

No. S 117

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))**

LIMITED LIABILITY PARTNERSHIPS ORDER, 2010

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order made under Article 83(3))

LIMITED LIABILITY PARTNERSHIPS ORDER, 2010

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Limited Liability Partnerships Order, 2010 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*.

(2) The long title of this Order is "An Order to provide for limited liability partnerships".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"Authority" means such person as is appointed by His Majesty the Sultan and Yang Di-Pertuan under section 3(1) to be the Authority for the purposes of this Order;

"company" has the same meaning as in section 2(1) of the Companies Act (Chapter 39);

"corporation" means any body corporate formed, incorporated or existing in Brunei Darussalam or outside Brunei Darussalam, and includes —

(a) a limited liability partnership registered under this Order; and

(b) any foreign company,

but does not include any co-operative society;

"financial year", in relation to a limited liability partnership, means the period in respect of which any profit and loss account of the limited liability partnership is made up, whether that period is a year or not;

"firm" has the same meaning as in section 2(1) of the Business Names Act (Chapter 92);

"foreign company" means any company incorporated outside Brunei Darussalam which has established a place of business in Brunei Darussalam under Part IX of the Companies Act (Chapter 39);

"limited liability partnership" has the meaning given to it by section 5(1);

"limited liability partnership agreement", in relation to a limited liability partnership, means any agreement expressed or implied between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to the limited liability partnership;

"liquidator" includes the Official Receiver when acting as the liquidator of a company;

"manager", in relation to a limited liability partnership, means any person (whether or not a partner of the limited liability partnership) who is concerned in or takes part in the management of the limited liability partnership (whether or not his particulars or consent to act are lodged with the Registrar as required under section 24(2));

"Minister" means the Minister of Finance;

"officer", in relation to a limited liability partnership, means —

(a) any manager of the limited liability partnership;

(b) a receiver and manager of any part of the undertaking of the limited liability partnership appointed under a power contained in any instrument; or

(c) any liquidator of the limited liability partnership appointed in a voluntary winding-up,

but does not include —

(i) any receiver who is not also a manager;

(ii) any receiver and manager appointed by the High Court; and

(iii) any liquidator appointed by the High Court or by the creditors;

"Official Receiver" means the Official Receiver appointed under the Bankruptcy Act (Chapter 67) and includes the deputy official receiver;

"partner", in relation to a limited liability partnership, means any person who has been admitted as a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

"prescribed person" means a person, or a person within a class of persons, prescribed by the Minister;

"private company" has the same meaning as in section 29(1) of the Companies Act (Chapter 39);

"register" means any register kept and maintained under this Order;

"Registrar" means the Registrar of Limited Liability Partnerships appointed under section 4 for the purposes of this Order, and includes any Deputy Registrar or Assistant Registrar.

(2) Where a limited liability partnership has more than one manager —

(a) anything that the manager is required by this Order to do may be done by any one of the managers; and

(b) anything which constitutes an offence by the manager under this Order constitutes an offence by each of the managers.

(3) A reference in this Order to the managers of a limited liability partnership shall, in the case of a limited liability partnership which has only one manager, be construed as a reference to that manager.

(4) A reference in this Order to the doing of any act by 2 or more managers of a limited liability partnership shall, in the case of a limited liability partnership which has only one manager, be construed as the doing of that act by that manager.

Appointment of Authority and authorised persons.

3. (1) His Majesty the Sultan and Yang Di-Pertuan may, by notification published in the *Gazette*, appoint a person to be the Authority for the purposes of this Order.

(2) The Authority may authorise or appoint any person to assist in the exercise of his powers, functions and duties under this Order, either generally or in any particular case.

(3) Any person authorised or appointed by the Authority under subsection (2) shall be deemed to be a public servant for the purposes of the Penal Code (Chapter 22).

Appointment of Registrar of Limited Liability Partnerships etc.

4. (1) His Majesty the Sultan and Yang Di-Pertuan shall appoint a fit and proper person to be the Registrar of Limited Liability Partnerships for the purposes of this Order.

(2) The Registrar may, subject to such conditions as he thinks fit, for the purposes of the administration of this Order, delegate to any person all or any of the powers, functions and duties vested in him by this Order, except the power of delegation conferred by this subsection.

(3) The Registrar shall be responsible generally for the carrying out of the provisions of this Order and for the collection of the fees thereunder.

(4) The Authority may give to the Registrar such directions, not inconsistent with the provisions of this Order, as to the exercise of his powers, functions or duties under this Order, and the Registrar shall give effect to any such directions.

Separate legal personality.

5. (1) A limited liability partnership is a body corporate which is formed by being registered under this Order and which has legal personality separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

Capacity and execution of documents.

6. (1) A limited liability partnership shall, in its name, be capable of —

(a) suing and being sued;

(b) acquiring, owning, holding and developing or disposing of property;

(c) having a common seal; and

(d) doing such other acts and things as bodies corporate may lawfully do.

(2) Sections 31A, 32, 34, 35, and 36 and 93{1}/*(b)* of the Companies Act (Chapter 39) shall apply to a limited liability partnership as they apply to a corporation under that Act.

Non-applicability of partnership law.

7. Except as otherwise provided by this Order, the law relating to partnerships shall not apply to a limited liability partnership.

Partners.

8. (1) Any individual or body corporate may be a partner in a limited liability partnership.

(2) For the avoidance of doubt, the reference in subsection (1) to body corporate shall not include a trade union.

Limited liability of partners.

9. (1) An obligation of the limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the limited liability partnership.

(2) A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for an obligation referred to in subsection (1) solely by reason of being a partner of the limited liability partnership.

(3) Subsections (1) and (2) do not affect the personal liability of a partner in tort for his own wrongful act, but a partner shall not be personally liable for the wrongful act of any other partner.

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

(5) The liabilities of the limited liability partnership shall be met out of the property of the limited liability partnership.

Power of partner to bind limited liability partnership.

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

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

(a) the partner has no authority to act for the limited liability partnership by doing that thing; and

(b) the person knows that he has no authority or does not know or believe him to be a partner of the limited liability partnership.

(3) Where a person has ceased to be a partner of a limited liability partnership, he is to be regarded (in relation to any person dealing with the limited liability partnership) as still being a partner —

(a) that person has notice that the former partner has ceased to be a partner; or

(b) notice that the former partner has ceased to be a partner has been given to the Registrar.

Relationship of partners etc.

11. (1) Except as otherwise provided by this Order, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed —

(a) by the limited liability partnership agreement; or

(b) in the absence of agreement as to any matter, by any provision relating to that matter set out in the First Schedule.

(2) Any reference to a resolution of partners for a particular matter is a reference to a resolution passed by all or such number of partners as may be required by the limited liability partnership agreement for that matter.

Cessation of partnership interest.

12. (1) A partner of a limited liability partnership may cease to be a partner in accordance with the limited liability partnership agreement or, in the absence of such an agreement, by that partner giving 30 days notice to the other partners of his intention to resign as a partner.

(2) Without affecting the generality of subsection (1), a partner of a limited liability partnership shall cease to be a partner upon the death or dissolution of that partner.

(3) Where a partner of a limited liability partnership ceases to be a partner, unless it is otherwise provided in the limited liability partnership agreement, the former partner, his personal representative or its liquidator (as the case may be) shall be entitled to receive from the partnership an amount —

(a) equal to the former partner's capital contribution to the limited liability partnership and his right to share in the accumulated profits of the partnership after the deduction of losses of the partnership; and

(b) determined as at the date he ceased to be a partner.

{4} For the avoidance of doubt, it is hereby declared that a former partner, his personal representative or its liquidator (as the case may be) shall not interfere in the management of the limited liability partnership.

Bankruptcy of partner.

13. Unless otherwise provided in the limited liability partnership agreement, if a partner of a limited liability partnership is adjudged a bankrupt in Brunei Darussalam or elsewhere —

(a) his bankruptcy shall not by itself cause him to cease being a partner of the limited liability partnership, but the restriction on him being a manager of the limited liability partnership under section 34 applies; and

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

Assignment of partner's interest in distributions.

14. (1) Unless otherwise provided in the limited liability partnership agreement, a partner may assign the whole or any part of his interest in the limited liability partnership, but only to the extent that the assignee becomes entitled to receive the distributions from the partnership that the partner would otherwise have been entitled to receive.

(2) An assignment under subsection (1) shall not by itself —

(a) cause the partner to cease being a partner of the limited liability partnership; and

(b) entitle the assignee to interfere in the management of the limited liability partnership.

Registration of limited liability partnership.

15. Subject to this Order, any 2 or more persons associated for carrying on a lawful business with a view to profit may, by complying with the requirements as to registration, register a limited liability partnership under this Order.

Manner and particulars of registration.

16. (1) A limited liability partnership may be registered under this Order if a statement by every person who is to be a partner is lodged with the Registrar in such medium and form as the Registrar may determine, containing the following particulars —

(a) the name of the proposed partnership;

(b) the general nature of the proposed business of the partnership;

(c) the proposed registered office of the partnership;

(d) the name, identification (if any), nationality and usual place of residence of every person who is to be a partner of the partnership and, where any of those persons is a body corporate, the corporate name, place of incorporation or registration, registration number and registered office of the body corporate to which all notices and communications may be addressed;

(e) the name, identification (if any), nationality and usual place of residence of every person who is to be a manager of the partnership and, where any of those persons is a body corporate, the corporate name, place of incorporation or registration, registration number and registered office of the body corporate to which all notices and communications may be addressed; and

(f) such other information concerning the proposed partnership as may be prescribed by the Minister.

(2) The Registrar may, in any particular case, require the statement referred to in subsection (1) to be verified in such manner as he may determine.

(3) The High Court may, on the application of any person alleged or claiming to be a partner, direct the rectification of the register and decide any question arising under this section.

(4) In this section, "identification" means, in the case of any individual issued with an identity card, the number of the identity card and, in the case of an individual not issued with an identity card, particulars of his passport or such other similar evidence of identification as may be available.

Registration.

17. (1) On receiving the statement referred to in section 16(1), the Registrar shall, subject to this Order, register the statement and issue a notice of registration in such form as he may determine.

(2) From the date of registration specified in the notice of registration issued under subsection (1), there shall be a limited liability partnership, by the name specified in the notice, registered under this Order with all the attributes described in sections 5 to 14.

(3) The notice of registration is conclusive evidence that the requirements of section 15 have been complied with and that the limited liability partnership is registered by the name specified in the notice.

(4) The Registrar may, upon receipt of an application in the prescribed form and on payment of the prescribed fee, issue to a limited liability partnership a certificate of confirmation of registration in such form as he may determine.

(5) Nothing in this section shall be construed as requiring the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under this Order.

(6) Any person aggrieved by the refusal of the Registrar to register a limited liability partnership of which he is to be a partner may, within 30 days of the date of the refusal, appeal to the Minister whose decision shall be final.

(7) The registration of any limited liability partnership does not imply that the requirements of any law in relation to any business carried on by that partnership have been complied with.

Power to refuse registration.

18. (1) Notwithstanding any provision in this Order or any other written law, the Registrar shall refuse to register a limited liability partnership under this Order where he is satisfied that —

(a) the proposed business is likely to be used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam; or

(b) it would be contrary to the national security or interest for the partnership to be registered.

(2) Any person aggrieved by the decision of the Registrar under subsection (1) may, within 30 days of the date of the decision, appeal to the Minister whose decision shall be final.

(3) For the purposes of this section, a certificate issued by the Minister charged with the responsibility for internal security stating that he is satisfied that it would be contrary to the national security or interest for the partnership to be registered under this Order shall be conclusive evidence of the matters so stated.

Names of limited liability partnerships.

19. (1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as part of its name.

(2) No limited liability partnership registered under this Order shall carry on business under a name that is not registered under sections 16 or 29.

(3) The registration of a name under which a limited liability partnership carries on business shall not be construed as authorising the use of that name if, apart from such registration, the use of that name could be prohibited.

(4) Any limited liability partnership which contravenes this section is guilty of an offence and liable on conviction to a fine not exceeding \$5,000.

Restrictions on registration of business names.

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

(a) undesirable;

(b) identical to that of any other limited liability partnership, corporation or business name;

(c) identical to a name that is being reserved under this section or section 20 of the Companies Act (Chapter 39); or

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

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

(a) the name of a proposed limited liability partnership; or

(b) the name to which a limited liability partnership proposes to change its name.

(3) Upon receipt of an application under subsection (2) and on payment of the prescribed fee, the Registrar may, if he is satisfied that the name to be reserved is not one which may be rejected on any ground referred to in subsections (1)(a),(b),(c) or (d), reserve that name for a period of 2 months from the date the making of the application or such longer period as the Registrar may allow.

(4) Notwithstanding anything in this section, where the Registrar is satisfied that a limited liability partnership has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which –

(a) is a name referred to in subsection (1); or

(b) so nearly resembles the name of any other limited liability partnership, corporation or business name as to be likely to be mistaken for it, the Registrar may direct the partnership to change its name, and the partnership shall comply with the direction within 6 weeks after the date of the direction or such longer period as the Registrar may allow, unless the direction is annulled by the Minister.

(5) Any person may apply in writing to the Registrar to give a direction to any limited liability partnership on a ground referred to in subsections (4)(a) or (b), to change its name.

(6) The Registrar shall not consider any application under subsection (5) to give a direction to a limited liability partnership on the ground referred to in subsection (4)(b) unless the Registrar receives the application within one year from the date of registration of the partnership under that name.

(7) Any limited liability partnership which fails to comply with a direction given under subsection (4) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(8) The Registrar may, if he is satisfied that a limited liability partnership which has been directed under subsection (4) to change its name had applied for registration under that name in bad faith, require that partnership to pay the Registrar such fees as may be prescribed, and such fees shall be recoverable as a debt due to the Government.

(9) Any limited liability partnership aggrieved by a direction of the Registrar under subsection (4) or a requirement of the Registrar under subsection (8) may, within 30 days of the date of that direction or requirement, appeal to the Minister whose decision shall be final.

(10) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by publication in the *Gazette*, make such rules as he considers appropriate for the purposes of determining the matters referred to in subsections (1) to (4).

(11) In this section, "business name" has the same meaning as in section 2 of the Business Names Act (Chapter 92).

Conversion from firm to limited liability partnership.

21. (1) A firm may convert to a limited liability partnership by complying with the requirements set out in the Second Schedule.

(2) Upon such conversion, the partners of the firm, the limited liability partnership to which the firm has converted and the partners of that limited liability partnership shall be bound by the provisions of the Second Schedule.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette* amend the Second Schedule.

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

Conversion from private company to limited liability partnership.

22. (1) A private company may convert to a limited liability partnership by complying with the requirements set out in the Third Schedule.

(2) Upon such conversion, the private company, its shareholders, the limited liability partnership to which the private company has converted and the partners of that limited liability partnership shall be bound by the provisions of the Third Schedule.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette* amend the Third Schedule.

(4) In this section, "convert", in relation to a private company converting to a limited liability partnership, means a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the limited liability partnership in accordance with the Third Schedule.

Minimum of 2 partners.

23. (1) Every limited liability partnership shall have at least 2 partners.

(2) If a limited liability partnership carries on business with fewer than 2 partners for a period of more than 2 years, a person shall (notwithstanding sections 9(1) and (2)) be personally liable, jointly and severally with the limited liability partnership, for any obligation of the partnership incurred during the period that it so carried on business after those 2 years if, at the time the obligation was incurred, he —

(a) was a partner of the partnership; and

(b) knew that the partnership was carrying on business with fewer than 2 partners for a period of more than 2 years.

Managers.

24. (1) Every limited liability partnership shall ensure that it has at least one manager who is an individual not less than 18 years of age and who is ordinarily resident in Brunei Darussalam.

(2) Every limited liability partnership shall ensure that the particulars of every person who acts as a manager of the partnership and his consent to act as such are lodged with the Registrar in such medium and form as the Registrar may determine.

(3) A manager shall be —

(a) answerable for the doing of all acts, matters and things, as are required to be done by the limited liability partnership under sections 25, 28 and 29; and

(b) personally liable to all penalties imposed on the partnership for any contravention of those sections, unless he satisfies the court that he should not be so liable.

(4) If a limited liability partnership contravenes subsection (1), the partnership and every partner is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

(5) Any limited liability partnership which contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$50 for every day or part thereof during which the offence continues after conviction.

Annual declaration of solvency or insolvency.

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

(a) appears at the date of the declaration to be able to pay its debts as they become due in the normal course of business; or

(b) does not appear at the date of the declaration to be able to pay its debts as they become due in the normal course of business.

(2) The declaration shall be lodged not later than 15 months after the registration of the limited liability partnership and subsequently once in every calendar year at intervals of not more than 15 months.

(3) Notwithstanding subsection (2), the Registrar may, on application by a limited liability partnership grant an extension of time for the lodging of the declaration.

(4) If a limited liability partnership fails to lodge a declaration within the time or extended time referred to in subsections (2) and (3) —

(a) the partnership is guilty of an offence and liable on conviction to a fine not exceeding \$5,000; and

(b) paragraph 3(2)(d) of the Fourth Schedule shall apply.

(5) A manager who makes a declaration referred to in subsection (1)(a) without having reasonable grounds for his opinion is guilty of an offence and liable on conviction —

(a) where the manager is an individual, to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both;

(b) in any other case, to a fine not exceeding \$5,000.

(6) Any person who, in connection with a declaration made under this section, makes a statement or furnishes information (whether directly or indirectly) to a manager that is false or misleading in a material particular, when he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular, is guilty of an offence and liable on conviction —

(a) where that person is an individual, to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both;

(b) in any other case, to a fine not exceeding \$10,000.

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

(a) where he is an individual, to a fine not exceeding \$15,000, imprisonment for a term not exceeding 3 years or both;

(b) in any other case, to a fine not exceeding \$15,000.

Accounts.

26. (1) Every limited liability partnership shall keep such accounting and other records as will sufficiently explain the transactions and financial position of the partnership and enable profit and loss accounts and balance sheets to be prepared from time to time which give a true and fair view of the state of affairs of the partnership.

(2) The limited liability partnership shall retain the records referred to in subsection (1) for a period of not less than 5 years from the end of the financial year in which the transactions to which those records relate are completed.

(3) The records shall be kept at such place as the partners determine and shall at all times be open to inspection by the partners.

(4) The Registrar may, by notice in writing to the limited liability partnership or any of its partners, require the partnership or that partner to produce the records referred to in subsection (1) for his inspection within such time and at such place as may be specified in that notice.

(5) If a limited liability partnership contravenes subsections (1), (2) or (3), the limited liability partnership and every partner is guilty of an offence and liable on conviction —

(a) where the offender is an individual, to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both;

(b) in any other case, to a fine not exceeding \$10,000.

(6) Any person who fails to comply with a requirement under subsection (4) is guilty of an offence and liable on conviction —

(a) where the offender is an individual, to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both;

(b) in any other case, to a fine not exceeding \$10,000.

Registered office.

27. (1) Every limited liability partnership shall have a registered office within Brunei Darussalam to which all communications and notices may be addressed.

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

(3) A limited liability partnership may change the address of its registered office by lodging with the Registrar notice of such change in such medium and form as the Registrar may determine, and any such change shall take effect only upon such lodgment.

Publication of name and limited liability.

28. (1) Every limited liability partnership shall ensure that its invoices and official correspondence bear the following —

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

(2) Any limited liability partnership which contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Registration of changes in particulars.

29. (1) Whenever a change is made or occurs in any of the particulars registered in respect of any limited liability partnership, that partnership shall, within 14 days after the change or within such further period as the Registrar may on application allow, lodge with the Registrar a statement specifying the nature and date of the change and containing such other information as may be prescribed.

