

(i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or

(ii) a hearing was held in accordance with paragraph 5, then—

A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the CEO);

B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different defaulter was served with it.

(2) A copy of—

. (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the CEO as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the contents therein; or

(b) any civil penalty order that has been served in terms of this Act, authenticated by the CEO as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be *prima facie* proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

FIFTH SCHEDULE (*section 37,38 and 65*)

MINOR AMENDMENTS

Provision	Extent of amendment
section 2	by the deletion of "judicial manager"
Section 37	by the deletion of "judicial manager" wherever it appears with the substitution of "curator" in the section. in subsection (1)by the deletion of "insolvency Act [*Chapter 6:04*] and the substitution of this "Act"
Section 38	in subsection (1)by the deletion of "insolvency Act [*Chapter 6:04*] and the substitution of this "Act" and wherever it appears in the section
Section 65	by the deletion of "judicial manager" with the substitution of "curator" wherever it appears in the section.