(2) Any person who ceases to be a partner or manager of a limited liability partnership may himself lodge with the Registrar the statement referred to in subsection (1) if he has reasonable cause to believe that the partnership will not lodge the statement with the Registrar.

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

(4) Any statement shall be in such medium and form as the Registrar may determine.

(5) Any limited liability partnership which contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Receivership.

30. The Fifth Schedule shall apply to the appointment of a receiver or receiver and manager of the property of a limited liability partnership, and to the receivership of a limited liability partnership.

Winding-up.

31. (1) The winding-up of a limited liability partnership may be either voluntary or by the High Court and, unless inconsistent with the context, the Fourth Schedule shall apply to the winding-up of a limited liability partnership in either of these modes.

(2) The Fourth Schedule relating to the remedies against the property of a limited liability partnership and the priority of debts shall be binding on the Government.

Amendment of Fourth and Fifth Schedules.

32. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, amend the Fourth and Fifth Schedules.

Debt owed to partner.

33. (1) Any sum due to a partner of a limited liability partnership in his capacity as a partner shall not be a debt of the limited liability partnership payable to that partner in a case of competition between himself and any other creditor who is not a partner, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the partners among themselves.

(2) Subsection (1) shall not apply to any sum due to a partner as repayment of a loan made in good faith by him to the limited liability partnership.

Restriction on undischarged bankrupt being manager of limited liability partnership.

34. (1) Any person who, being an undischarged bankrupt whether he was adjudged bankrupt by a court in Brunei Darussalam or elsewhere, acts as manager of any limited liability partnership without the leave of the High Court or the written permission of the Official Receiver, is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(2) On an application by an undischarged bankrupt under subsection (1) to the High Court or the Official Receiver, the High Court or the Official Receiver, as the case may be, may refuse the application or approve the application subject to such conditions as the High Court or the Official Receiver may impose.

(3) The leave of the High Court for the purposes of this section shall not be given unless notice of intention to apply for leave had been served on the Official Receiver, and the Official Receiver is heard on the application.

Disqualification of unfit manager of insolvent limited liability partnerships.

35. (1) The High Court may —

(a) on the application of the Minister or the Official Receiver as provided for in subsection (11); and

(b) on being satisfied as to the matters referred to in subsection (2),

make an order (in this section referred to as a disqualification order) disqualifying the person named therein from being a manager of a limited liability partnership for the period specified in the order not exceeding 5 years from the date of the making of the order.

(2) The High Court shall make a disqualification order under subsection (1) if it is satisfied that —

(a) the person against whom the order is sought has been given not less than 14 days notice of the application for the order;

(b) that person is or was a manager of a limited liability partnership which has gone into liquidation (whether while he was a manager or within 3 years of his ceasing to be a manager) and was insolvent at the date of its liquidation; and

(c) his conduct as a manager taken alone or taken together with his conduct as a manager of any other limited liability partnership or as a director of any other corporation makes him unfit to be a manager of a limited liability partnership.

(3) If in the case of a person who is or was a manager of a limited liability partnership which is —

(a) being wound-up by the High Court, it appears to the Official Receiver or to the liquidator, if he is not the Official Receiver;

(b) being wound-up otherwise than by the High Court, it appears to the liquidator,

that the conditions mentioned in subsections (2)(b) and (c) are satisfied as respects that person, the Official Receiver or the liquidator, as the case may be, shall immediately report the matter to the Minister.

(4) The Minister may require the Official Receiver or the liquidator or the former liquidator of a limited liability partnership to —

(a) furnish him with such information with respect to any person's conduct as a manager of the limited liability partnership; and

(b) produce and permit inspection of such books, papers and other records relevant to that person's conduct as such a manager,

as the Minister may reasonably require for the purpose of exercising or determining whether to exercise any of his functions under this section.

(5) If any person fails to comply with any requirement under subsection (4), the High Court may, on the application of the Minister, make an order requiring that person to make good the default within such time as is specified in the order.

(6) In this section —

(a) the date of liquidation of a limited liability partnership shall be —

(i) if the limited liability partnership is wound-up by the High Court, the date of the filing of the winding-up application;

(ii) where a provisional liquidator was appointed under paragraph 37 of the Fourth Schedule, the date the declaration made under that paragraph was lodged with the Registrar;

(iii) in any other case, the date of the passing of the resolution for winding-up;

(b) a limited liability partnership shall be taken to be insolvent if it was unable to pay its debts, within the meaning of that expression in paragraph 3(2) of the Fourth Schedule;

(c) references to a person's conduct as a manager of a limited liability partnership or a director of a corporation include, where any of those entities have become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency of that entity.

(7) In deciding whether a person's conduct as a manager of any particular limited liability partnership makes him unfit to be a manager of a limited liability partnership as is mentioned in subsection (2)(c), the High Court shall, in relation to his conduct as a manager of that limited liability partnership, have regard —

(a) generally to the matters referred to in subsection (8); and

(b) in particular, to the matters referred to in subsection (9),

notwithstanding that the manager has not been convicted or may not be criminally liable in respect of any of these matters.

(8) The matters referred to in subsection (7)(a) to which the High Court shall have regard generally are —

(a) whether there has been any misfeasance or breach of any fiduciary or other duty by the manager in relation to the limited liability partnership;

(b) whether there has been any misapplication or retention by the manager of, or any conduct by the manager giving rise to an obligation to account for, any money or other property of the partnership; and

(c) the extent of the manager's responsibility for any failure by the partnership to comply with this Order.

(9) The matters referred to in subsection (7)(b) to which the High Court shall have regard in particular are —

(a) the extent of the manager's responsibility for the causes of the limited liability partnership becoming insolvent;

(b) the extent of the manager's responsibility for any failure by the partnership to supply any goods or services which have been paid for, in whole or in part;

(c) the extent of the manager's responsibility for the partnership entering into any transaction liable to be made void under paragraph 8(1) of the Fourth Schedule; and

(d) whether the causes of the partnership becoming insolvent are attributable to its carrying on business in a particular area where the risk of insolvency is generally recognised to be higher.

(10) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan and by order published in the *Gazette*, amend the matters referred to in subsections (8) and (9) and that order may contain such transitional provisions as may appear to the Minister to be necessary or expedient.

(11) In the case of a person who is or was a manager of a limited liability partnership which has gone into liquidation and is being wound-up by the High Court, an application under this section shall be made by the Official Receiver, but in any other case the application shall be made by the Minister.

(12) On the hearing of an application under this section —

(a) the Minister or the Official Receiver, as the case may be, shall appear and call the attention of the High Court to any matter which appears to him to be relevant (and for this purpose the Minister may be represented by counsel) and may give evidence and call witnesses; and

(b) the person against whom an order is sought may appear and himself give evidence and call witnesses.

(13) A person who acts as receiver or as receiver and manager shall not be liable to have a disqualification order made against him in respect of acts done in his capacity as receiver or as receiver and manager, as the case may be.

(14) Nothing in this section shall prevent a person who is disqualified pursuant to an order made under subsection (1) from applying for leave of the High Court to be a manager of a limited liability partnership.

(15) On the hearing of an application made under subsection (14), the Minister or the Official Receiver shall appear (and for this purpose the Minister may be represented by counsel) and call the attention of the High Court to any matter which appears to him to be relevant to the application and may give evidence or call witnesses.

(16) Any person who contravenes a disqualification order made under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Disqualification of manager of limited liability partnerships wound-up on grounds of national security or interest.

36. (1) Subject to subsections (2) and (3), where a limited liability partnership is ordered to be wound-up by the High Court under paragraph 3(1)(f) of the Fourth Schedule, the High Court may, on the application of the Minister, make an order (referred to in this section as a disqualification order) disqualifying any person who is a manager of that partnership from being a manager of any limited liability partnership for a period of 3 years from the date of the making of the winding-up order.

(2) The High Court shall not make a disqualification order against any person under subsection (1) unless the High Court is satisfied that the person against whom it is sought has been given not less than 14 days notice of the application for the order.

(3) The High Court shall not make a disqualification order against any person under subsection (1) if such person proves to the satisfaction of the High Court that —

(a) the limited liability partnership was used for purposes against national security or interest without his consent or connivance; and

(b) he had exercised such diligence to prevent the partnership from being so used as he ought to have exercised having regard to the nature of his function in that capacity and to all the circumstances.

[4] Any person who contravenes a disqualification order made under subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Disqualification to act as manager on conviction for certain offences.

37. (1) Where a person has been convicted (whether in Brunei Darussalam or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for a term of 3 months or more, he shall be subject to the disqualification provided in subsection (3).

(2) Where a person is convicted in Brunei Darussalam of —

(a) any offence in connection with the formation or management of a limited liability partnership; or

(b) any offence under paragraph 94 of the Fourth Schedule,

the court may make a disqualification order in addition to any other sentence imposed.

(3) A person who is disqualified under subsection (1) or who has had a disqualification order made against him under subsection (2) shall not act as a manager of a limited liability partnership.

(4) Where a disqualified person —

(a) has not been sentenced to imprisonment, the disqualification provided in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years or for such shorter period as the court may order under subsection (2);

(b) has been sentenced to imprisonment, the disqualification provided in subsection (3) shall take effect upon conviction and shall continue for a period of 5 years after his release from prison.

(5) An application for leave to act as a manager of a limited liability partnership may be made by a person against whom a disqualification order has been made upon that person giving the Minister not less than 14 days notice of his intention to apply for such leave.

(6) On the hearing of any application under this section, the Minister may be represented by counsel and may oppose the granting of the application.

(7) A person who contravenes a disqualification order under this section is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(8) Without prejudice to section 54, the Court of a Magistrate may make a disqualification order under this section.

Disqualification under Chapter 39.

38. (1) A person who is subject to a disqualification or a disqualification order under sections 141A, 141B and 141C of the Companies Act (Chapter 39) shall not act as manager of a limited liability partnership during the period the disqualification or whilst a disqualification order is in force.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Power of Registrar to strike defunct limited liability partnership off register.

39. (1) Where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business, he may send to the partnership by post a letter to that effect and stating that, if an answer showing cause to the contrary is not received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the name of the partnership off the register.

(2) Unless the Registrar receives an answer within one month from the date of the letter to the effect that the limited liability partnership is carrying on business, he may publish in the *Gazette* and send to the limited liability partnership by registered post a notice that at the expiration of 3 months from the date of that notice the name of that partnership will, unless cause is shown to the contrary, be struck off the register and the partnership will be dissolved.

(3) If in any case where a limited liability partnership is being wound-up, the Registrar has reasonable cause to believe that —

(a) no liquidator is acting;

(b) the affairs of the partnership have been fully wound-up and, for a period of 6 months, the liquidator has been in default in lodging any return required to be made by him; or

(c) the affairs of the partnership have been fully wound-up under Part II of the Fourth Schedule and there are no assets or the assets available are not sufficient to pay the costs of obtaining an order of the High Court dissolving the limited liability partnership,

the Registrar may publish in the *Gazette* and send to the partnership or the liquidator, if any, a notice to the same effect as that referred to in subsection (2).

(4) At the expiration of the time mentioned in the notice, the Registrar may, unless cause has been shown to the contrary, strike the name of the limited liability partnership off the register and shall publish notice thereof in the *Gazette*.

(5) On the publication in the *Gazette* of the notice referred to in subsection (4), the limited liability partnership shall be dissolved, but —

(a) the liability, if any, of every officer and partner of the partnership shall continue and may be enforced as if the partnership had not been dissolved; and

(b) nothing in this subsection shall affect the power of the High Court to wind up a limited liability partnership the name of which has been struck off the register.

(6) If any person feels aggrieved by a limited liability partnership having been struck off the register, the High Court, on an application made by him at any time within 15 years after the partnership has been so struck off, may order the name of the partnership to be restored to the register if the High Court is satisfied that —

(a) the partnership was, at the time of the striking off, carrying on business; or

(b) it is just that the name of the partnership be restored to the register.

(7) Upon a copy of the order referred to in subsection (6) being lodged with the Registrar, the limited liability partnership shall be deemed to have continued in existence as if it had not been struck off, and the High Court may by the order give such directions and make such provisions as seem just for placing the limited liability partnership and all other persons in the same position as nearly as may be as if the partnership had not been struck off.

(8) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a limited liability partnership may be addressed to the partnership at its registered office or, if no such office has been registered, to the care of any officer of the partnership.

(9) The Fourth Schedule relating to —

(a) the dissolution of a limited liability partnership shall apply to a limited liability partnership struck off the register under this section; and

(b) the remedies against the property of a limited liability partnership and the priority of debts shall be binding on the Government.

False representation as to registration as limited liability partnership.

40. If any person knowingly holds out that a business is registered as a limited liability partnership under this Order, that person is, where he knows or ought to have known that at the material time the business was not registered as a limited liability partnership under this Order, is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Rectification of register.

41. (1) Where it appears to the High Court, as a result of evidence adduced before it by an applicant limited liability partnership, that any particular recorded in the register is incorrect, the High Court may, by order, direct the Registrar to rectify that register on such conditions as are specified in the order and the Registrar shall, upon receipt of the order, rectify the register accordingly.

(2) An order made under subsection (1) may require that a fresh document, showing the rectification, shall be filed by the applicant limited liability partnership with the Registrar, together with a copy of the order and a copy of the application.

(3) Notwithstanding subsections (1) and (2), an officer of a limited liability partnership may notify the Registrar in the prescribed form of any typographical or clerical error contained in any document relating to the partnership lodged with the Registrar.

(4) The Registrar may, upon receipt of any notification under subsection (3), rectify the register accordingly.

Information service, exclusion of liability of errors or omissions.

42. Where the Registrar furnishes, in any form, any information relating to a limited liability partnership registered under this Order to any person, the Authority, the Registrar and any person authorised by him who is involved in the furnishing of such information shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however caused, if the error or omission —

(a) is made in good faith and in the ordinary course of the discharge of his duties; or

(b) has occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

Electronic filing.

43. (1) The Registrar may require any document to be lodged under this Order to be filed electronically with him using the service provided by him whereby documents under this Order may be filed with or submitted to him electronically.

(2) Where any document is required to be filed with or submitted to the Registrar electronically by any person using the service referred to in subsection (1), the Registrar may allow the document to be filed or submitted by a prescribed person on behalf of that first-mentioned person, subject to such conditions as may be imposed by the Registrar on that prescribed person.

(3) Where the Registrar provides a service whereby documents required under this Order may be filed electronically with him, the Authority and any person authorised by him shall not be liable for any loss or damage suffered by any person by reason of any error or omission of whatever nature or however caused appearing in any document obtained by any person under the service, if the error or omission —

(a) is made in good faith and in the ordinary course of the discharge of his duties; or

(b) has occurred or arisen as a result of any defect or breakdown in the service or in any of the equipment used for the service.

(4) A copy of or an extract from any document electronically filed with or submitted to the Registrar using the service referred to in subsection (1) which is supplied or issued by the Registrar and certified under his hand and seal to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.

(5) Any information supplied by the Registrar that is certified by him under his hand and seal to be a true extract from any document filed or lodged with or submitted to him using the service referred to in subsection (1) shall, in any proceedings, be admissible.

Inspection.

44. (1) The Minister may authorise in writing or any public officer to be an inspector for the purposes of this Order.

(2) The Registrar and any inspector shall, for the purposes of ascertaining whether the Order is being complied with, have power at all reasonable times to enter into any premises at which he has reason to believe any person is carrying on business and to make such examination and inquiry as may be necessary for those purposes.

(3) The Registrar and every inspector when exercising any power under this Order shall declare his office and shall produce his authority in writing to any person affected by the exercise of that power.

(4) Any person who fails to comply with any inquiry request made by the Registrar or an inspector or resists or obstructs the Registrar or an inspector in the performance of his duties under this Order is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(5) It shall not be an offence for any person to refuse to comply with any inquiry made by the Registrar or an inspector, or to resist or obstruct the Registrar or an inspector in the performance of any of his duties under this Order, if the Registrar or inspector fails to declare his office and to produce his authority in writing.

Power of Registrar to obtain further information.

45. (1) In order to obtain such information as he may consider necessary for the purposes of carrying out the provisions of this Order, the Registrar may —

(a) require any former or present partner or manager of a limited liability partnership to answer any question in writing which he may consider necessary to ask for the purposes specified in this subsection; and

(b) summon that person to appear before him or any inspector whom the Registrar may designate or before any police officer, to ensure such question orally.

(2) The Registrar may further require the person referred to in subsection (1) to make such further declaration or supply such further particulars as the Registrar may require.

(3) Any person who, without lawful excuse, fails to comply with any requirement or summons of the Registrar under this section is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

Penalty for providing false information.

46. Any person who makes any statement or furnishes any information under the provisions of this Order which is false in any material particular or by reason of the omission of any material particular and which he either knows or has reason to believe is false, is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

Composition of offences.

47. (1) The Registrar may compound any offence under this Order which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed that offence a sum not exceeding one-half of the amount of the maximum fine prescribed for the offence, or a sum not exceeding \$5,000, whichever is lower.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to prescribe the offences which may be compounded.

Officers and inspectors deemed to be public servants.

48. All officers and inspectors appointed under this Order shall be deemed to be public servants for the purposes of the Penal Code (Chapter 22).

Destruction of old records.

49. The Registrar may destroy or give to the Brunei National Archives any document lodged, filed or registered with the Registrar and which has been microfilmed or converted to electronic form if, in his opinion, it is no longer necessary or desirable for him to retain the document.

Enforcement of duty to make returns.

50. (1) If any person is in default in complying with —

(a) any provision of this Order or of any other written law which requires the lodging or filing in any manner with the Registrar of any return, account or other document or the giving of notice to him of any matter; or

(b) any request of the Registrar to amend and resubmit any document or to submit a fresh document,

and fails to make good the default within 14 days after the service on him of a notice requiring it to be done, the Court of a Magistrate may, on application by the Registrar, make an order directing that person or (if that person is a corporation) any officer of the corporation to make good the default within such time as is specified in the order.

(2) Any such order may provide that (if that person is a corporation) all the costs of and incidental to the application shall be borne by that person or by any officer of the corporation who is responsible for the default.

(3) Nothing in this section shall limit the operation of any other provision of this Order or any other written law imposing penalties in respect of any default referred to in this section on that person or (if that person is a corporation) on any officer of the corporation who is responsible for the default.

Offences by limited liability partnerships.

51. Where an offence against this Order committed by a limited liability partnership is proved —

(a) to have been committed with the consent or connivance of a partner or manager of that limited liability partnership; or

(b) to be attributable to any neglect on the part of a partner or manager of that limited liability partnership,

that partner or manager (as the case may be) as well as that limited liability partnership, is also guilty of the offence and liable to be proceeded against and punished accordingly.

Offences by other bodies corporate, partnerships etc.

52. (1) Where an offence against this Order committed by a body corporate (other than a limited liability partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of that body corporate; or

(b) to be attributable to any neglect on the part of an officer of that body corporate,

he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence against this Order committed by a partnership (other than a limited liability partnership) is proved —

(a) to have been committed with the consent or connivance of a partner; or

(b) to be attributable to any neglect on the part of a partner,

he, as well as the partnership, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where an offence against this Order committed by an unincorporated association (other than a partnership) is proved —

(a) to have been committed with the consent or connivance of an officer of the unincorporated association or a member of its governing body; or

(b) to be attributable to any neglect on the part of the officer or member,

he, as well as the unincorporated association, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this section —

"officer" —

(a) in relation to a body corporate, means any director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate, and includes any person purporting to act in any such capacity;

(b) in relation to an unincorporated association (other than a partnership), means the president, secretary or any member of the committee, or any person holding a position analogous to that of president, secretary or member of a committee, and includes any person purporting to act in any such capacity;

"partner" includes a person purporting to act as a partner.

(6) Regulations may provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a country or territory outside Brunei Darussalam.

Authority and others not liable to suit.

53. (1) The Registrar, any public officer or any officer authorised by the Authority shall not be under any liability in respect of any error or inaccuracy in a register or in respect of any error or inaccuracy (whether in the copying or otherwise) in any certificate, certified extract, copy or other document made or issued under this Order and no court shall entertain any suit or other proceedings or damages in respect of any such matter.

(2) Notwithstanding any written law, the Authority shall not be under any liability or be liable to be sued in respect of any of the matters referred to in subsection (1).

Jurisdiction of Court of Magistrate.

54. Notwithstanding the Criminal Procedure Code (Chapter 7), the Court of a Magistrate shall have the jurisdiction to try any offence under this Order, and shall have the power to impose the full penalty or punishment in respect of the offence.

Evidence.

55. (1) Subject to subsection (3), a document or certificate issued by the Registrar in connection with the administration or enforcement of this Order or with an investigation carried out under this Order shall be admissible as evidence in any proceedings under this Order and shall be *prima facie* evidence of the facts stated therein.

(2) In this section, a document purporting to be a certificate referred to in subsection (1) on its production by the prosecution shall, until the contrary is proved, be deemed to be such a certificate.

(3) A certificate referred to in subsection (1) shall not be received in evidence under that subsection unless the person charged has been given —

(a) a copy of the certificate; and

(b) notice of the intention of the prosecution to produce the certificate as evidence in the proceedings,

not less than 10 clear days before the commencement of the proceedings.

(4) Where a certificate of the Registrar is admitted in evidence under subsection (1), the person charged may require the Registrar to be called as a witness for the prosecution and to be cross-examined as if he had given evidence of the matters stated in the certificate.

Penalty for offences not otherwise provided for.

56. Any person who is guilty of an offence against this Order for which no penalty is expressly provided is liable on conviction to a fine not exceeding \$10,000.

Regulations.

57. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to or carrying out the purposes and provisions of this Order and for the due administration thereof.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters —

(a) the registration and regulation of foreign limited liability partnerships;

(b) the powers and duties of the Registrar;

(c) the forms for the purposes of this Order, including the form of registers to be kept and the places at which the registers are to be kept;

(d) the translation of documents and records required for the purposes of this Order, and the authentication and lodgment of any such translation;

(e) all matters connected with or arising from the restrictions as to the business name which may be used by a limited liability partnership registered under this Order;

(f) the fees to be charged in respect of anything done under or by virtue of this Order, and the method of payment of such fees;

(g) the persons or classes of persons who are to be exempted from the payment of any fee or part thereof;

(h) the penalties for the late lodgment of documents;

(i) prescribing all matters and things which are required or which may be prescribed otherwise than by rules, under or for the purposes of this Order.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, in making any regulations provide that any contravention of, or failure or neglect to comply with, any provision of the regulations or any directive issued by the Registrar pursuant to those regulations shall be an offence punishable with a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both and, in the case of a continuing offence, with a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(4) In this section, "foreign limited liability partnership" means a partnership formed, registered or incorporated outside Brunei Darussalam in which the liability of the partners is limited, and having such other features as may be prescribed by the Minister.

Rules of Court.

58. (1) The Chief Justice may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules Court —

(a) regulating the practice and procedure of the High Court under this Order;

(b) with respect to any matter or thing which is required or permitted by the Fourth Schedule to be prescribed by rules;

(c) without limiting the generality of this section, with respect to High Court fees and costs and with respect to meetings ordered by the High Court; and

(d) generally with respect to the winding-up of limited liability partnerships.

Criminal liability of partners and managers of limited liability partnerships under other written laws.

59. (1) A culpable officer provision shall apply, with the necessary modifications, to a limited liability partnership as if the reference in that provision to a director or a person purporting to act as a director were a reference to a partner, manager or a person purporting to act as a partner or manager, as the case may be, of the partnership.

(2) A culpable officer provision is a provision in any written law to the effect that where a body corporate, corporation or company is guilty of a particular offence, a director of that body corporate, corporation or company is also guilty of that offence in any one or more of the following circumstances —

(a) if the offence is proved to have been committed with his authority;

(b) if the offence is proved to have been committed with his consent or connivance;

(c) if the offence is proved to be attributable to or to have been facilitated by any neglect on his part;

(d) if the offence is proved to be attributable to any act or default on his part;

(e) if he fails to prove that the offence was committed without his consent or connivance, and that he had exercised such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Service of documents on limited liability partnerships under other written laws.

60. A provision in any written law for the service of notices, orders or documents on a body corporate, corporation or company shall apply, with the necessary modifications, to a limited liability partnership as it applies to the body corporate, corporation or company, and a reference in any such provision to the secretary or other like officer of the body corporate, corporation or company shall be construed as a reference to the manager of the limited liability partnership.

Enabling powers.

61. His Majesty the Sultan and Yang Di-Pertuan may by order make such provisions as may appear to him to be necessary or expedient —

(a) for giving effect into this Order;

(b) for the purpose of bringing any other written law into accord with this Order or with any order made hereunder.

Transitional and savings provisions.

62. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations to provide for such transitional, savings and other consequential provisions as he considers necessary or expedient.

FIRST SCHEDULE

(section 11)

DEFAULT PROVISIONS FOR LIMITED LIABILITY PARTNERSHIPS

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined, subject to the terms of any limited liability partnership agreement, by the provisions in this Schedule.

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

3. The limited liability partnership must indemnify each partner in respect of payments made and personal liabilities incurred by him —

(a) in the ordinary and proper conduct of the business of the limited liability partnership; or

(b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner may take part in the management of the limited liability partnership.

5. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.

6. No person may be introduced as a partner without the consent of all existing partners.

7. Any matter or issue relating to the limited liability partnership shall be decided by resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote.

8. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.

9. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.

10. Every partner must account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.

11. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

SECOND SCHEDULE

(section 21)

CONVERSION FROM FIRM TO LIMITED LIABILITY PARTNERSHIP

Interpretation.

1. In this Schedule, "convert" has the same meaning as in section 21(4).

Eligibility for conversion.

2. A firm may apply to convert to a limited liability partnership in accordance with this Schedule only if the partners of the limited liability partnership to which the firm is to be converted comprises all the partners of the firm and no one else.

Statements to be lodged.

3. A firm may apply to convert to a limited liability partnership by lodging with the Registrar —

(a) a statement by all of its partners in such medium and form as the Registrar may determine containing the following particulars —

- (i) the name and registration number (if applicable) of the firm; and
- (ii) the date on which the firm was registered under the Business Names Act (Chapter 92) ; and

(b) the statement referred to in section 16(1).

Registration of conversion.

4. On receiving the statements referred to in paragraph 3, the Registrar shall, subject to this Order, register the statement and issue a notice of registration in such form as he may determine stating that the limited liability partnership is, from the date specified in the notice, registered under this Order.

Registrar may refuse to register.

5. (1) Nothing in this Schedule shall be construed to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under the provisions of this Order.

(2) The Registrar may, in any particular case, require the statements referred to in paragraph 3 to be verified in such manner as he considers fit.

Effect of registration.

6. As from the date of registration specified in the notice of registration issued under paragraph 4, in this Schedule referred to as the date of registration —

(a) there shall be a limited liability partnership by the name specified in the notice of registration registered under this Order, with all the attributes described in sections 5 to 14 of this Order and subject to this Order;

(b) all property vested in the firm, all assets, interests, rights, privileges, liabilities, obligations relating to the firm and the whole of the undertaking of the firm shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the firm shall be deemed to be dissolved and if earlier registered under the Business Names Act (Chapter 92), removed from the register of business names under that Act.

Registration in relation to property.

7. If any property to which paragraph 6(b) applies is registered with any authority, the limited liability partnership shall as soon as practicable after the date of registration, take all necessary steps as required by that authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as that authority may determine.

Pending proceedings.

8. All proceedings by or against the firm which were pending on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Continuance of conviction, ruling, order or judgment.

9. Any conviction, ruling, order or judgment in favour of or against the firm may be enforced by or against the limited liability partnership.

Existing agreements.

10. Every agreement to which the firm was a party immediately before the date of registration, whether or not of such a nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if —

(a) the limited liability partnership were a party to such an agreement instead of the firm; and

(b) for any reference to the firm, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

Existing contracts etc.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the firm or to which the firm is was party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the firm.

Continuance of employment.

12. Every contract of employment to which paragraphs 10 or 11 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the firm.

Existing appointment, authority or power.

13. (1) Every appointment of the firm in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the firm which was in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

Application of paragraphs 6 to 13.

14. Paragraphs 6 to 13 shall not apply to any approval, permit or licence issued under any written law to the firm which was in force immediately before the date of registration of the limited liability partnership.

Partner liable for liabilities and obligations of firm before conversion.

15. (1) Notwithstanding paragraphs 6 to 13, every partner of a firm that has converted to a limited liability partnership shall continue to be personally liable (jointly and severally with the limited liability partnership) for the liabilities and obligations of the firm which were incurred prior to the conversion or which arose from any contract entered into prior to the conversion.

(2) If any such partner discharges any liability or obligation referred to in sub-paragraph (1), he shall be entitled (subject to any agreement with the limited liability partnership to the contrary) to be fully indemnified by the limited liability partnership in respect of such liability or obligation.

Notice of conversion in invoices and correspondence.

16. (1) The limited liability partnership shall ensure that for a period of one year commencing 14 days after the date of registration, every invoice or official correspondence of the limited liability partnership bears the following —

(a) a statement that it was, as from the date of registration, converted from a firm to a limited liability partnership; and

(b) the name and registration number (if applicable) of the firm from which it was converted.

(2) Any limited liability partnership which contravenes sub-paragraph (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

THIRD SCHEDULE

(section 22)

CONVERSION FROM PRIVATE COMPANY TO LIMITED LIABILITY PARTNERSHIP

Interpretation.

1. In this Schedule —

"company" has the same meaning as in section 2(1) of the Companies Act (Chapter 39);

"convert" has the same meaning as in section 22(4).

Eligibility for conversion.

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

(a) there is no security interest in its assets subsisting or in force at the time of application; and

(b) the partners of the limited liability partnership to which it converts comprises all the shareholders of the company and no one else.

Statements to be lodged.

3. A company may apply to convert to a limited liability partnership by lodging with the Registrar —

(a) a statement by all of its shareholders in such medium and form as the Registrar may determine containing the following particulars —

(i) the name and registration number of the company; and

(ii) the date on which the company was incorporated under the Companies Act (Chapter 39); and

(b) a statement referred to in section 16(1).

Registration of conversion.

4. On receiving the statements referred to in paragraph 3, the Registrar shall, subject to the provisions of this Order, register the statements and issue a notice of registration in such form as he may determine stating that the limited liability partnership is, as from the date specified in the notice, registered under this Order.

Registrar may refuse to register.

5. (1) Nothing in this Schedule shall be construed to require the Registrar to register any limited liability partnership if he is not satisfied with the particulars or other information furnished under this Order.

(2) The Registrar may, in any particular case, require the statements referred to in paragraph 3 to be verified in such manner as he considers fit.

Effect of registration.

6. As from the date of registration specified in the notice of registration issued under paragraph 4, in this Schedule referred to as the date of registration —

(a) there shall be a limited liability partnership by the name specified in the notice of registration registered under this Order with all the attributes described in sections 5 to 14 of this Order and subject to this Order;

(b) all property vested in the company, all assets, interests, rights, privileges, liabilities, obligations relating to the company and the whole of the undertaking of the company shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and

(c) the company shall be deemed to be dissolved and removed from the register of companies under the Companies Act (Chapter 39).

Registration in relation to property.

7. If any property to which paragraph 6(b) applies is registered with any authority, the limited liability partnership shall as soon as practicable after the date of registration, take all necessary steps as required by that authority to notify the authority of the conversion and of the particulars of the limited liability partnership in such medium and form as that authority may determine.

Pending proceedings.

8. All proceedings by or against the company which were pending on the date of registration may be continued, completed and enforced by or against the limited liability partnership.

Continuance of conviction, ruling, order or judgment.

9. Any conviction, ruling, order or judgment in favour of or against the company may be enforced by or against the limited liability partnership.

Existing agreements.

10. Every agreement to which the company was a party immediately before the date of registration, whether or not of such a nature that the rights and liabilities thereunder could be assigned, shall have effect as from that day as if —

(a) the limited liability partnership were a party to such an agreement instead of the company; and

(b) for any reference to the company, there were substituted in respect of anything to be done on or after the date of registration a reference to the limited liability partnership.

Existing contracts etc.

11. All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting immediately before the date of registration relating to the company or to which the company was a party, shall continue in force on and after that date as if they relate to the limited liability partnership and shall be enforceable by or against the limited liability partnership as if the limited liability partnership were named therein or were a party thereto instead of the company.

Continuance of employment.

12. Every contract of employment to which paragraphs 10 or 11 applies shall continue in force on or after the date of registration as if the limited liability partnership were the employer thereunder instead of the company.

Existing appointment, authority or power.

13. (1) Every appointment of the company in any role or capacity which is in force immediately before the date of registration shall take effect and operate from that date as if the limited liability partnership were appointed.

(2) Any authority or power conferred on the company which was in force immediately before the date of registration shall take effect and operate from that date as if it were conferred on the limited liability partnership.

Application of paragraphs 6 to 13.

14. Paragraphs 6 to 13 shall not apply to any approval, permit or licence issued under any written law to the company which was in force immediately before the date of registration of the limited liability partnership.

Notice of conversion in invoices and correspondence.

15. (1) The limited liability partnership shall ensure that for a period of one year commencing 14 days after the date of registration, every invoice or official correspondence of the limited liability partnership bears the following —

(a) a statement that it was, as from the date of registration, converted from a company to a limited liability partnership; and

(b) the name and registration number of the company from which it was converted.

(2) Any limited liability partnership which contravenes sub-paragraph (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

FOURTH SCHEDULE

(sections 25,
31, 32, 36 37
and 39)

WINDINGS-UP

PART I

Interpretation.

1. In this Schedule —

"appointed liquidator" means —

(a) a person appointed as a liquidator by the Court under section 177 of the Companies Act (Chapter 39); or

(b) a person who has been appointed by the Minister under section 179A of the Companies Act (Chapter 39) and whose appointment has not been revoked;

"Court" means the High Court;

"public accountant" has the same meaning as in section 2 of the Accountants Order, 2010.

PART II

WINDING-UP BY COURT

Division 1 — General

Application for winding-up by Court.

2. (1) A limited liability partnership, whether or not it is being wound-up voluntarily, may be wound-up under an order of the Court on the application —

(a) of the limited liability partnership;

(b) of any creditor, including a contingent or prospective creditor, of the limited liability partnership;

(c) of a partner, the Official Receiver or of a trustee of the estate of a bankrupt partner;

(d) of the liquidator; or

(e) of the Minister on the ground specified in paragraphs 3(1)(b), (f) or (g), or of any 2 or more of those parties.

(2) Notwithstanding anything in sub-paragraph (1) —

(a) the Court shall not hear the application if made by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and a *prima facie* case for winding-up has been established to the satisfaction of the Court; and

(b) the Court shall not, where a limited liability partnership is being wound-up voluntarily, make a winding-up order unless it is satisfied that the voluntary winding-up cannot be continued with due regard to the interests of the creditors or partners.

Circumstances in which limited liability partnership may be wound-up by Court.

3. (1) The Court may order the winding-up if —

(a) the partners have resolved that the limited liability partnership be wound-up by the Court;

(b) the limited liability partnership has carried on business with less than 2 partners for more than 2 years;

(c) the limited liability partnership is unable to pay its debts;

(d) the Court is of the opinion that it is not reasonably practicable to carry on the business of the limited liability partnership in conformity with the limited liability partnership agreement;

(e) the Court is of the opinion that it is just and equitable that the limited liability partnership be wound-up;

(f) the limited liability partnership is being used for an unlawful purpose or for purposes prejudicial to public peace, welfare or good order in Brunei Darussalam or against national security or interest; or

(g) the limited liability partnership has been convicted of an offence under section 25(4).

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

(a) a creditor by assignment or otherwise to whom the limited liability partnership is indebted in a sum exceeding \$500 has served on the limited liability partnership by leaving at the registered office a demand under his

hand or under the hand of his agent thereunto lawfully authorised requiring the limited liability partnership to pay the sum so due, and the limited liability partnership has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the limited liability partnership is returned unsatisfied in whole or in part;

(c) it is proved to the satisfaction of the Court that the limited liability partnership is unable to pay its debts; and in determining whether a limited liability partnership is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the limited liability partnership; or

(d) the limited liability partnership has failed to lodge a declaration of solvency or insolvency as required under section 25, until such time as a declaration referred to in section 25(1)(a) is lodged.

Commencement of winding-up.

4. (1) Where before the filing of the application a resolution has been passed by the partners for the voluntary winding-up of the limited liability partnership, the winding-up of the limited liability partnership shall be deemed to have commenced at the time of the passing of the resolution and, unless the Court on proof of fraud or mistake directs otherwise, all proceedings taken in the voluntary winding-up shall be deemed to have been validly taken.

(2) In any other case, the winding-up shall be deemed to have commenced at the time of the filing of the application for the winding-up.

Payment of preliminary costs etc.

5. (1) The persons, other than the limited liability partnership itself or the liquidator thereof, on whose application any winding-up order is made, shall at their own cost prosecute all proceedings in the winding-up until a liquidator has been appointed under this Schedule.

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

(3) Where the limited liability partnership has no assets or has insufficient assets and in the opinion of the Minister any fraud has been committed by any person in the formation of the limited liability partnership or by any officer of the limited liability partnership in relation to the limited liability partnership since the registration thereof, the taxed costs or so much of them as is not so

reimbursed may, with the approval in writing of the Minister, to an extent specified by the Minister but not in any case exceeding \$3,000, be reimbursed to the applicant out of moneys provided by the Government for the purpose.

(4) Where any winding-up order is made upon the application of the limited liability partnership or the liquidator thereof, the costs incurred shall, subject to any order of the Court, be paid out of assets of the limited liability partnership in like manner as if they were the costs of any other applicant.

Powers of Court on hearing winding-up application.

6. (1) On hearing a winding-up application, the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim or other order that it thinks fit, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the limited liability partnership have been mortgaged to an amount equal to or in excess of those assets or that the limited liability partnership has no assets or, in the case of a winding-up application by a partner, that there will be no assets available for distribution amongst the partners.

(2) The Court may on the winding-up application coming on for hearing or at any time on the application of the person making the winding-up application, the limited liability partnership or any person who has given notice that he intends to appear on the hearing of the winding-up application —

(a) direct that any notices be given or any steps taken before or after the hearing of the winding-up application;

(b) dispense with any notices being given or steps being taken which are required by this Order, or by the rules made thereunder or by any prior order of the Court;

(c) direct that oral evidence be taken on the winding-up application or any matter relating thereto;

(d) direct a hearing or a trial of the winding-up application or any issue or matter;

(e) allow the winding-up application to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

Power to stay or restrain proceedings against limited liability partnership.

7. At any time after the filing of a winding-up application and before a winding-up order has been made, the limited liability partnership or any creditor or partner may, where any action or proceeding against the limited liability

partnership is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

Avoidance of dispositions of property and certain attachments etc. and winding-up application to be *lis pendens* etc.

8. (1) Any disposition of the property of the limited liability partnership, and any assignment of a partner's interest or right to distributions from the limited liability partnership or any alteration in the status of the partners of the limited liability partnership made after the commencement of the winding-up by the Court shall, unless the Court otherwise orders, be void.

(2) Any attachment, sequestration, distress or execution put in force against the estate or effects of the limited liability partnership after the commencement of the winding-up by the Court shall be void.

(3) Any application for winding-up a limited liability partnership shall constitute a *lis pendens* within the meaning of any law relating to the effect of a *lis pendens* upon purchasers or mortgagees.

Winding-up order.

9. (1) Within 7 days after the making of a winding-up order, the applicant shall lodge with the Registrar notice of —

(a) the order and its date; and

(b) the name and address of the liquidator.

(2) On the passing of the winding-up order, the applicant shall within 7 days —

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

(b) cause a copy to be served upon any manager of the limited liability partnership and upon such other person or in such manner as the Court directs; and

(c) deliver a copy to the liquidator with a statement that the requirements of this sub-paragraph have been complied with.

(3) When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the limited liability partnership except —

(a) by leave of the Court; and

(b) in accordance with such terms as the Court imposes.

(4) Subject to paragraph 70, an order for winding-up a limited liability partnership shall operate in favour of all the creditors and partners of the limited liability partnership as if made on the joint application of a creditor and of a partner.

(5) Any applicant contravening sub-paragraphs (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Division 2 – Liquidators

Disqualification of liquidators.

10. (1) Subject to this paragraph, a person shall not, except with the leave of the Court, consent to be appointed, and shall not act as liquidator of a limited liability partnership –

(a) if he is not an appointed liquidator;

(b) if he is indebted to the limited liability partnership in an amount exceeding \$2,500;

(c) if he is –

(i) an officer of the limited liability partnership;

(ii) a partner, employer or employee of an officer of the limited liability partnership; or

(iii) a partner or employee of an employee of an officer of the limited liability partnership;

(d) if he is an undischarged bankrupt;

(e) if he has assigned his estate for the benefit of his creditors or has made an arrangement with his creditors pursuant to any law relating to bankruptcy; or

(f) if he has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months.

(2) Sub-paragraphs (1)*(a)* and *(c)* shall not apply –

(a) to a partners' voluntary winding-up; or

(b) to a creditors' voluntary winding-up, if by a resolution carried by a majority of the creditors in number and value present in person or by proxy and voting at a meeting of which 7 days notice has been given to every creditor stating the object of the meeting, it is determined that the sub-paragraph shall not so apply.

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

(4) Any person who contravenes sub-paragraph (1) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Appointment, style etc. of liquidators.

11. The following provisions with respect to liquidators shall have effect on a winding-up order being made —

(a) if an appointed liquidator, other than the Official Receiver, is not appointed to be the liquidator of the limited liability partnership, the Official Receiver shall by virtue of his office become the provisional liquidator and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such;

(b) if there is no liquidator appointed, the Official Receiver shall summon separate meetings of the creditors and partners of the limited liability partnership for the purpose of determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the Official Receiver;

(c) the Court may make any appointment and order required to give effect to any such determination and, if there is a difference between the determinations of the meetings of the creditors and partners in respect of the matter, the Court shall make such order thereon as it may think fit;

(d) in a case where a liquidator is not appointed by the Court, the Official Receiver shall be the liquidator of the limited liability partnership;

(e) in a case where a winding-up order is made under paragraph 3(1)(f) on the ground that the limited liability partnership is being used for purposes against national security or interest, the Official Receiver shall be the liquidator of the limited liability partnership;

(f) the Official Receiver shall by virtue of his office be the liquidator during any vacancy;

(g) any vacancy in the office of a liquidator appointed by the Court may be filled by the Court;

(h) a liquidator shall be described, where a person other than the Official Receiver is liquidator, by the style of "the liquidator" and, where the Official Receiver is liquidator, by the style of "the Official Receiver and liquidator", of the particular limited liability partnership in respect of which he is appointed, and not by his individual name.

Provisions where person other than Official Receiver is appointed liquidator.

12. Where in the winding-up of a limited liability partnership by the Court, a person other than the Official Receiver, is appointed liquidator, that person —

(a) shall not be capable of acting as liquidator until he has notified his appointment to the Registrar and given security in the prescribed manner to the satisfaction of the Official Receiver; and

(b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the limited liability partnership, and generally such aid as may be required for enabling that officer to perform his duties under this Order.

Control of unofficial liquidators by Official Receiver.

13. (1) Where in the winding-up of a limited liability partnership by the Court, a person other than the Official Receiver is the liquidator, the Official Receiver shall take cognisance of his conduct and if the liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any complaint is made to the Official Receiver by any creditor or partner in regard thereto, the Official Receiver shall inquire into the matter, and take such action thereon as he may think expedient.

(2) The Official Receiver may at any time require any such liquidator of a limited liability partnership which is being wound-up by the Court to answer any inquiry in relation to any winding-up in which he is engaged and may, if the Official Receiver thinks fit, apply to the Court to examine him or any other person on oath concerning the winding-up.

(3) The Official Receiver may also direct an investigation to be made of the books and vouchers of such liquidator.

Control of Official Receiver by Minister.

14. The Minister shall take cognisance of the conduct of the Official Receiver and of any Deputy Official Receiver who is concerned in the liquidation of limited liability partnerships, and if any such person does not faithfully perform his duties and duly observe all the requirements imposed on him by any written law or otherwise with respect to the performance of his duties, or if any

complaint is made to the Minister by any creditor or partner in regard thereto, the Minister shall inquire into the matter, and take such action thereon as he may think expedient, and may direct a local investigation to be made of the books and vouchers of such person.

Provisional liquidator.

15. The Court may appoint the Official Receiver or an appointed liquidator provisionally at any time after the filing of a winding-up application and before the making of a winding-up order and the provisional liquidator shall have and may exercise all the functions and powers of a liquidator, subject to such limitations and restrictions as may be prescribed by the rules or as the Court may specify in the order appointing him.

General provisions as to liquidators.

16. (1) A liquidator appointed by the Court may resign or on cause shown be removed by the Court.

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

(3) A liquidator, other than the Official Receiver, shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is determined —

(a) by agreement between the liquidator and the committee of inspection, if any;

(b) failing such agreement, or where there is no committee of inspection, by a resolution passed at a meeting of creditors by a majority of not less than 75 percent in value and 50 percent in number of the creditors present in person or by proxy and voting at the meeting and whose debts have been admitted for the purpose of voting, which meeting shall be convened by the liquidator by a notice to each creditor to which notice shall be attached a statement of all receipts and expenditure by the liquidator and the amount of remuneration sought by him; or

(c) failing a determination in a manner referred to in sub-paragraphs (a) or (b), by the Court.

(4) Where the salary or remuneration of a liquidator is determined in the manner specified in sub-paragraph (3)(a), the Court may, on the application of any partner, confirm or vary the determination.

(5) Where the salary or remuneration of a liquidator is determined in the manner specified in sub-paragraph (3)(b), the Court may, on the application of the liquidator or of any partner, confirm or vary the determination.

(6) Subject to any order of the Court, the Official Receiver when acting as a liquidator or provisional liquidator of a limited liability partnership shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

(7) If more than one liquidator is appointed by the Court, the Court shall declare whether anything by this Order required or authorised to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(8) Subject to this Order, the acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification.

Custody and vesting of property of limited liability partnership.

17. (1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the limited liability partnership is or appears to be entitled.

(2) The Court may, on the application of the liquidator, by order direct that all or any part of the property of whatever description belonging to the limited liability partnership or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the Court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding-up the limited liability partnership and recovering its property.

(3) Where an order is made under this paragraph, every liquidator of a limited liability partnership in relation to which the order is made shall lodge within 7 days of the making of the order —

(a) a copy of the order with the Registrar; and

(b) where the order relates to land, an office copy of the order with the appropriate authority concerned with the registration or recording of dealings in that land,

and any liquidator who contravenes this paragraph is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(4) No vesting order referred to in this paragraph shall have any effect or operation in transferring or otherwise vesting land until an appropriate entry or memorandum thereof is made by or with the appropriate authority.

Statement of affairs of limited liability partnership to be submitted to Official Receiver.

18. (1) There shall be made out and verified in the prescribed form and manner and submitted to the Official Receiver or the liquidator, as the case requires, a statement of the affairs of the limited liability partnership as at the date of the winding-up order showing —

- (a) the particulars of its assets, debts and liabilities;
- (b) the names and addresses of its creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further information as is prescribed or as the Official Receiver or the liquidator requires.

(2) The statement shall be submitted by one or more of the persons who are, at the date of the winding-up order, managers of the limited liability partnership or by such of the following persons as the Official Receiver or the liquidator, subject to the direction of the Court, requires —

- (a) persons who are or have been partners or officers of the limited liability partnership;
- (b) persons who have taken part in the formation of the limited liability partnership at any time within one year before the date of the winding-up order; or
- (c) persons who are or have been within that period officers of or in the employment of a corporation which is, or within that period was, an officer of the limited liability partnership to which the statement relates.

(3) The statement shall be submitted within 14 days after the date of the winding-up order or within such extended time as the Official Receiver, the liquidator or the Court for special reasons specifies, and the Official Receiver or the liquidator shall within 7 days after its receipt cause a copy of the statement to be filed with the Court and lodged with the Registrar and, where the Official Receiver is not the liquidator, shall cause a copy to be lodged with the Official Receiver.

(4) Any person making or concurring in making the statement required by this paragraph may, subject to the rules, be allowed, and be paid, out of the assets of the limited liability partnership, such costs and expenses incurred in and about the preparation and making of the statement as the Official Receiver or the liquidator considers reasonable subject to an appeal to the Court.

(5) Any person who, without reasonable excuse, contravenes this paragraph is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, to imprisonment for a term not exceeding one year or both, and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(6) In this paragraph, "officer", in relation to a corporation, has the same meaning as in section 2(1) of the Companies Act (Chapter 39).

Report by liquidator.

19. (1) The liquidator shall as soon as practicable after receipt of the statement of affairs submit a preliminary report to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver —

(a) as to the amount of capital paid up and the estimated amount of assets and liabilities;

(b) if the limited liability partnership has failed, as to the causes of the failure; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the formation or failure of the limited liability partnership or the conduct of the business thereof.

(2) The liquidator may also, if he thinks fit, make further reports to the Court or, if the liquidator is not the Official Receiver, to the Official Receiver stating the manner in which the limited liability partnership was formed and whether in his opinion any fraud has been committed or any material fact has been concealed by any person in its formation or by any officer in relation to the limited liability partnership since its formation, and whether any officer of the limited liability partnership has contravened any of the provisions of this Order, and specifying any other matter which in his opinion it is desirable to bring to the notice of the Court.

Powers of liquidator.

20. (1) The liquidator may with the authority either of the Court or of the committee of inspection —

(a) carry on the business of the limited liability partnership so far as is necessary for the beneficial winding-up thereof, but the authority shall not

be necessary to so carry on the business during the 4 weeks next after the date of the winding-up order;

(b) subject to paragraph 76, pay any class of creditors in full;

(c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the limited liability partnership, or whereby the limited liability partnership may be rendered liable;

(d) compromise any calls and liabilities to calls, debts and liabilities capable of resulting in debts and any claims present or future, certain or contingent, ascertained or sounding only in damages subsisting, or supposed to subsist, between the limited liability partnership and a partner or other debtor or person apprehending liability to the limited liability partnership, and all questions in any way relating to or affecting the assets or the winding-up of the limited liability partnership, on such terms as are agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof; and

(e) appoint an advocate and solicitor to assist him in his duties.

(2) The liquidator may —

(a) bring or defend any action or other legal proceeding in the name and on behalf of the limited liability partnership;

(b) compromise any debt due to the limited liability partnership, other than calls and liabilities for calls and other than a debt where the amount claimed by the limited liability partnership to be due to it exceeds \$1,500;

(c) sell the property of the limited liability partnership by public auction, public tender or private contract with power to transfer the whole thereof to any person or limited liability partnership or to sell the same in parcels;

(d) do all acts and execute in the name and on behalf of the limited liability partnership all deeds, receipts and other documents and for that purpose use when necessary the limited liability partnership's seal;

(e) prove, rank and claim in the bankruptcy of any partner or debtor for any balance against his estate, and receive dividends in the bankruptcy in respect of that balance as a separate debt due from the bankrupt, and rateably with the other separate creditors;

(f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the limited liability partnership with the same effect with respect to the liability of the limited liability partnership as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the limited liability partnership in the course of its business;

(g) raise on the security of the assets of the limited liability partnership any money required;

(h) take out letters of administration of the estate of any deceased partner or debtor, and do any other act necessary for obtaining payment of any money due from a partner or debtor or his estate which cannot be conveniently done in the name of the limited liability partnership, and in all such cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money be deemed due to the liquidator himself;

(i) appoint an agent to do any business which the liquidator is unable to do himself; and

(j) do all such other things as are necessary for winding-up the affairs of the limited liability partnership and distributing its assets.

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

Exercise and control of liquidator's powers.

21. (1) Subject to this Schedule, the liquidator shall in the administration of the assets of the limited liability partnership and in the distribution thereof among its creditors have regard to any directions given by resolution of the creditors or partners at any general meeting or by the committee of inspection, and any directions so given by the creditors or partners shall, in case of conflict, override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or partners for the purpose of ascertaining their wishes, and he shall summon meetings at such times as the creditors or partners by resolution direct or whenever requested in writing to do so by not less than 10 percent in value of the creditors or 10 percent of the total number of partners.

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

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

Payment by liquidator into bank.

22. (1) Every liquidator shall, in the manner and at the times prescribed by the rules, pay the money received by him into such bank account as is prescribed by those rules or as is specified by the Court.

(2) If any liquidator retains for more than 10 days a sum exceeding \$1,000 or such other amount as the Court in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess, computed from the expiration of the above-mentioned 10 days, until he has complied with sub-paragraph (1), at the rate of 20 percent per annum, and is liable —

(a) to disallowance of all or such part of his remuneration as the Court thinks just;

(b) to be removed from his office by the Court; and

(c) to pay any expenses occasioned by reason of his default.

(3) Any liquidator who pays any sum received by him as liquidator into any bank or account other than the bank or account prescribed or specified under sub-paragraph (1) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Release of liquidators and dissolution of limited liability partnership.

23. When the liquidator —

(a) has realised all the property of the limited liability partnership or so much thereof as can in his opinion be realised without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the partners among themselves and made a final return, if any, to the partners; or

(b) has resigned or has been removed from his office,

he may apply to the Court —

(i) for an order that he be released; or

(ii) for an order that he be released and that the limited liability partnership be dissolved.

As to orders for release or dissolution.

24. (1) Where an order is made that the limited liability partnership be dissolved, the limited liability partnership shall from the date of the order be dissolved accordingly.

(2) The Court —

(a) may cause a report on the accounts of a liquidator, not being the Official Receiver, to be prepared by the Official Receiver or by public accountant appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court, shall take into consideration the report and any objection which is urged by the Official Receiver, public accountant or any creditor, partner or other person interested against the release of the liquidator; and

(c) shall either grant or withhold the release accordingly.

(3) Where the release of a liquidator is withheld, the Court may, on the application of any creditor, partner or person interested, make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty.

(4) An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the limited liability partnership or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by the suppression or concealment of any material fact.

(5) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal from office.

(6) Where the Court has made —

(a) an order that the liquidator be released; or

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

a copy of the order and an office copy of the order shall, within 14 days after the making thereof, be lodged by the liquidator with the Registrar and with the Official Receiver, respectively, and a liquidator who contravenes this subparagraph is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding

\$200 for every day or part thereof during which the offence continues after conviction.

Division 3 – Committees of inspection

Appointment, constitution and proceedings of committee of inspection.

25. (1) The liquidator may, and shall if requested by any creditor or partner summon separate meetings of the creditors and partners for the purpose of determining whether or not the creditors or partners require the appointment of a committee of inspection to act with the liquidator, and if so who are to be members of the committee.

(2) If there is a difference between the determinations of the meetings of the creditors and partners the Court shall decide the difference and make such order as it thinks fit.

(3) The committee of inspection shall consist of creditors and partners of the limited liability partnership or persons holding –

(a) general powers of attorney from creditors or partners; or

(b) special authorities from creditors or partners authorising the persons named therein to act on such a committee,

appointed by the meetings of creditors and partners in such proportions as are agreed or, in case of difference, as are determined by the Court.

(4) The committee shall meet at such times and places as it may appoint, and the liquidator or any member of the committee may also call a meeting of the committee as he thinks necessary.

(5) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present.

(6) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(7) If a member of the committee becomes bankrupt or assigns his estate for the benefit of his creditors or makes an arrangement with his creditors pursuant to any written law relating to bankruptcy or is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or partners, as the case may be, his office shall thereupon become vacant.

(8) A member of the committee may be removed by an ordinary resolution at a meeting of creditors, if he represents creditors, or of partners, if he represents

partners, of which meeting 7 days notice has been given stating the object of the meeting.

(9) A vacancy in the committee may be filled by the appointment by the committee of the same or another creditor or partner or a person holding a general power of attorney or special authority as specified in sub-paragraph (3).

(10) The liquidator may at any time of his own motion and shall within 7 days after the request in writing of a creditor or partner summon a meeting of creditors or of partners, as the case requires, to consider any appointment made pursuant to sub-paragraph (9), and the meeting may confirm the appointment or revoke the appointment and appoint another creditor or partner or person holding a general power of attorney or special authority as specified in sub-paragraph (3), as the case requires, in his place.

(11) The continuing members of the committee if not less than 2 may act notwithstanding any vacancy in the committee.

Division 4 – General powers of Court

Power to stay winding-up.

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

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

(3) A copy of an order made under this paragraph and an office copy of such an order shall be lodged by the limited liability partnership with the Registrar and the Official Receiver, respectively, within 14 days after the making of the order.

(4) Any person who contravenes sub-paragraph (3) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Collection and application of assets.

27. (1) As soon as possible after making a winding-up order, the Court may rectify the register of partners in all cases where rectification is required in

pursuance of this Schedule and shall cause the assets of the limited liability partnership to be collected and applied in discharge of its liabilities.

(2) The Court may order any person from whom money is due to the limited liability partnership to pay the amount due into a bank, named in such order, to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

(3) All moneys and securities paid or delivered into a bank pursuant to this Schedule shall be subject in all respects to orders of the Court.

Appointment of special manager.

28. (1) The liquidator may, if satisfied that the nature of the estate or business of the limited liability partnership, or the interests of the creditors or partners generally, require the appointment of a special manager of the estate or business of the limited liability partnership other than himself, apply to the Court which may appoint a special manager of the estate or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him by the Court.

(2) The special manager —

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court; and

(c) may at any time resign after giving not less than one months notice in writing to the liquidator of his intention to resign, or on cause shown be removed by the Court.

Claims of creditors and distribution of assets.

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

(2) The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges and expenses incurred in the winding-up in such order of priority as the Court thinks fit.

Inspection of books by creditors and partners.

30. The Court may make such order for inspection of the books and papers of the limited liability partnership by creditors and partners as the Court thinks just, and any books and papers in the possession of the limited liability partnership may be inspected by creditors or partners accordingly, but not further or otherwise.

Power to summon persons connected with limited liability partnership.

31. (1) The Court may summon before it any officer of the limited liability partnership or any person known or suspected to have in his possession any property of the limited liability partnership, or who is supposed to be indebted to the limited liability partnership, or any person whom the Court considers capable of giving information concerning the formation, trade dealings, affairs or property of the limited liability partnership.

(2) The Court may examine him on oath concerning the matters mentioned in sub-paragraph (1) either orally or on written interrogatories and may reduce his answers to writing and require him to sign them, and any writing so signed may be used in evidence in any legal proceedings against him.

(3) The Court may require him to produce any books and papers in his custody or power relating to the limited liability partnership, but where he claims any lien on books or papers the production shall be without prejudice to that lien, and the Court shall have jurisdiction to determine all questions relating to that lien.

(4) An examination under this paragraph or paragraph 32 may, if the Court so directs and subject to the rules, be held before any Judge named for the purpose by the Court, and the powers of the Court under this paragraph and paragraph 32 may be exercised by that Judge.

(5) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful excuse made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be arrested and brought before the Court for examination.

Power to order public examination of officers etc.

32. (1) Where the liquidator has made a report under this Schedule stating that, in his opinion, a fraud has been committed or that any material fact has been concealed by any person in the formation of the limited liability partnership or by any officer in relation to the limited liability partnership since its formation or that any officer of the limited liability partnership has failed to act honestly or diligently or has been guilty of any impropriety or recklessness in relation to the

affairs of the limited liability partnership, the Court may, after consideration of the report, direct that the person or officer, or any other person who was previously an officer of the limited liability partnership, including any banker, advocate and solicitor and auditor, or who is known or suspected to have in his possession any property of the limited liability partnership or is supposed to be indebted to the limited liability partnership or any person whom the Court considers capable of giving information concerning the formation, trade dealings, affairs or property of the limited liability partnership, shall attend before the Court on a day appointed and be publicly examined as to the formation or the conduct of the business of the limited liability partnership or, in the case of an officer or former officer, as to his conduct and dealings as an officer thereof.

(2) The liquidator and any creditor or partner may take part in the examination either personally or by an advocate and solicitor.

(3) The Court may put or allow to be put such questions to the person examined as it thinks fit.

(4) The person examined shall be examined on oath and shall answer all such questions as the Court puts or allows to be put to him.

(5) A person ordered to be examined under this paragraph shall before his examination be furnished with a copy of the liquidator's report.

(6) Where a person directed to attend before the Court under subparagraph (1) applies to the Court to be exculpated from any charges made or suggested against him, the liquidator shall appear on the hearing of the application and call the attention of the Court to any matters which appear to him to be relevant, and if the Court, after hearing any evidence given or witnesses called by the liquidator, grants the application the Court may allow the applicant such costs as the Court in its discretion thinks fit.

(7) Notes of the examination —

(a) shall be reduced to writing;

(b) shall be read over to or by and signed by the person examined;

(c) may thereafter be used in evidence in any legal proceedings against him; and

(d) shall be open to the inspection of any creditor or partner at all reasonable times.

(8) The Court may if it thinks fit adjourn the examination.

Power to arrest absconding partner, manager or former manager.

33. The Court, at any time before or after making a winding-up order, on proof of probable cause for believing that a partner, manager or former manager of the limited liability partnership is about to leave Brunei Darussalam or otherwise to abscond or to remove or conceal any of his property for the purpose of evading the discharge of any liability arising under this Schedule or of avoiding examination respecting the affairs of the limited liability partnership, may cause that partner, manager or former manager to be arrested and his books and papers and movable personal property to be seized and safely kept until such time as the Court orders.

Delegation to liquidator of certain powers of Court.

34. Provision may be made by rules enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Schedule in respect of —

(a) the holding and conducting of meetings to ascertain the wishes of creditors and partners;

(b) the settling of lists of partners, the rectifying of the register of partners where required, and the collecting and applying of the assets;

(c) the paying, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;

(d) the making of calls and the adjusting of the rights of partners; and

(e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, but the liquidator shall not, without the special leave of the Court, rectify the register of partners and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Powers of Court cumulative.

35. (1) Any powers by this Order conferred on the Court shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any partner or debtor of the limited liability partnership or the estate of any partner or debtor for the recovery of any call or other sums.

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

PART III

VOLUNTARY WINDING-UP

Division 1 – Introductory

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

36. (1) A limited liability partnership may be wound-up voluntarily if the partners so resolve.

(2) A limited liability partnership shall —

(a) within 7 days after the passing of a resolution for voluntary winding-up, lodge a copy of the resolution with the Registrar; and

(b) within 10 days after the passing of the resolution, give notice of the resolution in at least one newspaper circulating in Brunei Darussalam.

(3) If the limited liability partnership contravenes sub-paragraph (2), the limited liability partnership and every officer of the limited liability partnership who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Provisional liquidator.

37. (1) Where the managers of a limited liability partnership have made a statutory declaration in the prescribed form which has been lodged with the Official Receiver and have lodged a declaration in the prescribed form with the Registrar —

(a) that the limited liability partnership cannot by reason of its liabilities continue its business; and

(b) that meetings of the limited liability partnership and of its creditors have been summoned for a date within one month of the date of the declaration,

the managers shall immediately appoint a provisional liquidator.

(2) A provisional liquidator shall have and may exercise all the functions and powers of a liquidator in a creditors' winding-up, subject to such limitations and restrictions as may be prescribed by the rules.

(3) The appointment of a provisional liquidator under this paragraph shall continue for one month from the date of his appointment or for such further

period as the Official Receiver may allow in any particular case or until the appointment of a liquidator, whichever first occurs.

(4) Notice of the appointment of a provisional liquidator under this paragraph, together with a copy of the declaration lodged with the Official Receiver, shall be advertised within 14 days of the appointment of the provisional liquidator in at least one newspaper circulating in Brunei Darussalam.

(5) A provisional liquidator shall be entitled to receive such salary or remuneration by way of percentage or otherwise as is prescribed.

Commencement of voluntary winding-up.

38. A voluntary winding-up shall commence —

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

(b) in any other case, at the time of the passing of the resolution for voluntary winding-up.

Effect of voluntary winding-up.

39. (1) The limited liability partnership shall from the commencement of the winding-up cease to carry on its business, except so far as is in the opinion of the liquidator required for the beneficial winding-up thereof, but the limited liability partnership shall, notwithstanding anything to the contrary in the limited liability partnership agreement, continue until it is dissolved.

(2) Any assignment of a partner's interest or right to distributions from the limited liability partnership, not being an assignment made to or with the sanction of the liquidator, and any alteration in the status of the partners made after the commencement of the winding-up, shall be void.

Declaration of solvency.

40. (1) Where it is proposed to wind-up a limited liability partnership voluntarily, the managers of the limited liability partnership or (in the case of a limited liability partnership having more than 2 managers) the majority of the managers shall, in the case of a partners' voluntary winding-up, make a declaration to the effect that they have made an inquiry into the affairs of the limited liability partnership and have formed the opinion that the limited liability partnership will be able to pay its debts in full within a period not exceeding one year after the commencement of the winding-up.

(2) There shall be attached to the declaration a statement of affairs of the limited liability partnership showing, in the prescribed form —

(a) the assets of the limited liability partnership and the total amount expected to be realised therefrom;

(b) the liabilities of the limited liability partnership; and

(c) the estimated expenses of winding-up,

made up to the latest practicable date before the making of the declaration.

(3) A declaration so made shall have no effect for the purposes of this Order unless it is —

(a) made within 5 weeks immediately preceding the passing of the resolution for voluntary winding-up; and

(b) lodged with the Registrar at the same time when the resolution for winding-up is lodged.

(4) A manager who makes a declaration under this paragraph without having reasonable grounds for the opinion that the limited liability partnership will be able to pay its debts in full within the period stated in the declaration is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

(5) If the limited liability partnership is wound-up in pursuance of a resolution for voluntary winding-up passed within a period of 5 weeks after the making of the declaration, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed until the contrary is shown that the manager did not have reasonable grounds for his opinion.

Division 2 — Provisions applicable only to partners' voluntary winding-up

Liquidator.

41. (1) A limited liability partnership shall, by resolution of the partners, appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the limited liability partnership and may fix the remuneration to be paid to him or them.

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

(3) The limited liability partnership may in a meeting convened by any partner by resolution of the partners of which notice has been given to the creditors and the liquidators, remove any liquidator but no such resolution shall be effective to remove a liquidator if the Court, on the application of the liquidator or a creditor, has ordered that the liquidator be not removed.

(4) If a vacancy occurs by death, resignation, removal or otherwise in the office of a liquidator, the limited liability partnership may, by resolution of the partners, fill the vacancy by the appointment of a new liquidator and fix the remuneration to be paid to him.

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

42. (1) If the liquidator is at any time of the opinion that the limited liability partnership will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration made under paragraph 40, he shall immediately convene a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the limited liability partnership and the notice summoning the meeting shall draw the attention of the creditors to the right conferred upon them by sub-paragraph (2).

(2) The creditors may, at the meeting convened under sub-paragraph (1), appoint some other person to be the liquidator for the purpose of winding-up the affairs and distributing the assets of the limited liability partnership instead of the liquidator appointed by the limited liability partnership.

(3) If the creditors appoint some other person under sub-paragraph (2), the winding-up shall thereafter proceed as if it were a creditors' voluntary winding-up.

(4) Within 7 days after a meeting has been held pursuant to sub-paragraph (1), the liquidator or if some other person has been appointed by the creditors to be the liquidator, the person so appointed shall lodge with the Registrar and with the Official Receiver a notice in the prescribed form, and if the liquidator or the person so appointed contravenes this sub-paragraph he is guilty of an offence and liable on conviction to a fine not exceeding \$800 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(5) Where the liquidator has convened a meeting under sub-paragraph (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the limited liability partnership, the winding-up shall thereafter proceed as if it were a creditors' voluntary winding-up; but the liquidator shall not be required to summon an annual meeting of creditors at the end of the first year from the commencement of the winding-up if the meeting held under sub-paragraph (1) was held less than 3 months before the end of that year.

Division 3 – Provisions applicable only to creditors' voluntary winding-up

Meeting of creditors

43. (1) The limited liability partnership shall cause a meeting of the creditors of the limited liability partnership to be convened for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding-up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the limited liability partnership.

(2) The limited liability partnership shall convene the meeting at a time and place convenient to the majority in value of the creditors and shall –

(a) give to the creditors at least 7 clear days notice by post of the meeting; and

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

(3) The limited liability partnership shall cause notice of the meeting of the creditors to be advertised at least 7 days before the date of the meeting in at least one newspaper circulating in Brunei Darussalam.

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

(a) cause a full statement of the limited liability partnership's affairs (verified in the prescribed form and manner) showing in respect of assets the method and manner in which the valuation of the assets was arrived at, together with a list of the creditors and the estimated amount of their claims to be laid before the meeting of creditors; and

(b) appoint one of their number to attend the meeting.

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

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

(7) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors and his decision shall be final.

(8) If the chairman decides that the meeting has not been held at a time and place convenient to that majority, the meeting shall lapse and a further meeting shall be summoned by the limited liability partnership as soon as is practicable.

(9) If the meeting of the limited liability partnership is adjourned and the resolution for winding-up is passed at the subsequent meeting, any resolution passed at the subsequent meeting shall have effect as if it had been passed immediately after the passing of the resolution for winding-up.

(10) If any provision in this paragraph is contravened, the limited liability partnership and any officer of the limited liability partnership who is in default is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Liquidators.

44. (1) The limited liability partnership shall, and the creditors may at their respective meetings, nominate a person to be liquidator for the purpose of winding-up the affairs and distributing the assets of the limited liability partnership, and if the creditors and the limited liability partnership nominate different persons the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors the person nominated by the limited liability partnership shall be the liquidator.

(2) Notwithstanding sub-paragraph (1), where different persons are nominated, any manager, partner or creditor may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the limited liability partnership shall be liquidator instead of or jointly with the person nominated by the creditors.

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

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

(5) If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates the office, the creditors may fill the vacancy and for the purpose of so doing a meeting of the creditors may be summoned by any 2 of their number.

Committee of inspection.

45. (1) The creditors at the meeting summoned pursuant to paragraphs 42 or 43 or at any subsequent meeting may, if they think fit, appoint a committee of

inspection consisting of not more than 5 persons, whether creditors or not, and, if such a committee is appointed, the limited liability partnership may, after the resolution for voluntary winding-up has been passed, appoint such number of persons not more than 5 as it thinks fit to act as members of the committee.

(2) Notwithstanding sub-paragraph (1), the creditors may, if they think fit, resolve that all or any of the persons so appointed by the limited liability partnership ought not to be members of the committee of inspection and, if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to act as members of the committee, and on any application to the Court under this sub-paragraph the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(3) Subject to this paragraph and the rules made under this Order, paragraph 25 shall apply with respect to a committee of inspection appointed under this paragraph.

Property and proceedings.

46. (1) Any attachment, sequestration, distress or execution put in force against the estate or effects of the limited liability partnership after the commencement of a creditors' voluntary winding-up shall be void.

(2) After the commencement of the winding-up, no action or proceeding shall be proceeded with or commenced against the limited liability partnership except by leave of the Court and subject to such terms as the Court imposes.

Division 4 – Provisions applicable to every voluntary winding-up

Distribution of property of limited liability partnership.

47. Subject to the provisions of this Order as to preferential payments, the property of a limited liability partnership shall, on its winding-up, be applied *pari passu* in satisfaction of its liabilities and, subject to that application, shall, unless the limited liability partnership agreement otherwise provides, be distributed among the partners according to their rights and interests in the limited liability partnership.

Appointment of liquidator.

48. If from any cause there is no liquidator acting, the Court may appoint a liquidator.

Removal of liquidator.

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

Review of liquidator's remuneration.

50. Any partner or creditor or the liquidator may at any time before the dissolution of the limited liability partnership apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court shall be final and conclusive.

Acts of liquidator valid etc.

51. (1) The acts of a liquidator shall be valid, notwithstanding any defect or irregularity that may afterwards be discovered in his appointment or qualification.

(2) Any conveyance, assignment, transfer, mortgage, charge or other disposition of the property of a limited liability partnership made by a liquidator shall, notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator be valid in favour of any person taking such property *bona fide* and for value and without notice of such defect or irregularity.

(3) Every person making or permitting any disposition of property to any liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding-up or the appointment of the liquidator not then known to that person.

(4) For the purposes of this paragraph, a disposition of property shall be taken as including a payment of money.

Powers and duties of liquidator.

52. (1) The liquidator may —

(a) in the case of a partners' voluntary winding-up, with the approval of a resolution of the partners and, in the case of a creditors' voluntary winding-up, with the approval of the Court or the committee of inspection, exercise any of the powers given by paragraphs 20(1)(b), (c), (d) and (e) to a liquidator in a winding-up by the Court;

(b) exercise any of the other powers by this Order given to the liquidator in a winding-up by the Court; and

(c) summon meetings of the partners for the purpose of obtaining the sanction of the partners by resolution in respect of any matter or for any other purpose he thinks fit.

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

(3) When several liquidators are appointed, any power given by this Order may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination by any number not less than 2.

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

53. (1) Where it is proposed that the whole or part of the business or property of a limited liability partnership be transferred or sold to another corporation, the liquidator of that limited liability partnership may, with the sanction of a resolution of the partners conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive in compensation or part compensation for the transfer or sale, shares, debentures, policies or other like interests in that corporation for distribution among the partners of the limited liability partnership, or may enter into any other arrangement whereby the partners of the limited liability partnership may, in lieu of receiving cash, shares, debentures, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the corporation and any such transfer, sale or arrangement shall be binding on the partners of the limited liability partnership.

(2) If any partner of the limited liability partnership expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the liquidator within 7 days after the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in the manner provided by this paragraph.

(3) If the liquidator elects to purchase the partner's interest, the purchase money shall be paid before the limited liability partnership is dissolved and be raised by the liquidator in such manner as is determined by resolution.

(4) A resolution shall not be invalid for the purposes of this paragraph by reason that it is passed before or concurrently with a resolution for voluntary winding-up or for appointing liquidators but, if an order for winding-up the limited liability partnership by the Court is made within one year after the passing of the resolution, the resolution shall not be valid unless sanctioned by the Court.

(5) For the purposes of an arbitration under this paragraph, the Arbitration Order, 2009 (S 34/09) shall apply as if there were a submission for reference to 2 arbitrators, one to be appointed by each party; and the appointment of an arbitrator may be made under the hand of the liquidator, or if there is more than one liquidator then under the hands of any 2 or more of the liquidators; and the Court may give any directions necessary for the initiation and conduct of the arbitration and such direction shall be binding on the parties.

{6} In the case of a creditors' voluntary winding-up, the powers of the liquidator under this paragraph shall not be exercised except with the approval of the Court or the committee of inspection.

Annual meeting of partners and creditors.

54. (1) If the winding-up continues for more than one year, the liquidator shall summon a meeting of the partners in the case of a partners' voluntary winding-up, and of the partners and the creditors in the case of a creditors' voluntary winding-up, at the end of the first year from the commencement of the winding-up and of each succeeding year or not more than 3 months thereafter, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year.

(2) The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the limited liability partnership.

(3) Any liquidator who contravenes this paragraph is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Final meeting and dissolution.

55. (1) As soon as the affairs of the limited liability partnership are fully wound-up, the liquidator shall make up an account showing how the winding-up has been conducted and the property of the limited liability partnership has been disposed of, and thereupon shall call a general meeting of the limited liability partnership, or in the case of a creditors' voluntary winding-up a meeting of the limited liability partnership and the creditors, for the purpose of laying before it the account and giving any explanation thereof.

(2) The meeting shall be called by advertisement published in at least one local daily newspaper which advertisement shall specify the time, place and object of the meeting and shall be published at least one month before the meeting, except that when a declaration is made by the liquidator and filed with the Official Receiver that neither at the date of commencement of the winding-up nor since that date has the limited liability partnership had trade creditors, the advertisement referred to in this sub-paragraph need only be published in at least one newspaper circulating in Brunei Darussalam.

(3) The liquidator shall within 7 days after the meeting lodge with the Registrar and the Official Receiver a return of the holding of the meeting and of its date with a copy of the account attached to such return and, if the return or copy of the account is not so lodged, the liquidator is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing

offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(4) The *quorum* at a meeting of the limited liability partnership shall be 2, and at a meeting of the limited liability partnership and the creditors shall be 2 partners and 2 creditors, and if a *quorum* is not present at the meeting, the liquidator shall *in lieu* of the return mentioned in sub-paragraph (3) lodge a return (with account attached) that the meeting was duly summoned and that no *quorum* was present thereat, and upon such a return being lodged sub-paragraph (3) as to the lodging of the return shall be deemed to have been complied with.

(5) On the expiration of 3 months after the lodging of the return with the Registrar and with the Official Receiver, the limited liability partnership shall be dissolved.

(6) Notwithstanding sub-paragraph (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the limited liability partnership is to take effect for such time as the Court thinks fit.

(7) The person on whose application an order of the Court under this paragraph is made shall, within 14 days after the making of the order, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so he is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

(8) If the liquidator fails to call a meeting as required by this paragraph, he is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Arrangement when binding on creditors.

56. (1) Any arrangement entered into between a limited liability partnership about to be or in the course of being wound-up and its creditors shall, subject to the right of appeal under this paragraph, be binding on the limited liability partnership if sanctioned by a resolution passed by the partners, and on the creditors if acceded to by 75 percent in value and 50 percent in number of the creditors, every creditor for under \$50 being reckoned in value only.

(2) A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated after allowing the value of security or liens held by him and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him.

(3) Any dispute with regard to the value of any such security or lien or the amount of such debt or set-off may be settled by the Court on the application of the limited liability partnership, the liquidator or the creditor.

(4) Any creditor or partner may within 3 weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Application to Court to have questions determined or powers exercised.

57. (1) The liquidator or any partner or creditor may apply to the Court —

(a) to determine any question arising in the winding-up of a limited liability partnership; or

(b) to exercise all or any of the powers which the Court might exercise if the limited liability partnership were being wound-up by the Court.

(2) The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

Costs.

58. All proper costs, charges and expenses of and incidental to the winding-up including the remuneration of the liquidator shall be payable out of the assets of the limited liability partnership in priority to all other claims.

Limitation on right to wind-up voluntarily.

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

PART IV

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING-UP

Division 1 – General

Books to be kept by liquidator and control of Court over liquidator.

60. (1) Every liquidator shall keep proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as

are prescribed, and any creditor or partner may, subject to the control of the Court, personally or by his agent inspect them.

(2) The Court shall take cognisance of the conduct of liquidators, and if a liquidator does not faithfully perform his duties and observe the prescribed requirements or the requirements of the Court or if any complaint is made to the Court by any creditor or partner or by the Official Receiver in regard thereto, the Court shall inquire into the matter and take such action as it thinks fit.

(3) The Registrar or the Official Receiver may report to the Court any matter which in his opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss which the estate of the limited liability partnership has sustained thereby and make such other order as the Court thinks fit.

(4) The Court may at any time require any liquidator to answer any inquiry in relation to the winding-up and may examine him or any other person on oath concerning the winding-up and may direct an investigation to be made of the books and vouchers of the liquidator.

(5) The Court may require any partner, trustee, receiver, banker, agent or officer of the limited liability partnership to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator immediately or within such time as the Court directs any money, property, books and papers in his hands to which the limited liability partnership is *prima facie* entitled.

Powers of Official Receiver where no committee of inspection.

61. (1) Where a person other than the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may, on the application of the liquidator, do any act or thing or give any direction or permission which is by this Order authorised or required to be done or given by the committee.

(2) Where the Official Receiver is the liquidator and there is no committee of inspection, the Official Receiver may do any act or thing which is by this Order required to be done by, or subject to any direction or permission given by, the committee.

Appeal against decision of liquidator.

62. Any person aggrieved by any act or decision of the liquidator may apply to the Court which may confirm, reverse or modify the act or decision complained of and make such order as it thinks just.

Notice of appointment and address of liquidator.

63. (1) A liquidator shall, within 14 days after his appointment, lodge with the Registrar and with the Official Receiver notice in the prescribed form of his

appointment and of the situation of his office, and in the event of any change in the situation of his office shall within 14 days after the change lodge with the Registrar and with the Official Receiver notice in the prescribed form of such change.

{2} Service made by leaving any document at or sending it by post addressed to the address of the office of the liquidator given in any such notice lodged with the Registrar shall be deemed to be good service upon the liquidator and upon the limited liability partnership.

{3} A liquidator shall, within 14 days after his resignation or removal from office, lodge with the Registrar and with the Official Receiver notice thereof in the prescribed form.

{4} If a liquidator contravenes this paragraph, he is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Liquidator's accounts.

64. (1) Every liquidator shall, within one month after the expiration of a period of 6 months from the date of his appointment and of every subsequent period of 6 months and in any case within one month after he ceases to act as liquidator and immediately after obtaining an order of release, lodge with the Official Receiver in the prescribed form and verified by statutory declaration an account of his receipts and payments and a statement of the position in the winding-up, and any liquidator who fails to do so is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(2) The liquidator referred to in sub-paragraph (1) shall also lodge with the Registrar a notice in the prescribed form of the matters referred to in that sub-paragraph and, if he fails to do so, he is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(3) The Official Receiver may cause the account of any liquidation to be audited by a public accountant, and for the purpose of the audit the liquidator shall furnish him with such vouchers and information as he requires, and the public accountant may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) A copy of the account or, if audited, a copy of the audited account shall be kept by the liquidator and the copy shall be open to the inspection of any creditor or of any person interested at the office of the liquidator.

(5) The liquidator shall —

(a) give notice that the account has been made up to every creditor and partner when next forwarding any report, notice of meeting, notice of call or dividend; and

(b) in such notice inform the creditors and partners at what address and between what hours the account may be inspected.

(6) The costs of an audit under this paragraph shall be fixed by the Official Receiver and shall be part of the expenses of winding-up.

Liquidator to make good defaults.

65. (1) If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice which he is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him of a notice requiring him to do so, the Court may, on the application of any partner or creditor of the limited liability partnership or the Official Receiver, make an order directing the liquidator to make good the default within such time as is specified in the order.

(2) Any order made under sub-paragraph (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in sub-paragraph (1) shall prejudice the operation of any written law imposing penalties on a liquidator in respect of any such default.

Notification that a limited liability partnership is in liquidation.

66. (1) Where a limited liability partnership is being wound-up, every invoice, order for goods or business letter issued by or on behalf of the limited liability partnership or a liquidator of the limited liability partnership or a receiver or manager of the property of the limited liability partnership, being a document on or in which the name of the limited liability partnership appears, shall have the words "in liquidation" added after the name of the limited liability partnership where it first appears therein.

(2) If sub-paragraph (1) is contravened, the limited liability partnership and every officer of the limited liability partnership or liquidator and every receiver or manager who knowingly and wilfully authorises or permits the default, is guilty of an offence and liable on conviction to a fine not exceeding \$400.

Books of limited liability partnership.

67. (1) Where a limited liability partnership is being wound-up, all books and papers of the limited liability partnership and of the liquidator that are relevant to the affairs of the limited liability partnership at or subsequent to the commencement of the winding-up of the limited liability partnership shall, as between the partners of the limited liability partnership, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

(2) When a limited liability partnership has been wound-up the liquidator shall retain the books and papers referred to in sub-paragraph (1) for a period of 2 years from the date of dissolution of the limited liability partnership and at the expiration of that period may destroy them.

(3) Notwithstanding sub-paragraph (2), when a limited liability partnership has been wound-up, the books and papers referred to in sub-paragraph (1) may be destroyed within a period of 2 years after the dissolution of the limited liability partnership —

(a) in the case of a winding-up by the Court, in accordance with the directions of the Court;

(b) in the case of a partners' voluntary winding-up, as the partners by resolution direct; and

(c) in the case of a creditors' voluntary winding-up, as the committee of inspection, or, if there is no such committee, as the creditors of the limited liability partnership direct.

(4) No responsibility shall rest on the limited liability partnership or the liquidator by reason of any such book or paper not being forthcoming to any person claiming to be interested therein if such book or paper has been destroyed in accordance with this paragraph.

(5) Any person who contravenes sub-paragraph (2) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Investment of surplus funds on general account.

68. (1) Whenever the cash balance standing to the credit of any limited liability partnership in liquidation is in excess of the amount which, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the estate of the limited liability partnership, the liquidator, if so directed in writing by the committee of inspection, or, if there is no committee of inspection, the liquidator himself, may, unless the Court on application by any creditor thinks fit to direct otherwise and so orders, invest the sum or any part thereof in securities

issued by the Government or place it on deposit at interest with any bank, and any interest received in respect thereof shall form part of the assets of the limited liability partnership.

(2) Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the estate of the limited liability partnership, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for the sale or realisation of such part of those securities as is necessary.

Unclaimed assets to be paid to Official Receiver.

69. (1) Where a liquidator has in his hands or under his control —

(a) any unclaimed dividend or other moneys which have remained unclaimed for more than 6 months from the date when the dividend or other moneys became payable; or

(b) after making final distribution, any unclaimed or undistributed moneys arising from the property of the limited liability partnership,

he shall immediately pay those moneys to the Official Receiver to be placed to the credit of the Limited Liability Partnerships Liquidation Account and shall be entitled to the prescribed certificate of receipt for the moneys so paid and that certificate shall be an effectual discharge to him in respect thereof.

(2) The Court may, at any time on the application of the Official Receiver, order any liquidator to submit to it an account of any unclaimed or undistributed funds, dividends or other moneys in his hands or under his control verified by affidavit and may direct an audit thereof and may direct him to pay those moneys to the Official Receiver to be placed to the credit of the account referred to in sub-paragraph (1).

(3) The interest arising from the investment of the moneys standing to the credit of the account referred to in sub-paragraph (1) shall be paid into the Consolidated Fund.

(4) For the purposes of this paragraph, the Court may exercise all the powers conferred by this Order with respect to the discovery and realisation of the property of the limited liability partnership and the provisions of this Order with respect thereto shall with such adaptations as are prescribed apply to proceedings under this paragraph.

(5) This paragraph shall not, except as expressly declared in this Order, deprive any person of any other right or remedy to which he is entitled against the liquidator or any other person.

(6) If any claimant makes any demand for any money placed to the credit of the account referred to in sub-paragraph (1), the Official Receiver upon being satisfied that the claimant is the owner of the money shall authorise payment thereof to be made to him out of that account or, if it has been paid into the Consolidated Fund, may authorise payment of a like amount to be made to him out of moneys made available by the Government for the purpose.

(7) Any person dissatisfied with the decision of the Official Receiver in respect of a claim made in pursuance of sub-paragraph (6) may appeal to the Court which may confirm, disallow or vary the decision.

(8) Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person, that other person shall not be entitled to any payment out of the account referred to in sub-paragraph (1) or out of the Consolidated Fund but such person may have recourse against the claimant to whom the unclaimed moneys have been paid.

(9) Any unclaimed moneys paid to the credit of the account referred to in sub-paragraph (1) to the extent to which the unclaimed moneys have not been under this paragraph paid out of that account shall, on the lapse of 7 years from the date of the payment of the moneys to the credit of that account, be paid into the Consolidated Fund.

Outstanding assets of limited liability partnership wound-up on grounds of national security or interest.

70. Notwithstanding any written law or rule of law to the contrary, upon a limited liability partnership being wound-up under paragraph 3(1)(f) on the ground that it is being used for purposes against national security or interest, the Court may, on the application of the Minister, order that any assets of the limited liability partnership remaining after payment of its debts and liabilities and the costs, charges and expenses of the winding-up shall be paid into the Consolidated Fund.

Expenses of winding-up where assets insufficient.

71. (1) Unless expressly directed to do so by the Official Receiver, a liquidator shall not be liable to incur any expense in relation to the winding-up of a limited liability partnership unless there are sufficient available assets.

(2) The Official Receiver may, on the application of a creditor or a partner, direct a liquidator to incur a particular expense on condition that the creditor or partner indemnifies the liquidator in respect of the recovery of the amount expended and, if the Official Receiver so directs, gives such security to secure the amount of the indemnity as the Official Receiver thinks reasonable.

Resolutions passed at adjourned meetings of creditors and partners.

72. Subject to paragraph 43(9), where a resolution is passed at an adjourned meeting of any creditors or partners of a limited liability partnership, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed and not on any earlier date.

Meetings to ascertain wishes of creditors or partners.

73. (1) The Court may, as to all matters relating to the winding-up of a limited liability partnership, have regard to the wishes of the creditors or partners as proved to it by any sufficient evidence, and may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or partners to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of partners, regard shall be had to the number of votes conferred on each partner by this Order or the limited liability partnership agreement.

Commission for receiving evidence.

74. (1) Judges of the High Court shall be commissioners for the purpose of taking evidence under this Schedule, and the Court may refer the whole or any part of the examination of any witnesses under this Schedule to any commissioner.

(2) Every commissioner shall, in addition to any powers which he might lawfully exercise as a Judge, have in the matter so referred to him the same powers as the Court of summoning and examining witnesses, of requiring the production or delivery of documents, of punishing defaults by witnesses and of allowing costs and expenses to witnesses.

(3) Unless otherwise ordered by the Court, the taking of evidence by commissioners shall be in open court and shall be open to the public.

(4) The examination so taken shall be returned or reported to the Court in such manner as the Court directs.

Division 2 – Proof and ranking of claims

Proof of debts.

75. (1) In every winding-up all debts payable on a contingency, and all claims against the limited liability partnership, present or future, certain or contingent,

ascertained or sounding only in damages, shall be admissible to proof against the limited liability partnership, a just estimate being made, so far as possible, of the value of such debts or claims as are subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

{2} Subject to paragraph 76, in the winding-up of an insolvent limited liability partnership the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law relating to bankruptcy in relation to the estates of bankrupt persons, and all persons, who in any such case would be entitled to prove for and receive dividends out of the assets of the limited liability partnership, may come in under the winding-up and make such claims against the limited liability partnership as they respectively are entitled to by virtue of this paragraph.

Priorities.

76. (1) Subject to this Order, in a winding-up there shall be paid in priority to all other unsecured debts —

(a) first, the costs and expenses of the winding-up including the taxed costs of the applicant for the winding-up order payable under paragraph 5, the remuneration of the liquidator and the costs of any audit carried out pursuant to paragraph 64;

(b) secondly, subject to sub-paragraph (2), all wages or salary (whether or not earned wholly or in part by way of commission) including any amount payable by way of allowance or reimbursement under any contract of employment or award or agreement regulating conditions of employment of any employee;

(c) thirdly, subject to sub-paragraph (2), the amount payable to an employee as a retrenchment benefit or *ex gratia* payment under any contract of employment or award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding-up;

(d) fourthly, all amounts due in respect of compensation under the Workmen's Compensation Act (Chapter 74) accrued before, on or after the commencement of the winding-up;

(e) fifthly, all amounts due in respect of contributions payable during the one year next before, on or after the commencement of the winding-up by the limited liability partnership as the employer of any person under any written law relating to employees' superannuation or provident funds or

under any scheme of superannuation which is an approved scheme under the law relating to income tax;

(f) sixthly, all remuneration payable to any employee in respect of vacation leave, or in the case of his death to any other person in his right, accrued in respect of any period before, on or after the commencement of the winding-up; and

(g) seventhly, the amount of all tax assessed and due under any written law before the date of the commencement of the winding-up or assessed at any time before the time fixed for the proving of debts has expired.

(2) The amount payable under sub-paragraphs (1)(b) and (c) shall not exceed an amount equivalent to 5 months' wages or salary whether for time or piecework in respect of services rendered to the limited liability partnership or \$7,500, whichever is the lesser.

(3) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, amend sub-paragraph (2) by varying the amount specified in that sub-paragraph as the maximum amount payable under sub-paragraphs (1)(b) and (c).

(4) In sub-paragraphs (1)(b) and (c) —

"amount payable" means the amount stipulated in any contract of employment, award or agreement, as the case may be;

"employee" means a person who has entered into or works under a contract of service with an employer and includes a sub-contractor of labour;

"*ex gratia* payment" means the amount payable to an employee on the winding-up of a limited liability partnership or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work;

"retrenchment benefit" means the amount payable to an employee on the winding-up of a limited liability partnership or on the termination of his service by his employer on the ground of redundancy or by reason of any re-organisation of the employer, profession, business, trade or work, and "the amount payable to an employee" means the amount stipulated in any contract of employment, award or agreement, as the case may be, or if no amount is stipulated therein, such amount as is stipulated by the Commissioner of Labour;

"wages or salary" shall be deemed to include —

(i) all arrears of money due to a sub-contractor of labour;

- (ii) any amount payable to an employee on account of wages or salary during a period of notice of termination of employment or in lieu of notice of such termination, as the case may be, whether such amount becomes payable before, on or after the commencement of the winding-up; and
- (iii) any amount payable to an employee, on termination of his employment, as a gratuity under any contract of employment, or under any award or agreement that regulates conditions of employment whether such amount becomes payable before, on or after the commencement of the winding-up.

(5) The debts in each class, specified in sub-paragraph (1) shall rank in the order therein specified, but as between debts of the same class shall rank equally between themselves, and shall be paid in full, unless the property of the limited liability partnership is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(6) Where any payment has been made to any employee of the limited liability partnership on account of wages, salary or vacation leave out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in a winding-up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee would have been entitled to priority in the winding-up has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.

(7) So far as the assets of the limited liability partnership available for payment of general creditors are insufficient to meet any preferential debts specified in sub-paragraphs (1)(a), (b), (c), (e) and (f) and any amount payable in priority by virtue of sub-paragraph (6), those debts shall have priority over the claims of the holders of debentures under any floating charge created by the limited liability partnership and shall be paid accordingly out of any property comprised in or subject to that charge.

(8) Where the limited liability partnership is under a contract of insurance entered into before the commencement of the winding-up insured against liability to third parties, then if any such liability is incurred by the limited liability partnership either before or after the commencement of the winding-up and an amount in respect of that liability is or has been received by the limited liability partnership or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidental to getting in such amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in sub-paragraph (1).

(9) If the liability of the insurer to the limited liability partnership is less than the liability of the limited liability partnership to the third party, nothing in sub-paragraph (8) shall limit the rights of the third party in respect of the balance.

(10) Notwithstanding anything in sub-paragraph (1) –

(a) sub-paragraph (1)/*d*) shall not apply in relation to the winding-up of a limited liability partnership in any case where the limited liability partnership is being wound-up voluntarily merely for the purpose of reconstruction or of amalgamation with another limited liability partnership and the right to the compensation has on the reconstruction or amalgamation been preserved to the person entitled thereto, or where the limited liability partnership has entered into a contract with an insurer in respect of any liability under any law relating to work injury compensation;

(b) where a limited liability partnership has given security for the payment or repayment of any amount to which sub-paragraph (1)/*g*) relates, sub-paragraph (1)/*g*) shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from such security.

(11) Where in any winding-up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the Court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risks run by them in so doing.

Division 3 – Effect on other transactions

Transactions at an undervalue.

77. (1) Subject to this paragraph and paragraphs 79 and 81, where a limited liability partnership is wound-up and it has at the relevant time (as defined in paragraph 79) entered into a transaction with any person at an undervalue, the Official Receiver may apply to the Court for an order under this paragraph.

(2) The Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that limited liability partnership had not entered into that transaction.

(3) The Court shall not make an order under sub-paragraph (2) in respect of a transaction at an undervalue if it is satisfied that —

(a) the limited liability partnership which entered into the transaction did so in good faith and for the purpose of carrying on its business; and

(b) that at the time it did so, there were reasonable grounds for believing that the transaction would benefit the limited liability partnership.

(4) For the purposes of this paragraph and paragraphs 79 and 81, a limited liability partnership enters into a transaction with a person at an undervalue if —

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

(b) it enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the limited liability partnership.

Unfair preferences.

78. (1) Subject to this paragraph and paragraphs 79 and 81, where a limited liability partnership is wound-up and it has, at the relevant time (as defined in paragraph 79), given an unfair preference to any person, the Official Receiver may apply to the Court for an order under this paragraph.

(2) The Court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that limited liability partnership had not given that unfair preference.

(3) In this paragraph and paragraphs 79 and 81, a limited liability partnership gives an unfair preference to a person if —

(a) that person is one of the limited liability partnership's creditors or a surety or guarantor for any of its debts or other liabilities; and

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

(4) The Court shall not make an order under this paragraph in respect of an unfair preference given to any person unless the limited liability partnership

which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in sub-paragraph (3)(b).

(5) A limited liability partnership which has given an unfair preference to a person connected with the limited liability partnership (otherwise than by reason only of being its employee) at the time the unfair preference was given shall be presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in sub-paragraph (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more evidence, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

(7) This paragraph shall apply without prejudice to the operation of paragraph 85.

Relevant time under paragraphs 77 and 78.

79. (1) Subject to this paragraph, the time at which a limited liability partnership enters into a transaction at an undervalue or gives an unfair preference shall be a relevant time if the transaction is entered into or the preference given —

(a) in the case of a transaction at an undervalue, within the period of 5 years ending on the day which the winding-up of the limited liability partnership is deemed by this Schedule to have commenced;

(b) in the case of an unfair preference which is not a transaction at an undervalue and is given to a person who is connected with the limited liability partnership (otherwise than by reason only of being its employee), within the period of 2 years ending on that day; and

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

(2) Where a limited liability partnership enters into a transaction at an undervalue or gives an unfair preference at a time mentioned in sub-paragraphs (1)(a), (b) or (c), that time is not a relevant time for the purposes of paragraphs 77 and 78 unless the limited liability partnership —

(a) was insolvent at that time; or

(b) became insolvent in consequence of the transaction or preference.

(3) Where a transaction is entered into at an undervalue by a limited liability partnership with a person who is connected to the limited liability

partnership (otherwise than by reason only of being its employee), the requirements under sub-paragraph (2) shall be presumed to be satisfied unless the contrary is shown.

(4) In sub-paragraph (2), a limited liability partnership is insolvent if —

(a) it is unable to pay its debts as they fall due; or

(b) the value of its assets is less than the amount of its liabilities.

Meaning of "connected with".

80. (1) For the purposes of paragraphs 78 and 79, any question whether a person is connected with a limited liability partnership shall be determined in accordance with this paragraph.

(2) A person is connected with a limited liability partnership if he is —

(a) a partner of the limited liability partnership or an associate of such a partner; or

(b) an associate of the limited liability partnership.

(3) A person is an associate of an individual if that person is the individual's spouse, or is a relative or the spouse of a relative of that individual or his spouse.

(4) A person is an associate of any person with whom he is in partnership, and of the spouse or relative of any individual with whom he is in partnership.

(5) A person is an associate of any person whom he employs or by whom he is employed and for this purpose, any director or other officer of a company shall be treated as employed by that company and any partner of a limited liability partnership shall be treated as employed by that limited liability partnership.

(6) A person in his capacity as trustee of a trust is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that person or an associate of that person.

(7) A limited liability partnership or company shall be regarded as an associate of another limited liability partnership or company if —

(a) the same person has control of both entities, or a person has control of one entity and persons who are his associates, or he and persons who are his associates, have control of the other entity; or

(b) a group of 2 or more persons has control of each entity, and such groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(8) A limited liability partnership or company is an associate of a person if that person has control of it or if that person and other persons who are his associates together have control of it.

(9) In this paragraph, a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating —

(a) any relationship of the half-blood as a relationship of the whole-blood and the step-child or adopted child of any person as his child; and

(b) an illegitimate child as the legitimate child of his mother and reputed father.

(10) References in this paragraph to a spouse include a former spouse.

(11) In this paragraph, a person shall be taken to have control of a limited liability partnership or company if —

(a) the partners of the limited liability partnership or directors of the company or the partners or directors of another entity which has control of the partnership or company, as the case may be (or any of them), are accustomed to act in accordance with his directions or instructions; or

(b) he is entitled to exercise, or control the exercise of, one-third or more of the voting power at any meeting of the limited liability partnership or general meeting of the company or of another entity which has control of the partnership or company, as the case may be, and where 2 or more persons together satisfy sub-paragraphs *(a)* or *(b)*, they shall be taken to have control of the limited liability partnership or company.

(12) In this paragraph, "company" includes any body corporate (whether incorporated in Brunei Darussalam or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company shall have effect with any necessary modifications.

Orders under paragraphs 77 and 78.

81. (1) Without prejudice to the generality of paragraphs 77(2) and 78(2), an order under either of those paragraphs with respect to a transaction or preference entered into or given by a limited liability partnership which is subsequently wound-up may, subject to this paragraph —

(a) require any property transferred as part of the transaction, or in connection with the giving of the preference, to be vested in the limited liability partnership;

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

(c) release or discharge (in whole or in part) any security given by the limited liability partnership;

(d) require any person to pay, in respect of benefits received by him from the limited liability partnership, such sums to the liquidator as the Court may direct;

(e) provide for any surety or guarantor whose obligations to any person were released or discharged (in whole or in part) under the transaction or by the giving of the preference to be under such new or revived obligations to that person as the Court thinks appropriate;

(f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order, for such an obligation to be charged on any property and for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference;

(g) provide for the extent to which any person whose property is vested by the order in the limited liability partnership, or on whom obligations are imposed by the order, is to be able to prove in the winding-up of the limited liability partnership for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference.

(2) An order under paragraphs 77 or 78 may affect the property of, or impose any obligation on, any person whether or not he is the person with whom the limited liability partnership in question entered into the transaction or, as the case may be, the person to whom the unfair preference was given.

(3) An order under paragraphs 77 or 78 shall not —

(a) prejudice any interest in property which was acquired from a person other than that limited liability partnership and was acquired in good

faith, for value and without notice of the relevant circumstances, or prejudice any interest deriving from such an interest; or

(b) require a person who received a benefit from the transaction or unfair preference in good faith, for value and without notice of the relevant circumstances to pay a sum to the liquidator, except where he was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when he was a creditor of that limited liability partnership.

(4) In this paragraph, the relevant circumstances, in relation to a transaction or unfair preference, shall be —

(a) the circumstances by virtue of which an order under paragraphs 77 or 78 could be made in respect of the transaction or preference if the limited liability partnership in question were wound-up within the particular period after the transaction is entered into or the unfair preference given; and

(b) if that period has expired, the fact that that limited liability partnership has been wound-up within that period.

Extortionate credit transactions.

82. (1) This paragraph shall apply where a limited liability partnership which is wound-up is or has been a party to a transaction for or involving the provision to it of credit.

(2) The Court may, on the application of the liquidator, make an order with respect to the transaction if the transaction is or was extortionate and was entered into within 3 years before the commencement of the winding-up.

(3) In this paragraph, a transaction shall be presumed, unless the contrary is proved, to be extortionate if, having regard to the risk accepted by the person providing the credit —

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it is harsh and unconscionable or substantially unfair.

(4) An order under this paragraph may contain one or more of the following —

(a) provision setting aside the whole or part of any obligation created by the transaction;

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

(c) provision requiring any person who is or was a party to the transaction to pay the liquidator any sums paid to that person;

(d) provision requiring any person to surrender to the liquidator any property held by him as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

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

Avoidance of general assignment of book debts.

83. (1) This paragraph shall apply where a limited liability partnership makes a general assignment to another person of its existing or future book debts, or any class of them, and is subsequently wound-up.

(2) The assignment shall be void against the liquidator as regards book debts which were not paid before the commencement of winding-up of the limited liability partnership, unless the assignment was registered under the Bills of Sale Act (Chapter 70).

(3) For the purposes of registration under the Bills of Sale Act (Chapter 70), an assignment of book debts shall be treated as if it were a bill of sale given otherwise than by way of security for the payment of a sum of money.

(4) The Bills of Sale Act (Chapter 70) with respect to the registration of bills of sale shall apply accordingly with such necessary modifications as may be made by rules under that Act.

(5) In this paragraph —

"assignment" includes an assignment by way of security or charge on book debts;

"general assignment" does not include —

(a) an assignment of book debts due at the date of the assignment from specified debtors or of debts becoming due under specified contracts; and

(b) an assignment of book debts included either in a transfer of a business made in good faith and for value or in an assignment of assets for the benefit of creditors generally.

Right of recovery of distributions.

84. (1) A partner or former partner of a limited liability partnership who receives a distribution from the limited liability partnership —

(a) when the limited liability partnership is insolvent and knew or ought to have known at the time of the distribution that the limited liability partnership was insolvent; or

(b) which results in the limited liability partnership becoming insolvent and knew or ought to have known at the time of distribution that the limited liability partnership would become insolvent as a result of the distribution, shall be personally liable to the limited liability partnership for the amount or value of the distribution if it was received within a period of 3 years before the commencement of the winding-up of the limited liability partnership.

(2) Where any partner or former partner has made a payment to discharge his liability under sub-paragraph (1), the amount of the payment shall constitute a debt due from the limited liability partnership to such partner or former partner, and paragraph 47 shall apply to such debt but only after all the liabilities of the limited liability partnership (excluding the debts arising under this sub-paragraph) have been discharged and settled in full.

(3) In this paragraph —

(a) a limited liability partnership is insolvent at a particular time if —

(i) it is at that time unable to pay its debts as they fall due in the normal course of business; or

(ii) at that time, the value of its assets is less than the amount of its liabilities;

(b) distribution means any payment of dividends, distribution of profits, return or refund of capital by the limited liability partnership, whether in cash or in kind and any payment made by the limited liability partnership under section 11(3);

(c) a partner or former partner shall be deemed to have received a distribution if the distribution is received by his assignee.

Liquidator's right to recover in respect of certain sales to or by limited liability partnership.

85. (1) Where any property, business or undertaking has been acquired by a limited liability partnership for a cash consideration within a period of 2 years

before the commencement of the winding-up of the limited liability partnership —

(a) from a person who was at the time of the acquisition a manager of the limited liability partnership;

(b) from a limited liability partnership of which, at the time of the acquisition, a manager was also a manager of the first-mentioned limited liability partnership;

(c) from a corporation (other than a limited liability partnership) of which, at the time of the acquisition, a director was also a manager of the limited liability partnership; or

(d) from a firm of which, at the time of the acquisition, a partner was also a manager of the limited liability partnership,

the liquidator may recover from the person, limited liability partnership, corporation or firm from which the property, business or undertaking was acquired any amount by which the cash consideration for the acquisition exceeded the value of the property, business or undertaking at the time of its acquisition.

(2) Where any property, business or undertaking has been sold by a limited liability partnership for a cash consideration within a period of 2 years before the commencement of the winding-up of the limited liability partnership —

(a) to a person who was, at the time of the sale, a manager of the limited liability partnership;

(b) to a limited liability partnership of which, at the time of the sale, a manager was also a manager of the first-mentioned limited liability partnership;

(c) from a corporation (other than a limited liability partnership) of which, at the time of the sale, a director was also a manager of the limited liability partnership; or

(d) from a firm of which, at the time of the sale, a partner was also a manager of the limited liability partnership,

the liquidator may recover from the person, limited liability partnership, corporation or firm to which the property, business or undertaking was sold any amount by which the value of the property, business or undertaking at the time of the sale exceeded the cash consideration.

(3) In this paragraph, the value of the property, business or undertaking includes the value of any goodwill or profits which might have been made from the business or undertaking or similar considerations.

(4) In this paragraph, "cash consideration", in relation to an acquisition or sale by a limited liability partnership, means consideration for such acquisition or sale payable otherwise than as contribution of capital to the limited liability partnership.

Disclaimer of onerous property.

86. (1) Where any part of the property of a limited liability partnership consists of —

(a) any estate or interest in land which is burdened with onerous covenants;

(b) shares or interests in corporations;

(c) unprofitable contracts; or

(d) any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money,

the liquidator of the limited liability partnership, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court or the committee of inspection and, subject to this paragraph, by writing signed by him, at any time within one year after the commencement of the winding-up or such extended period as is allowed by the Court, disclaim the property; but where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power of disclaiming may be exercised at any time within one year after he has become aware thereof or such extended period as is allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest and liabilities of the limited liability partnership and the property of the limited liability partnership in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the limited liability partnership and the property of the limited liability partnership from liability, affect the rights or liabilities of any other person.

(3) The Court or the committee before or on granting leave to disclaim may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the Court or committee thinks just.

(4) The liquidator shall not be entitled to disclaim if an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or such further period as is allowed by the Court or the committee, given notice to the applicant that he intends to apply to the Court or the committee for leave to disclaim, and, in the case of a contract, if the liquidator after such an application in writing does not within that period or further period disclaim the contract, the liquidator shall be deemed to have adopted it.

(5) The Court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the limited liability partnership, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to that person may be proved by him as a debt in the winding-up.

(6) The Court may, on the application of a person who either claims any interest in any disclaimed property or is under any liability not discharged by this Order in respect of any disclaimed property and on hearing such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it seems just that the property should be delivered by way of compensation for such liability, or a trustee for him, and on such terms as the Court thinks just, and on any such vesting order being made and a copy thereof and an office copy thereof being lodged with the Registrar and the Official Receiver, respectively, and if the order relates to land with the appropriate authority concerned with the recording or registration of dealings in that land, as the case requires, the property comprised therein shall vest accordingly in the person therein named in that behalf without any further conveyance, transfer or assignment.

(7) Notwithstanding anything in sub-paragraph (6), where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the limited liability partnership, whether as under-lessee or as mortgagee, except upon the terms of making that person –

(a) subject to the same liabilities and obligations as those to which the limited liability partnership was subject under the lease in respect of the property at the commencement of the winding-up; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any under-lessee or mortgagee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming

under the limited liability partnership who is willing to accept an order upon such terms, the Court may vest the estate and interest of the limited liability partnership in the property in any person liable personally or in a representative capacity and either alone or jointly with the limited liability partnership to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the limited liability partnership. *

(8) Any person suffering loss by the operation of a disclaimer under this paragraph shall be deemed to be a creditor of the limited liability partnership to the amount of the injury, and may accordingly prove the amount as a debt in the winding-up.

Interpretation.

87. In paragraphs 88 and 89 —

"bailiff" includes any officer charged with the execution of a writ or other process;

"goods" includes moveable property.

Restriction of rights of creditor as to execution or attachment.

88. (1) Where a creditor has issued execution against the goods or land of a limited liability partnership or has attached any debt due to the limited liability partnership and the limited liability partnership is subsequently wound-up, he shall not be entitled to retain the benefit of the execution or attachment against the liquidator unless he has completed the execution or attachment before the date of the commencement of the winding-up, but —

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding-up is to be proposed, the date on which the creditor so had notice shall for the purposes of this paragraph be substituted for the date of the commencement of the winding-up;

(b) a person who purchases in good faith under a sale by the bailiff any goods of a limited liability partnership on which an execution has been levied shall in all cases acquire a good title to them against the liquidator; and

(c) the rights conferred by this sub-paragraph on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

(2) For the purposes of this paragraph —

(a) an execution against goods is completed by seizure and sale;

(b) an attachment of a debt is completed by receipt of the debt;

(c) an execution against land is completed by sale or, in the case of an equitable interest, by the appointment of a receiver.

Duties of bailiff as to goods taken in execution.

89. (1) Subject to sub-paragraph (3), where any goods of a limited liability partnership are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the bailiff that a provisional liquidator has been appointed or that a winding-up order has been made or that a resolution for voluntary winding-up has been passed, the bailiff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the liquidator, but the costs of the execution shall be a first charge on the goods or moneys so delivered, and the liquidator may sell the goods, or a sufficient part thereof, for the purpose of satisfying that charge.

(2) Subject to sub-paragraph (3), where under an execution in respect of a judgment for a sum exceeding \$100 the goods of a limited liability partnership are sold or money is paid in order to avoid sale, the bailiff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance of 14 days; and if within that time notice is served on him of an application for the winding-up of the limited liability partnership having been made or of a meeting having been called at which there is to be proposed a resolution for the voluntary winding-up and an order is made or a resolution is passed for the winding-up, the bailiff shall pay the balance to the liquidator who shall be entitled to retain it as against the execution creditor.

(3) The rights conferred by this paragraph on the liquidator may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Division 4 – Offences

Offences by officers of limited liability partnerships in liquidation.

90. (1) Every person who, being a past or present officer or partner of a limited liability partnership which is being wound-up –

(a) does not to the best of his knowledge and belief fully and truly disclose to the liquidator all the property of the limited liability partnership, and how and to whom and for what consideration and when the limited liability partnership disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the limited liability partnership;

- (b) does not deliver up to the liquidator, or as he directs —
- (i) all the property of the limited liability partnership in his custody or under his control and which he is required by law to deliver up; or
 - (ii) all books and papers in his custody or under his control belonging to the limited liability partnership and which he is required by law to deliver up;
- (c) within one year next before the commencement of the winding-up or at any time thereafter —
- (i) has concealed any part of the property of the limited liability partnership to the value of \$200 or upwards, or has concealed any debt due to or from the limited liability partnership;
 - (ii) has fraudulently removed any part of the property of the limited liability partnership to the value of \$200 or upwards;
 - (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the limited liability partnership;
 - (iv) has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the limited liability partnership;
 - (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the limited liability partnership;
 - (vi) by any false representation or other fraud, has obtained any property for or on behalf of the limited liability partnership on credit which the limited liability partnership has not subsequently paid for;
 - (vii) has obtained on credit, for or on behalf of the limited liability partnership, under the false pretence that the limited liability partnership is carrying on its business, any property which the limited liability partnership has not subsequently paid for;
or
 - (viii) has pawned, pledged or disposed of any property of the limited liability partnership which has been obtained on credit and has not been paid for, unless such pawning, pledging or

disposing was in the ordinary way of the business of the limited liability partnership;

(d) makes any material omission in any statement relating to the affairs of the limited liability partnership;

(e) knowing or believing that a false debt has been proved by any person, fails for a period of one month to inform the liquidator thereof;

(f) prevents the production of any book or paper affecting or relating to the property or affairs of the limited liability partnership;

(g) within one year next before the commencement of the winding-up or at any time thereafter, has attempted to account for any part of the property of the limited liability partnership by fictitious losses or expenses; or

(h) within 12 months next before the commencement of the winding-up or at any time thereafter, has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the limited liability partnership or any of them to an agreement with reference to the affairs of the limited liability partnership or to the winding-up,

is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years.

(2) It shall be defence to a charge under sub-paragraphs (1)(a), (b), (1)(c)(i), (vii) or (viii) or *(d)* if the accused person proves that he had no intent to defraud, and to a charge under sub-paragraphs (1)(c)(iii) or (iv) or *(f)* if he proves that he had no intent to conceal the state of affairs of the limited liability partnership or to defeat the law.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-paragraph (1)(c)(viii), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years.

Inducement to be appointed liquidator.

91. Any person who gives or agrees or offers to give to any partner or creditor of a limited liability partnership any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the limited liability partnership's liquidator is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 6 months.

Penalty for falsification of books.

92. Every officer or partner of any limited liability partnership being wound-up who destroys, mutilates, alters or falsifies any book, paper or security, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the limited liability partnership with intent to defraud or deceive any person is guilty of an offence and liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years.

Liability where proper accounts not kept.

93. (1) If, on an investigation under this Order or where a limited liability partnership is wound-up, it is shown that proper books of account were not kept by the limited liability partnership throughout the period of 2 years immediately preceding the commencement of the investigation or winding-up or the period between the registration of the limited liability partnership and the commencement of the investigation or winding-up (whichever is the lesser), every officer who is in default, unless he acted honestly and shows that, in the circumstances in which the business of the limited liability partnership was carried on, the default was excusable, is guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding one year.

(2) In this paragraph, proper books of account shall be deemed not to have been kept in the case of any limited liability partnership if there have not been kept such books or accounts as are necessary to exhibit and explain the transactions and financial position of the trade or business of the limited liability partnership, including books containing entries from day-to-day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified or if such books or accounts have not been kept in such manner as to enable them to be conveniently and properly audited, whether or not the limited liability partnership has appointed an auditor.

(3) If, in the course of the winding-up of a limited liability partnership or in any proceedings against a limited liability partnership, it appears that an officer of the limited liability partnership who was knowingly a party to the contracting of a debt had, at the time the debt was contracted, no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the limited liability partnership at the time of the limited liability partnership being able to pay the debt, the officer is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or imprisonment for a term not exceeding 3 months.

Responsibility for fraudulent trading.

94. (1) If, in the course of the winding-up of a limited liability partnership or in any proceedings against a limited liability partnership, it appears that any business of the limited liability partnership has been carried on with intent to defraud creditors of the limited liability partnership or creditors of any other person or for any fraudulent purpose, the Court, on the application of the liquidator or any creditor or partner of the limited liability partnership, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for the payment of all or any of the debts or other liabilities of the limited liability partnership as the Court directs.

(2) Where a person has been convicted of an offence under paragraph 93(3), the Court, on the application of the liquidator or any creditor or partner of the limited liability partnership, may, if it thinks proper to do so, declare that he shall be personally responsible, without any limitation of liability, for the payment of the whole or any part of that debt.

(3) Where the Court makes any declaration pursuant to sub-paragraphs (1) or (2), it may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the limited liability partnership to him, or on any charge or any interest in any charge on any assets of the limited liability partnership held by or vested in him or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may make such further order as is necessary for the purpose of enforcing any charge imposed under this sub-paragraph.

(4) In sub-paragraph (3), "assignee" includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(5) Where any business of a limited liability partnership is carried on with the intent or for the purpose mentioned in sub-paragraph (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose is guilty of an offence and liable on conviction to a fine not exceeding \$15,000, imprisonment for a term not exceeding 7 years or both.

(6) Sub-paragraph (5) shall apply to a limited liability partnership whether or not it has been, or is in the course of being, wound-up.

(7) This paragraph shall have effect notwithstanding that the person concerned is criminally liable apart from this paragraph in respect of the matters on the ground of which the declaration is made.

(8) On the hearing of an application under sub-paragraphs (1) or (2), the liquidator may himself give evidence or call witnesses.

Power of Court to assess damages against delinquent officers etc.

95. (1) If, in the course of winding-up, it appears that any person who has taken part in the formation or registration of the limited liability partnership or any past or present liquidator or officer has misapplied, retained or become liable or accountable for any money or property of the limited liability partnership or been guilty of any misfeasance or breach of trust or duty in relation to the limited liability partnership, the Court may, on the application of the liquidator or of any creditor or partner, examine into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the limited liability partnership by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(2) This paragraph shall extend and apply to and in respect of the receipt of any money or property by any officer of the limited liability partnership during the 2 years preceding the commencement of the winding-up, whether by way of salary or otherwise, appearing to the Court to be unfair or unjust to other partners of the limited liability partnership.

(3) This paragraph shall have effect notwithstanding that the offence is one for which the offender is criminally liable.

Prosecution of delinquent officers and partners of limited liability partnership.

96. (1) If it appears to the Court, in the course of a winding-up by the Court, that any past or present officer, or any partner, of the limited liability partnership has been guilty of an offence in relation to the limited liability partnership for which he is criminally liable, the Court may, either on the application of any person interested in the winding-up or of its own motion, direct the liquidator to prosecute the offender or to report the matter to the Minister.

(2) If it appears to the liquidator, in the course of a voluntary winding-up, that any past or present officer or any partner of the limited liability partnership has been guilty of any offence in relation to the limited liability partnership for which he is criminally liable, he shall immediately report the matter to the Minister and shall, in respect of information or documents in his possession or under his control which relate to the matter in question, furnish the Minister with

such information and give to him such access to and facilities for inspecting and taking copies of any document as he may require.

(3) If it appears to the liquidator, in the course of any winding-up, that the limited liability partnership which is being wound-up will be unable to pay its unsecured creditors more than 50 cents in the dollar, the liquidator shall immediately report the matter in writing to the Official Receiver and shall furnish the Official Receiver with such information and give to him such access to and facilities for inspecting and taking copies of any document as the Official Receiver may require.

(4) Where any report is made under sub-paragraphs (2) or (3), the Minister may, if he thinks fit, investigate the matter and for the purposes of such an investigation shall have all such powers of investigating the affairs of the limited liability partnership as are provided by this Order in the case of a winding-up by the Court, but if it appears to him that the case is not one in which proceedings ought to be taken by him he shall inform the liquidator accordingly, and thereupon, subject to the previous approval of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court, in the course of a voluntary winding-up, that any past or present officer or any partner, of the limited liability partnership has been guilty as aforesaid and that no report with respect to the matter has been made by the liquidator to the Minister, the Court may, on the application of any person interested in the winding-up or on its own motion, direct the liquidator to make such a report, and on a report being made accordingly this paragraph shall have effect as though the report has been made in pursuance of sub-paragraph (2).

(6) If, where any matter is reported to the Minister or the Official Receiver under this paragraph, he considers that the case is one in which a prosecution ought to be instituted, he may institute proceedings accordingly, and the liquidator and every officer and agent of the limited liability partnership past and present, other than the defendant in the proceedings, shall give the Minister or the Official Receiver all assistance in connection with the prosecution which he is reasonably able to give.

(7) In sub-paragraph (6), "agent", in relation to a limited liability partnership, includes any banker or advocate and solicitor of the limited liability partnership and any person employed by the limited liability partnership as an auditor, whether or not an officer of the limited liability partnership.

(8) If any person fails or neglects to give assistance in the manner required by sub-paragraph (6), the Court may, on the application of the Minister or the Official Receiver, (as the case may be) direct that person to comply with the requirements of that sub-paragraph, and where any application is made under this sub-paragraph with respect to a liquidator the Court may, unless it appears that the failure or neglect to comply was due to the liquidator not having in his

hands sufficient assets of the limited liability partnership to enable him to do so, direct that the costs of the application shall be borne by the liquidator personally.

(9) The Minister may direct that the whole or any part of any costs and expenses properly incurred by the liquidator in proceedings brought under this paragraph shall be defrayed out of moneys provided by Government.

(10) Subject to any direction given under sub-paragraph (9) and to any charges on the assets of the limited liability partnership and any debts to which priority is given by this Order, all such costs and expenses shall be payable out of those assets as part of the costs of winding-up.

Division 5 – Dissolution

Power of Court to declare dissolution of limited liability partnership void.

97. (1) Where a limited liability partnership has been dissolved, the Court may at any time within 2 years after the date of dissolution, on application of the liquidator of the limited liability partnership or of any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the limited liability partnership had not been dissolved.

(2) The person on whose application the order was made shall, within 7 days after the making of the order or such further time as the Court allows, lodge with the Registrar and with the Official Receiver a copy of the order and an office copy of the order, respectively, and if he fails to do so he is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Official Receiver to act as representative of defunct limited liability partnership in certain events.

98. (1) Where, after a limited liability partnership has been dissolved, it is proved to the satisfaction of the Official Receiver –

(a) that the limited liability partnership, if still existing, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(b) that in order to carry out, complete or give effect thereto, some purely administrative act, not discretionary, should have been done by or on behalf of the limited liability partnership, or should be done by or on behalf of the limited liability partnership, if still existing,

the Official Receiver may, as representing the limited liability partnership or its liquidator under this paragraph, do or cause to be done any such act.

(2) The Official Receiver may execute or sign any relevant instrument or document adding a memorandum stating that he has done so in pursuance of this paragraph, and such execution or signature shall have the same force, validity and effect as if the limited liability partnership, if still existing, had duly executed such instrument or document.

Outstanding assets of defunct limited liability partnership to vest in Official Receiver.

99. (1) Where, after a limited liability partnership has been dissolved, there remains any outstanding property, whether in or outside Brunei Darussalam, which was vested in the limited liability partnership or to which it was entitled, or over which it had a disposing power at the time it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the limited liability partnership or its liquidator, such property shall, for the purposes of the following paragraphs of this Division and notwithstanding any written law to the contrary, by the operation of this paragraph be and become vested in the Official Receiver for all the estate and interest therein legal or equitable of the limited liability partnership or its liquidator at the date the limited liability partnership was dissolved, together with all claims, rights and remedies which the limited liability partnership or its liquidator then had in respect thereof.

(2) Where any claim, right or remedy of the liquidator may under this Order be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Official Receiver may for the purposes of this paragraph make, exercise or avail himself of that claim, right or remedy without such approval or concurrence.

Disposal of outstanding interests in property.

100. (1) Upon proof to the satisfaction of the Official Receiver that there is vested in him by operation of paragraph 99 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Official Receiver may sell or otherwise dispose of or deal with such estate or interest or any part thereof as he sees fit.

(2) The Official Receiver may sell or otherwise dispose of or deal with such property either solely or in concurrence with any other person in such manner for such consideration by public auction, public tender or private contract upon such conditions as he thinks fit, with power to rescind any contract and resell or otherwise dispose of or deal with such property as he thinks expedient, and may make, execute, sign and give such contracts, instruments and documents as he thinks necessary.

(3) The Official Receiver shall be remunerated by such commission, whether by way of percentage or otherwise, as is prescribed in respect of the exercise of the powers conferred upon him by sub-paragraph (1).

(4) The moneys received by the Official Receiver in the exercise of any of the powers conferred on him by this Division shall be applied in defraying all costs, expenses, commission and fees incidental thereto and thereafter to any payment authorised by this Division and the surplus, if any, shall be dealt with as if they were unclaimed moneys paid to the Official Receiver in pursuance of paragraph 69.

Liability of Official Receiver and Government as to property vested in Official Receiver.

101. Property vested in the Official Receiver by operation of this Division shall be liable and subject to all charges, claims and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, charges or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership or occupation of the limited liability partnership; but there shall not be imposed on the Official Receiver or the Government any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the assets of the limited liability partnership so far as they are in the opinion of the Official Receiver properly available for and applicable to such payment.

Accounts and audit.

102. (1) The Official Receiver shall —

(a) record in a register a statement of any property coming to his hands or under his control or to his knowledge vested in him by operation of this Division and of his dealings therewith;

(b) keep accounts of all moneys arising therefrom and of how they have been disposed of;

(c) keep all accounts, vouchers, receipts and papers relating to any such property and moneys.

(2) The Auditor General shall have all the powers in respect of such accounts as are conferred upon him by any written law relating to the audit of public accounts.

FIFTH SCHEDULE

{sections 30 and 32}

RECEIVERS AND MANAGERS

Interpretation.

1. In this Schedule —

"Court" means the High Court;

"public accountant" has the same meaning as in section 2 of the Accountants Order, 2010.

Disqualification for appointment as receiver.

2. (1) The following shall not be qualified to be appointed and shall not act as receiver of the property of a limited liability partnership —

(a) a corporation;

(b) an undischarged bankrupt;

(c) a mortgagee of any property of the limited liability partnership, or a director, manager or an employee of the limited liability partnership or of any corporation which is a mortgagee of the property of the limited liability partnership; and

(d) any person who is neither an appointed liquidator nor the Official Receiver.

(2) Nothing in sub-paragraphs (1)(a) or (d) shall apply to any corporation authorised by any written law to act as receiver of the property of a limited liability partnership.

Liability of receiver.

3. (1) Any receiver or other authorised person entering into possession of any assets of a limited liability partnership for the purpose of enforcing any charge shall, notwithstanding any agreement to the contrary, but without prejudice to his rights against the limited liability partnership or any other person, be liable for debts incurred by him in the course of the receivership or possession for services rendered, goods purchased or property hired, leased, used or occupied.

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

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

(4) Where a receiver or manager has been appointed to enforce any charge for the benefit of holders of debentures of the limited liability partnership, any such debenture holder may apply to the Court for directions in relation to any matter arising in connection with the performance of the functions of the receiver or manager.

Power of Court to fix remuneration of receiver or manager.

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

(2) The power of the Court shall, where no previous order has been made with respect thereto –

(a) extend to fixing the remuneration for any period before the making of the order or the application therefor;

(b) be exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application therefor; and

(c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that fixed for that period, extend to requiring him or his personal representatives to account for the excess or such part thereof as may be specified in the order.

(3) The power conferred by sub-paragraph (2)(c) shall not be exercised as respects any period before the making of the application for the order unless in the opinion of the Court there are special circumstances making it proper for the power to be so exercised.

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

Appointment of liquidator as receiver.

5. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a limited liability partnership which is being wound-up by the Court, the liquidator may be so appointed.

Notification of appointment of receiver or manager.

4. (1) If any person obtains an order for the appointment of a receiver or manager of the property of a limited liability partnership or appoints such a receiver or manager under any powers contained in any instrument, he shall, within 7 days after he has obtained the order or made the appointment, lodge notice of that fact with the Registrar.

(2) Where any person appointed as receiver or manager of the property of a limited liability partnership under the powers contained in any instrument ceases

to act as such, he shall within 7 days thereafter lodge with the Registrar notice to that effect.

(3) Any person who fails to comply with the requirements of this paragraph is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Statement that receiver or manager appointed.

7. (1) Where a receiver or manager of the property of a limited liability partnership has been appointed, every invoice, order for goods or business letter issued by or on behalf of the limited liability partnership or by the receiver or manager or by the liquidator of the limited liability partnership, being a document on or in which the name of the limited liability partnership appears, shall contain a statement immediately following the name of the limited liability partnership that a receiver or manager has been appointed.

(2) If sub-paragraph (1) is contravened, the limited liability partnership and every officer and every liquidator of the limited liability partnership and every receiver or manager who knowingly and wilfully authorises or permits the contravention is guilty of an offence and liable on conviction to a fine not exceeding \$1,000.

Provisions as to information where receiver or manager appointed.

8. (1) Where a receiver or manager of the property of a limited liability partnership (referred to in this paragraph and in paragraph 9 as the receiver) is appointed —

(a) the receiver shall immediately send notice to the limited liability partnership of his appointment;

(b) there shall, within 14 days after receipt of the notice, or such longer period as may be allowed by the Court or by the receiver, be made out and submitted to the receiver in accordance with paragraph 9 a statement in the prescribed form as to the affairs of the limited liability partnership; and

(c) the receiver shall within one month after receipt of the statement —

(i) lodge with the Registrar a copy of the statement and of any comments he sees fit to make thereon;

(ii) send to the limited liability partnership a copy of any such comments referred to in sub-paragraph (i), or if he does not see fit to make any comment, a notice to that effect; and

(iii) where the receiver is appointed by or on behalf of the holders of debentures of the limited liability partnership, send to the trustees, if any, for those holders a copy of the statement and his comments thereon.

(2) Sub-paragraph (1) shall not apply in relation to the appointment of a receiver or manager to act with an existing receiver or manager or in place of a receiver or manager dying or ceasing to act except that, where that sub-paragraph applies to a receiver or manager who dies or ceases to act before that sub-paragraph has been fully complied with, the references in sub-paragraph (1)(b) and (c) to the receiver shall, subject to sub-paragraph (3), include references to his successor and to any continuing receiver or manager.

(3) Where the limited liability partnership is being wound-up, this paragraph and paragraph 9 shall apply notwithstanding that the receiver or manager and the liquidator are the same person, but with any necessary modifications arising from that fact.

(4) If any person fails to comply with any of the requirements of this paragraph, he is guilty of an offence and liable on conviction to a fine not exceeding \$2,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Special provisions as to statement submitted to receiver.

9. (1) The statement as to the affairs of a limited liability partnership required by paragraph 8 to be submitted to the receiver shall show as at the date of the receiver's appointment the particulars of the limited liability partnership's assets, debts and liabilities, the names and addresses of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.

(2) The statement shall be submitted by, and be verified by affidavit of, one or more of the persons who were at the date of the receiver's appointment the managers of the limited liability partnership, or by such of the following persons, as the receiver may require to submit and verify the statement, that is to say —

(a) persons who are or have been officers;

(b) persons who have taken part in the formation of the limited liability partnership at any time within one year before the date of the receiver's appointment;

(c) persons who are in the employment of the limited liability partnership, or have been in the employment of the limited liability

partnership within that year, and are in the opinion of the receiver capable of giving the information required;

(d) persons who are or have been, within that year, officers of, or in the employment of, a corporation which is, or within that year was, an officer of the limited liability partnership to which the statement relates.

(3) Any person making the statement and affidavit shall be allowed and shall be paid by the receiver or his successor out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver or his successor may consider reasonable, subject to an appeal to the Court.

(4) If any person fails to comply with the requirements of this paragraph, he is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

(5) In this paragraph —

(a) "officer", in relation to a corporation, has the same meaning as in section 2(1) of the Companies Act (Chapter 39); and

(b) references to the receiver's successor include a continuing receiver or manager.

Lodging of accounts of receivers and managers.

10. (1) Every receiver or manager of the property of a limited liability partnership shall —

(a) within one month after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and within one month after he ceases to act as receiver or manager, lodge with the Registrar a detailed account in the prescribed form showing —

- (i) his receipts and his payments during each period of 6 months or, where he ceases to act as receiver or manager, during the period from the end of the period to which the last preceding account related or from the date of his appointment, as the case may be, up to the date of his so ceasing;
- (ii) the aggregate amount of those receipts and payments during all preceding periods since his appointment; and

(iii) where he has been appointed pursuant to the powers contained in any instrument, the amount owing under that instrument at the time of his appointment, in the case of the first account, and at the expiration of every 6 months after his appointment and, where he has ceased to act as receiver or manager at the date of his so ceasing, and his estimate of the total value of all assets of the limited liability partnership which are subject to that instrument; and

(b) before lodging such account, verify by affidavit all accounts and statements referred to therein.

(2) The Registrar may, of his own motion or on the application of the limited liability partnership or a creditor, cause the accounts to be audited by a public accountant appointed by the Registrar, and for the purpose of the audit the receiver or manager shall furnish the auditor with such vouchers and information as he requires and the auditor may at any time require the production of and inspect any books of account kept by the receiver or manager or any document or other records relating thereto.

(3) Where the Registrar causes the accounts to be audited upon the request of the limited liability partnership or a creditor, he may require the applicant to give security for the payment of the cost of the audit.

(4) The costs of an audit under sub-paragraph (2) shall be fixed by the Registrar and be paid by the receiver unless the Registrar otherwise determines.

(5) Every receiver or manager who contravenes this paragraph is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$200 for every day or part thereof during which the offence continues after conviction.

Payments of certain debts out of assets subject to floating charge in priority to claims under charge.

11. (1) Where a receiver is appointed on behalf of the holders of any debentures of a limited liability partnership secured by a floating charge or possession is taken by or on behalf of debenture holders of any property comprised in or subject to a floating charge, then, if the limited liability partnership is not at the time in the course of being wound-up, debts which in every winding-up are preferential debts and are due by way of wages, salary, retrenchment benefit or *ex gratia* payment, vacation leave or superannuation or provident fund payments and any amount which in a winding-up is payable in pursuance of paragraphs 76(6) or (8) of the Fourth Schedule shall be paid out of any assets coming to the hands of the receiver or other person taking possession in priority to any claim for principal or interest in respect of the debentures and

shall be paid in the same order of priority as is prescribed by that paragraph in respect of those debts and amounts.

(2) In sub-paragraph (1), "floating charge" means a charge which, as created, was a floating charge.

(3) For the purposes of sub-paragraph (1), the references in paragraphs 76(1) (c), (d), (e), (f) and (g) of the Fourth Schedule to the commencement of the winding-up shall be read as a reference to the date of the appointment of the receiver or of possession being taken as aforesaid, as the case requires.

(4) Any payments made under this paragraph shall be recouped as far as may be out of the assets of the limited liability partnership available for payment of general creditors.

Enforcement of duty of receiver etc. to make returns.

12. (1) If any receiver or manager of the property of a limited liability partnership who is in default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on him by any partner or creditor of the limited liability partnership or trustee for debenture holders of a notice requiring him to do so, the Court may, on an application made for the purpose by the person who has given the notice, make an order directing him to make good the default within such time as is specified in the order.

(2) If it appears that any receiver or manager of the property of a limited liability partnership has misapplied or retained or become liable or accountable for any money or property of the limited liability partnership or been guilty of any misfeasance or breach of trust or duty in relation to the limited liability partnership, the Court may on the application of any creditor or partner or of the liquidator examine into the conduct of such receiver or manager and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just or to contribute such sum to the assets of the limited liability partnership by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just.

(3) This paragraph has effect notwithstanding that the offence is one for which the offender is criminally liable.

Made this 25th. day of Muharram, 1432 Hijriah corresponding to the 31st. day of December, 2010 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM

