

## SAMOA

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**2006, No. 16**

**AN ACT to reform the law relating to receivers.**

*[04<sup>th</sup> December 2006]*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**1. Short title** - This Act may be cited as the Receiverships Act 2006.

**2. Commencement**-(1) This Act comes into force on the commencement of the Companies Act 2001.

(2) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**PART 1**  
**PRELIMINARY PROVISIONS**

**3. Overview** - In this Act:

- (a) this Part deals with preliminary matters, including interpretation and the application of this Act;
- (b) Part 2 sets out the receivership process. Part 2 is supplemented by Schedule 1 (powers, duties, and liabilities of receivers) and Schedule 2 (office of receiver).

**4. Interpretation**-(1) In this Act, unless the context otherwise requires:

“administrator” means an administrator appointed under Part 9 of the Companies Act 2001;

“broadcasting” means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by

means of broadcasting receiving apparatus; but does not include any such transmission of programmes:

- (a) made on the demand of a particular person for reception only by that person; or
- (b) made solely for performance or display in a public place;

“company”:

- (a) means a company within the meaning of the Companies Act 1955 or the Companies Act 2001, as the case may be; and
- (b) includes an overseas company;

“Court” means the Supreme Court of Samoa;

“creditor” includes a person to whom the grantor owes a debt or is under a liability, whether present or future, certain or contingent, and whether an ascertained debt or liability or a liability in damages;

“director”:

- (a) in relation to a company, means a person who occupies the position of director of the company by whatever name called;
- (b) in relation to any body corporate or unincorporated that is not a company, means a person occupying a position in the body that is comparable with that of a director of a company;
- (c) in relation to an overseas company, includes an agent, officer, or employee responsible in Samoa for the business of the overseas company; but
- (d) does not include a receiver;

“document”:

- (a) means information in written or electronic form, or both; and
- (b) includes anything from which information can be reproduced (with or without the aid of anything else);

“electronic” includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic;

“essential service” means:

- (a) the retail supply of electricity;

- (b) the retail supply of fuel and other similar consumable items necessary for the generation of electricity;
  - (c) the retail supply of gas;
  - (d) the supply of water;
  - (e) telecommunications services;
- “grantor” means the person in respect of whose property a receiver is, or may be, appointed;
- “information” includes information (whether in its original form or otherwise) that is in the form of a document, a signature, a seal, data, text, images, sound, or speech;
- “liquidator” means a liquidator appointed under Part VI of the Companies Act 1955 or under Part 9 of the Companies Act 2001, as the case may be; and
- “liquidation” has a corresponding meaning;
- “Minister” means the Minister responsible for this Act from time to time;
- “mortgagee” includes a person who derives title under the original mortgagee;
- “overseas company” means a company incorporated outside Samoa;
- “penalty unit” has the same meaning as in section 4 of the Fines (Review and Amendment) Act 1998;
- “preferential claims” means the claims referred to in Part 3 of Schedule 18 of the Companies Act 2001 (except clause 16 of that schedule);
- “property” includes:
- (a) real and personal property; and
  - (b) an estate or interest in real or personal property; and
  - (c) a debt; and
  - (d) any thing in action; and
  - (e) any other rights, interests, and claims of any kind in relation to property;
- “property in receivership” means property in respect of which a receiver is appointed;
- “receiver”:
- (a) means a receiver, or a manager, or a receiver and manager in respect of any property appointed in

any of the following ways (whether or not the person appointed is empowered to sell any of the property in receivership);

(i) by appointment under a document;

(ii) by appointment by the Court; but:

(b) does not include a mortgagee who exercises a power:

(i) to receive income from mortgaged property; or

(ii) to enter into possession or assume control of mortgaged property; or

(iii) to sell or otherwise alienate mortgaged property; and

(c) does not include an agent of a mortgagee referred to in paragraph (b);

“Registrar”:

(a) means a person for the time being holding the office of Registrar of Companies or Deputy Registrar of Companies in accordance with the Companies Act 2001; and

(b) includes every Deputy Registrar of Companies, District Registrar of Companies, and Assistant Registrar of Companies appointed in accordance with that Act;

“shareholder” includes a member of a company within the meaning of the Companies Act 1955;

“telecommunications services”:

(a) means the conveyance by electromagnetic means from 1 device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not; but

(b) does not include any conveyance that constitutes broadcasting;

“working day” means a day of the week other than:

- (a) Saturday and Sunday;
  - (b) a day that is defined as, or declared to be, a public holiday under the Shops Ordinance 1961 or any other Act;
- “writing” includes representing or reproducing words, figures, or symbols;
- (a) in a visible and tangible form by any means and in any medium;
  - (b) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read.

(2) In this Act, unless the context otherwise requires, a reference to a person by whom, or in whose interests, a receiver was appointed, as the case may be, includes a reference to a person to whom the rights and interests under any document appointing the receiver have been transferred or assigned.

**5. Public notice** – If, under this Act, public notice must be given, that notice must be given by publishing it in at least 1 issue of the Savali; and

- (a) in the case of a matter affecting a grantor that is not an overseas company, at least 2 issues of any newspaper circulating in the area in which is situated:
  - (i) the grantor’s place of business; or
  - (ii) if the grantor has more than 1 place of business, the grantor’s principal place of business; or
  - (iii) if the grantor has no place of business or neither its place of business nor its principal place of business is known, the grantor’s registered office in the case of a body corporate, or the residence of the grantor in the case of an individual; or
- (b) in the case of a matter affecting a grantor that is an overseas company, at least 2 issues of any newspaper circulating in the area in which is situated:

- (i) the place of business in Samoa of the grantor; or
- (ii) if the grantor has more than 1 place of business in Samoa, the principal place of business in Samoa of the grantor.

**6. Application of this Act to receivers-**(1) This Act applies:

- (a) to a receiver appointed after the commencement of this Act; and
  - (b) with the exceptions and modifications specified in subsection (2), to a receiver holding office on the commencement of this Act.
- (2) In the application of this Act to a receiver holding office on the commencement of this Act:
- (a) clause 1 of Schedule 2 does not apply;
  - (b) section 15 applies as if the reference in that section to the receiver's appointment were a reference to the commencement of this Act unless the receiver has, under section 348(1) of the Companies Act 1955, already prepared a statement, in which case section 15 does not apply;
  - (c) section 17(1) applies as if the reference in that subsection to the receiver's appointment were a reference to the commencement of this Act;
  - (d) section 17(2) does not apply to a receivership that ended before the commencement of this Act, in which case section 348(2) of the Companies Act 1955 continues to apply;
  - (e) section 25 does not apply to a receivership that ended before the commencement of this Act;
  - (f) clauses 20(1)(b) and (c) and 21(1) and (2) of Schedule I do not apply.
- (3) Except as expressly provided in this Act, Schedules 1 and 2 apply to receivers.

**7. Application of section 92 of Property Law Act 1952 to receivers-**(1) Nothing in section 92 of the Property Law Act 1952 applies to:

- (a) the appointment of a receiver by a mortgagee; or
  - (b) the entering into possession of property by a receiver; or
  - (c) the payment of money secured by a debenture.
- (2) Section 92 of the Property Law Act 1952 applies to the exercise by a receiver of a power of sale in relation to land.
- (3) For the purposes of subsection (2), section 92(6) of the Property Law Act 1952 applies to a receiver exercising a power of sale of land as if the receiver was a mortgagee exercising a power of sale conferred by a mortgage of land.

## **Part 2**

### **Receiverships**

#### *Appointment of receivers*

**8. Restrictions on appointment of receiver-**(1) The following persons must not be appointed as a receiver:

- (a) a person who must not be appointed as a receiver under clause 1 of Schedule 2, unless the Court orders otherwise;
  - (b) a person who has not consented in writing to their appointment as a receiver.
- (2) Every person who fails to comply with subsection (1)(a) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**9. Appointment of receiver under document-**(1) A receiver may be appointed in respect of the property of a person by, or in the exercise of a power conferred by, a document to which the person is a party.

(2) The appointment of a receiver in the exercise of a power conferred by a document must be in writing.

(3) The power conferred by subsection (1) is in addition to the power conferred on the Court to appoint a receiver.

**10. Extent of power to appoint receiver under document** – A power conferred by a document to appoint a receiver includes, unless the document expressly provides otherwise, the power to appoint:

- (a) 2 or more receivers;
- (b) a receiver additional to 1 or more presently in office;
- (c) a receiver to succeed a receiver whose office has become vacant.

### *Notices*

**11. Notices given by receiver-**(1) Not later than 5 working days after being appointed, a receiver must:

- (a) give written notice of their appointment to the grantor; and
- (b) give public notice of his or her appointment, including:
  - (i) the receiver's full name; and
  - (ii) the date of the appointment; and
  - (iii) the receiver's office address; and
  - (iv) a brief description of the property in receivership.

(2) If the grantor is a body corporate, the receiver must, within 5 working days after being appointed, send a copy of the public notice to the Registrar.

(3) If the appointment of the receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, as the case may be, every notice under this section must state that fact.

(4) Every receiver who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**12. Notice of receivership-**(1) Every document provided by or on behalf of a grantor or a receiver in the course of a receivership must clearly state that a receiver has been appointed in respect of the property that is in receivership.

(2) A failure to comply with subsection (1) does not affect the validity of the document.

(3) Every person commits an offence who fails to comply with subsection (1) and is liable on conviction to a fine not exceeding 25 penalty units.

### ***Obligations to receivers***

**13. Obligations of grantor-**(1) A grantor and, in the case of a grantor that is a body corporate, every director of the grantor, must:

- (a) make available to the receiver all documents and information relating to the property in receivership in the grantor's possession or under the grantor's control;
  - (b) if required to do so by the receiver, verify by statutory declaration that the documents and information are complete and correct;
  - (c) give the receiver any assistance that the receiver may reasonably require;
  - (d) if the grantor has a common seal, make the common seal available for use by the receiver.
- (2) On the application of the receiver, the Court may make an order requiring the grantor or, if the grantor is a body corporate, a director of the grantor to comply with subsection (1).

**14. Obligations of suppliers of essential services -** Despite any other Act or any contract, a supplier of an essential service must not:

- (a) refuse to supply the service to a receiver or to the owner of property in receivership by reason of the grantor's default in paying charges due for the service in relation to a period before the date of the appointment of the receiver; or
- (b) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership that payment be made of outstanding charges due for the service in relation to a period before the date of the appointment of the receiver.

***Reports of receivers***

**15. First report of receiver-**(1) Not later than 3 months after the receiver's appointment, a receiver must:

- (a) prepare a report on the state of affairs with respect to the property in receivership; and
- (b) send a copy of the report to the grantor and every person in whose interests the receiver was appointed; and
- (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
- (d) in the case of a grantor that is a body corporate, send a copy of the report to the Registrar.

(2) Every receiver who fails to comply with this section or section 16 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**16. Contents of first report** - A receiver's first report must include details:

- (a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them; and
- (b) any property disposed of and any proposals for the disposal of property in receivership; and
- (c) any amounts owing, as at the date of appointment, to any person in whose interests the receiver was appointed; and
- (d) any amounts owing, as at the date of appointment, to creditors of the grantor having preferential claims; and
- (e) the receiver's expenses and remuneration or likely expenses and remuneration; and
- (f) any amounts likely to be available for payment to creditors other than those referred to in paragraphs (c) or (d); and
- (g) the assets comprising the property in receivership; and

- (h) the debts and liabilities to be satisfied from the property in receivership; and
- (i) the names and addresses of the creditors with an interest in the property in receivership; and
- (j) any encumbrance over the property in receivership held by any creditor including the date on which it was created; and
- (k) any default by the grantor in making relevant information available.

**17. Further reports of receiver-**(1) Not later than 2 months after the end of each period of 6 months after the receiver's appointment, a receiver must:

- (a) prepare a further report summarising:
  - (i) the state of affairs with the respect to the property in receivership as at that date; and
  - (ii) the conduct of the receivership, including all amounts received and paid, during the period to which the report relates; and
- (b) send a copy of the report to the grantor and every person in whose interest the receiver was appointed; and
- (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
- (d) in the case of a grantor that is a body corporate, send a copy of the report to the Registrar.

(2) Not later than 2 months after the date on which the receivership ends, a person who was a receiver at the end of the receivership must:

- (a) prepare a further report summarising:
  - (i) the state of affairs with respect to the property in receivership as that date; and
  - (ii) the conduct of the receivership, including all amounts received and paid, during the period to which the report relates; and

- (b) send a copy of the report to the grantor and every person in whose interest the receiver was appointed; and
  - (c) in the case of a receiver appointed by the Court, file a copy of the report in the office of the Court; and
  - (d) in the case of a grantor that is a body corporate, send a copy of the report to the Registrar.
- (3) Every person who fails to comply with this section or section 18 commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**18. Contents of further reports** – Every report under section 17 must include details of:

- (a) any property disposed of since the date of any previous report and any proposals for the disposal of property in receivership; and
- (b) any amounts owing, as at the date of the report, to any person in whose interest the receiver was appointed; and
- (c) any amounts owing, as at the date of the report, to creditors of the grantor having preferential claims; and
- (d) the receiver's expenses and remuneration or likely expenses and remuneration; and
- (e) any amounts likely to be available as at the date of the report for payment to creditors other than those referred to in paragraphs (b) or (c).

**19. What may be omitted from reports** – A receiver may omit from any report under this Part details of any proposals for disposal of property in receivership that the receiver considers would materially prejudice the carrying out of the receivership by the receiver.

**20. Extension of time for preparing reports** - A period of time within which a receiver is required to prepare a report under this Part may be extended, on the application of that person, by:

- (a) the Court, if the person was appointed a receiver by the Court;
- (b) the Registrar, if the person was appointed a receiver by or under a document.

**21. Persons entitled to receive reports-**(1) A receiver who is requested in writing by a person referred to in subsection (2) to provide a copy of a report under this Part must, not later than 5 working days after receiving the request, send a copy of the report to that person.

(2) The persons referred to in subsection (1) are a creditor, director, or guarantor of the grantor, or any other person with an interest in any of the property in receivership, who has paid the reasonable costs of making and sending a copy of the requested report.

(3) Every person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**22. Persons entitled to inspect reports** – A person to whom a report must be sent in accordance with section 21 is entitled to inspect the report during normal office hours at the office of the receiver.

### *Preferential claims*

**23. Application of section 24-**(1) Section 24 applies to a person who:

- (a) is the receiver of property of a grantor that is a company that is not in liquidation at the time of the receiver's appointment; and
- (b) was appointed as a receiver under:
  - (i) a floating charge; or
  - (ii) a fixed charge that conferred a floating security at the time it was created.

(2) Nothing in section 24 applies to a grantor in respect of whose property a receiver was appointed before the commencement of this Act and section 101 of the Companies

Act 1955 continues to apply to that grantor despite its repeal by the Companies Act 2001.

**24. Receiver appointed under floating charge: ranking of preferential claims-**(1) A receiver to whom this section applies must apply the property that is subject to the floating charge or its proceeds in the following order of priority:

- (a) first, to reimburse the receiver for their expenses and remuneration;
  - (b) secondly, to pay preferential claims to the extent and in the order of priority specified in Part 3 of Schedule 18 (except clauses 16 and 19(1)(b)) of the Companies Act 2001;
  - (c) thirdly, to pay any claim of the person who is entitled to the benefit of the charge.
- (2) In applying Part 3 of Schedule 18 of the Companies Act 2001 in accordance with subsection (1):
- (a) every reference to a liquidator must be read as a reference to a receiver;
  - (b) every reference to the commencement of the liquidation must be read as a reference to the appointment of the receiver;
  - (c) every reference to a company being put into or being in liquidation must be read as a reference to the company being put into or being in receivership.

#### *End of receivership*

**25. Notice of end of receivership-**(1) If the grantor is a body corporate, the person who held office as receiver at the end of the receivership must, not later than 5 working days after the receivership ends, send or deliver to the Registrar notice in writing of the fact that the receivership has ended.

(2) Every person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**26. Court may terminate or limit receivership-**(1) The Court may, on the application of the grantor or a liquidator of the grantor or the Official Assignee of the estate of the grantor:

- (a) order that a receiver cease to act as such as from a specified date, and prohibit the appointment of any other receiver in respect of the property in receivership;
  - (b) order that a receiver, as from a specified date, act only in respect of specified assets forming part of the property in receivership.
- (2) An order may be made only if the Court is satisfied that:
- (a) the purpose of the receivership has been satisfied so far as possible; or
  - (b) circumstances no longer justify continuation of the receivership.
- (3) Unless the Court orders otherwise:
- (a) a copy of an application under this section must be served on the receiver not less than 5 working days before the hearing of the application; and
  - (b) the receiver may appear and be heard at the hearing.
- (4) An order under subsection (1) may be made on any conditions that the Court thinks fit.
- (5) An order under this section does not affect a security or charge over the property in respect of which the order is made.
- (6) The Court may, on the application of any person who applied for or is affected by the order, rescind, or amend an order made under this section.

**27. Regulations-**(1) The Head of State, acting on the advice of Cabinet, may make regulations for all or any of the following purposes:

*Fees*

- (a) prescribing fees or other amount payable to the Registrar in respect of any matter under this Act;
- (b) prescribing fees or other amounts payable to the Registrar of the Supreme Court in respect of any Court proceedings under this Act;

*Forms*

- (c) prescribing forms (including Court forms) for the purposes of this Act; and those regulations may require:
  - (i) the inclusion in, or attachment to, forms of specified information or documents;
  - (ii) forms to be signed by specified persons;

*Court proceedings under this Act*

- (d) providing for and regulating any Court proceedings under this Act;

*Transitional and savings provisions*

- (e) prescribing transitional and savings provisions relating to the coming into force of this Act;

*General*

- (f) providing for any matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The Registrar or the Registrar of the Supreme Court, as the case may require, may refuse to perform a function or exercise a power until the prescribe fee or amount is paid.
- (3) Any regulations made under subsection (1) may authorise the Registrar or the Registrar of the Supreme Court, as the case may require, to waive, in whole or in part and on any conditions that may be prescribe, payment of any amount referred to in paragraphs (a) or (b) of that subsection.
- (4) Any fee or amount payable to the Registrar or to the Registrar of the Supreme Court, as the case may require, is recoverable by the Registrar or the Registrar of the Supreme Court, as the case may require, in any court of competent jurisdiction as a debt due to the State.

## Schedule 1

ss 3(b), 6(2) and (3), cl 3 of Schedule 2

### Powers, duties, and liabilities of receivers

#### Arrangement of Provisions

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**Part 5****Court supervision of receivers**

24. Court directions

25. Court orders: receiver's remuneration and validity of appointment

26. Court orders are additional to other Court powers

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**Part 1****Preliminary provisions****1. Receiver is grantor's agent**

A receiver appointed by, or under a power conferred by, a document is the agent of the grantor unless it is expressly provided otherwise in the document by or under which the receiver was appointed.

**2. Exercise of powers by 2 or more receivers**

Two or more receivers may act jointly or severally to the extent that they have the same powers unless the document under which, or the order of the Court by which, they are appointed expressly provides otherwise.

**Part 2****Powers of receivers****3. General powers of receivers**

Subject to the document or the order of the Court appointing the receiver, a receiver may exercise the following powers:

- (a) demand and recover income of the property in receivership;
- (b) issue receipts for income recovered;
- (c) manage the property in receivership;
- (d) insure the property in receivership;
- (e) repair and maintain the property in receivership;
- (f) inspect at any reasonable time documents that relate to the property in receivership and that are in the possession or under the control of the grantor;

- (g) exercise, on behalf of the grantor, a right to inspect documents that relate to the property in receivership and that are in the possession or under the control of a person other than the grantor;
- (h) if the receiver is appointed in respect of all or substantially all of the property of a grantor, change the registered office of the grantor or address at which the documents of the grantor are kept;
- (i) buy and sell the property in receivership in the ordinary course of business.

#### **4. Receiver may execute documents**

- (1) A receiver may execute in the name and on behalf of the grantor all documents necessary or incidental to the exercise of the receiver's powers.
- (2) A document signed on behalf of a grantor by a receiver is deemed to have been properly signed by the grantor.

#### **5. Power to claim amounts unpaid on shares**

- (1) A receiver has the same powers as the directors of a grantor that is a company or, if the grantor is being wound up or in liquidation, as the directors would have if it was not being wound up or in liquidation, to:
  - (a) make claims against the shareholders, or former shareholders, of the company in respect of any uncalled capital that is, or any unpaid amount in respect of any shares issued by the grantor that are, charged under the document by or under which the receiver was appointed; and
  - (b) charge interest on, and enforce payment of, any uncalled capital or unpaid amount.
- (2) The exercise of a power under subclause (1) is, as between the shareholders, or former shareholders, of the grantor affected and the grantor, deemed to be a power properly exercised by the directors of the grantor.

**6. Receiver may apply for Court order authorising sale of property**

- (1) If the consent of a mortgagee is required to the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the Court for an order authorising the sale of the property, either by itself or together with other assets.
- (2) The Court may make any order that it thinks fit authorising the sale of the property by the receiver if it is satisfied that:
  - (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
  - (b) the sale:
    - (i) is in the interests of the grantor and the grantor's creditors; and
    - (ii) will not substantially prejudice the interests of the mortgagee.
- (3) An order under this clause may be made on any conditions that the Court thinks fit.

**7. Powers of receiver on liquidation or bankruptcy**

- (1) Subject to subclause (2), a receiver may, unless the Court orders otherwise, be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of:
  - (a) a company that is being wound up or that has been put into liquidation; or
  - (b) a debtor who has been adjudged bankrupt.
- (2) A receiver holding office in respect of property referred to in subclause (1) may act as the agent of the grantor only:
  - (a) with the approval of the Court; or
  - (b) with the written consent of the liquidator or the Official Assignee, as the case may be.
- (3) A receiver who, by reason of subclause (2), is not able to act as the agent of the grantor does not, by reason only of that fact, become the agent of a person by whom or in whose interests the receiver was appointed.

- (4) A debt or liability incurred by a grantor through the acts of a receiver who is acting as the agent of the grantor in accordance with subclause (2) is not a cost, charge, or expense of the liquidation or the administration of the bankrupt's estate.

### **Part 3** **Duties of receivers**

#### *Duties*

#### **8. Principal duties of receivers**

- (1) A receiver must exercise their powers in:
- (a) good faith and for a proper purpose; and
  - (b) a manner they believe on reasonable grounds to be in the interests of the person in whose interests they were appointed.
- (2) If a receiver appointed under a document acts or does not act in accordance with any directions given by the person in whose interests they were appointed, the receiver:
- (a) is not in breach of the duty referred to in subclause (1)(b); but
  - (b) is still liable for any breach of the duty referred to in subclause (1)(a) or the duty referred to in clause 9.
- (3) Nothing in this clause or clause 9 limits or affects clause 10.

#### **9. Other interests receiver must consider**

To the extent consistent with clause 8, a receiver must exercise their powers with reasonable regard to the interests of:

- (a) the grantor; and
- (b) persons claiming, through the grantor, interests in the property in receivership; and
- (c) unsecured creditors of the grantor; and
- (d) guarantors who may be called on to fulfil obligations of the grantor.

**10. Duty of receiver selling property**

A receiver who exercises a power of sale of property in receivership owes a duty to obtain the best price reasonably obtainable as at the time of sale to:

- (a) the grantor; and
- (b) persons claiming, through the grantor, interests in the property in receivership; and
- (c) unsecured creditors of the grantor; and
- (d) guarantors who may be called on to fulfil obligations of the grantor.

**11. Liability for breach of duty imposed by clause 10**

Despite any other Act or rule of law or anything contained in the document appointing the receiver:

- (a) a receiver is still liable for a breach of the duty imposed by clause 10 even though the receiver was acting as the grantor's agent or under a power of attorney from the grantor; and
- (b) the receiver is not entitled to compensation or indemnity from the property in receivership or the grantor in respect of any liability incurred by the receiver arising from a breach of the duty imposed by clause 10.

**12. Duty in relation to money**

A receiver must keep money for the property in receivership separate from:

- (a) other money received in the course of, but not relating to, the receivership; and
- (b) other money held by or under the control of the receiver.

**13. Accounting records**

- (1) A receiver must, at all times, keep accounting records that correctly record and explain all receipts, expenditure, and other transactions for the property in receivership.
- (2) The accounting records must be retained by the receiver for not less than 7 years after the receivership ends.

**14. Duty to notify breaches of Acts**

- (1) A receiver of a grantor that is a company who considers that the company or any director or officer of the company has committed an offence against this Act, the Companies Act 1955, the Companies Act 2001, or the Securities Act 2006 must report that fact to the Registrar.
- (2) A report made under subclause (1), and any communications between the receiver and Registrar relating to that report, are protected by absolute privilege.
- (3) Nothing in subclause (1) imposes a duty on a receiver to investigate whether any offence of the kind referred to in that subclause has been committed.
- (4) Every receiver who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

*Failure to comply with duties***15. Meaning of failure to comply**

In clauses 16 and 17, failure to comply, in relation to a receiver, means a failure by a receiver to comply with a relevant duty arising under:

- (a) the document or the order of the Court by or under which the receiver was appointed; or
- (b) this or any other Act or rule of law or rules of Court; or any order or direction of the Court, other than an order to comply made under clause 16.

**16. Failure to comply**

- (1) If the Court is satisfied that there is, or has been, a failure to comply, the Court may:
  - (a) relieve the receiver of the duty to comply, wholly or in part; or
  - (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply to the extent specified in the order.
- (2) No application may be made to the Court in relation to a failure to comply unless:

- (a) notice of the failure to comply has been served on the receiver not less than 5 working days before the date of the application; and
- (b) as at the date of the application, there is a continuing failure to comply.

### **17. Prohibition order**

- (1) The Court must make an order prohibiting a person from acting as a receiver for a period not exceeding 5 years if the Court is satisfied that the person is unfit to act as a receiver by reason of:
  - (a) persistent failures to comply; or
  - (b) the seriousness of a failure to comply.
- (2) A person to whom a prohibition order applies must not:
  - (a) act as a receiver in any receivership;
  - (b) act as an administrator of a company;
  - (c) act as a liquidator in any liquidation.
- (3) In the absence of special reasons to the contrary, evidence of the following is evidence of persistent failures to comply:
  - (a) that on 2 or more occasions within the preceding 5 years, a Court has made an order to comply in respect of the same person; or
  - (b) that on 2 or more occasions within the preceding 5 years, an application for an order to comply has been made in respect of the same person and that in each case the person has complied after the making of the application and before the hearing.

### **18. Who may apply for orders**

An application for an order under clauses 16 or 17 or both may be made by:

- (a) the Registrar;
- (b) a receiver;
- (c) a person seeking appointment as a receiver;
- (d) the grantor;
- (e) a person with an interest in the property in receivership;
- (f) a creditor of the grantor;

- (g) a guarantor of an obligation of the grantor;
- (h) if the grantor is a company, an administrator or a liquidator of the grantor;
- (i) if the grantor is a person who has been adjudged bankrupt, the Official Assignee of the estate of the grantor.

**19. Court orders: general**

- (1) In making an order under clauses 16 or 17 or both, the Court may:
  - (a) extend the time for compliance;
  - (b) impose any conditions;
  - (c) make any ancillary orders.
- (2) A copy of every order made under clauses 16 or 17 must, within 10 working days of the order being made, be delivered by the applicant to the Registrar of the Court who must keep it on a public file indexed by reference to the name of the receiver concerned.

**Part 4**  
**Liability of receivers**

*Liability*

**20. General liability of receiver**

- (1) Subject to subclauses (2) and (3), a receiver is personally liable:
  - (a) on a contract entered into by the receiver in the exercise of any of the receiver's powers; and
  - (b) for payment of wages or salary that, during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before the appointment of the receiver if notice of the termination of the contract is not lawfully given within 10 working days after the date of appointment; and

- (c) for the payment of remuneration under any contract with a director of a grantor if the receiver has expressly confirmed the contract.
- (2) A contract referred to in subclause (1)(a) may exclude or limit the personal liability of a receiver who is not appointed by the Court.
- (3) The Court may, on the application of a receiver and on any conditions that the Court thinks fit, extend the period within which notice of the termination of a contract is required to be given under subclause (1)(b).
- (4) Every application must be made before the expiry of the 10-day working period.

## **21. Liability for rent and other payments**

- (1) Subject to subclauses (2) and (3), a receiver is personally liable, to the extent specified in subclause (2), for rent and any other payments becoming due under an agreement subsisting at the date of the receiver's appointment relating to the use, possession, or occupation by the grantor of property in receivership.
- (2) The liability of a receiver under subclause (1) is limited to that portion of the rent or other payments which is attributable to the period commencing 10 working days after the date of the appointment of the receiver and ending on whichever is the earlier of:
  - (a) the date on which the receivership ends; or
  - (b) the date on which the grantor ceases to use, possess, or occupy the property.
- (3) The Court may, on the application of a receiver:
  - (a) limit the liability of the receiver to a greater extent than that specified subclause (2); or
  - (b) excuse the receiver from liability under subclause (1).
- (4) Nothing in subclauses (1) or (2):
  - (a) must be taken as giving rise to an adoption by a receiver of an agreement referred to in subclause (1); or
  - (b) renders a receiver liable to perform any other obligation under the agreement.

***Relief from liability*****22. Receiver is entitled to indemnity**

- (1) A receiver is entitled to an indemnity out of the property in receivership in respect of their personal liability under clauses 20 or 21.
- (2) Nothing in this clause or clauses 20 or 21:
  - (a) limits any other right of indemnity to which a receiver may be entitled; or
  - (b) limits the liability of a receiver on a contract entered into without authority; or
  - (c) confers on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

**23. Court may relieve receiver from personal liability**

- (1) The Court may relieve a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership if it is satisfied that:
  - (a) the liability was incurred solely by reason of a defect in the appointment of the receiver or in the document or order of the Court by or under which the receiver was appointed; and
  - (b) the receiver acted honestly and reasonably; and
  - (c) the receiver ought, in the circumstances, to be excused.
- (2) The Court may exercise its powers under subclause (1) on any conditions that it thinks fit.
- (3) A person in whose interests a receiver was appointed is liable, on any conditions that the Court thinks fit, to the extent to which the receiver is relieved from liability by the Court.

**Part 5****Court supervision of receivers****24. Court directions**

- (1) The Court may, on the application of a receiver:

- (a) give directions in relation to any matter arising in connection with the carrying out of the receivership by the receiver;
  - (b) revoke or vary those directions.
- (2) Subject to subclause (3), it is a defence to a claim against a receiver in relation to any act or omission by the receiver that the receiver acted or omitted to act in accordance with a direction given under subclause (1).
- (3) The Court may, on the application of a person referred to in clause 18, order that, by reason of the circumstances in which a direction was obtained under subclause (1), a receiver is not entitled to the protection given by subclause (2).

**25. Court orders: receiver's remuneration and validity of appointment**

- (1) The Court may, on the application of a person referred to in subclause (2):
- (a) in respect of any period, review or fix the remuneration of a receiver at a level which is reasonable in the circumstances;
  - (b) to the extent that an amount retained by a receiver as remuneration is found by the Court to be unreasonable in the circumstances, order the receiver to refund the amount;
  - (c) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.
- (2) Any of the following persons may apply to the Court:
- (a) the receiver;
  - (b) the grantor;
  - (c) a creditor of the grantor;
  - (d) a person claiming, through the grantor, an interest in the property in receivership;
  - (e) the directors of the grantor or, in the case of a grantor that is in liquidation, the directors of the grantor at the time the liquidator was appointed;
  - (f) if the grantor is a company, a liquidator;

- (g) if the grantor is a person who has been adjudged bankrupt, the Official Assignee of the estate of the grantor.
- (3) The Court may, on the application of a person referred to in subclause (2), revoke or vary an order made under subclause (1).

## **26. Court orders are additional to other Court powers**

The powers given by clauses 24 and 25:

- (a) are in addition to any other powers the Court may exercise under this Act or any other Act; and
- (b) may be exercised whether or not the receiver has ceased to act as receiver when the application is made.

## **Schedule 2**

ss 3(b), 6(2) and (3),8(1)

### ***Office of receiver***

Arrangement of Provisions

#### ***Appointment of receivers***

1. Persons not to be appointed Receiver
2. Validity of acts of receivers
3. Court may declare whether receiver validly appointed
4. Court orders for protecting property on removal of receiver

#### ***Vacancy in office of receivers***

5. Vacancy in office of receiver
6. How receiver may resign
7. Notice of vacancy validly appointed
8. Vacating receiver's successor to be Court orders for protecting property on removal of receiver

### ***Appointment of receivers***

#### **1. Persons not to be appointed receiver**

The following persons must not be appointed or act as a receiver:

- (a) a body corporate;

- (b) a person who is under 21 years of age;
- (c) a creditor of the grantor;
- (d) a person who is, or who has within the period of 2 years immediately before the commencement of the receivership been:
  - (i) a director or employee of the grantor;
  - or
  - (ii) a director or employee of a mortgagee of the property in receivership;
- (e) a person who has, or who has had within the period of 2 years before the commencement of the receivership, an interest, whether direct or indirect, in a share issued by the grantor;
- (f) a person who is an undischarged bankrupt;
- (g) a person who has been adjudged to be mentally defective under the Mental Health Ordinance 1961;
- (h) a person in respect of whom an order has been made under clauses 16 or 17 of Schedule 1;
- (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under, section 189 of the Companies Act 1955, or who would be so prohibited but for the repeal of that Act;
- (j) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under the Companies Act 2001;
- (k) a person who is disqualified from acting as a receiver by the document that confers the power to appoint a receiver.

## **2. Validity of acts of receivers**

- (1) Subject to subclause (2), no act of a receiver is invalid merely because the receiver was not validly appointed or is disqualified from acting as a receiver or is not authorised to do the act.
- (2) No transaction entered into by a receiver is invalid merely because the receiver was not validly appointed or is not

authorised to enter into the transaction unless the person who deals with the receiver knows, or ought to know, that the receiver was not validly appointed or did not have authority to enter into the transaction.

### **3. Court may declare whether receiver validly appointed**

The Court may, in respect of a person who is disqualified under clause 1 to become or remain a receiver, or fails to comply with an order made under clause 17 of Schedule 1:

- (a) order that the person may be appointed and act or may continue to act as a receiver, despite clause 1; or
- (b) remove the person from office.

### **4. Court orders for protecting property on removal of receiver**

The Court may, on making an order that removes, or has the effect of removing, a receiver from office, make any orders that the Court thinks fit:

- (a) for preserving the property in receivership;
- (b) requiring the receiver for that purpose to make available to any person specified in the order any information and documents in the possession or under the control of the receiver.

### ***Vacancy in office of receivers***

### **5. Vacancy in office of receiver**

The office of receiver becomes vacant if the person holding office resigns, dies, or is or becomes disqualified under clause 1.

### **6. How receiver may resign**

- (1) A receiver appointed under a power conferred by a document may resign office by giving not less than 5 working days' written notice of their intention to resign to the person who appointed the receiver.
- (2) A receiver appointed by the Court must not resign office without first obtaining the leave of the Court to do so.

**7. Notice of vacancy**

- (1) Every person who vacates office as receiver (or if that person is unable to act, that person's legal representative) must:
  - (a) if the vacancy arose because of the disqualification of the person holding office as receiver, immediately notify the person who appointed the receiver; and
  - (b) if the receiver held office in relation to the property of a company, within 5 working days of the vacancy occurring, give written notice of the vacancy to the Registrar for registration in the register of charges kept by the Registrar; and
  - (c) in all cases, immediately give public notice of the vacancy.
- (2) Every person who fails to comply with subclause (1) commits an offence and is liable on conviction to a fine not exceeding 25 penalty units.

**8. Vacating receiver's successor to be helped**

- (1) A person vacating the office of receiver must, if practicable, provide any information and give any assistance in the conduct of the receivership to their successor as that person reasonably requires.
- (2) On the application of a person appointed to fill a vacancy in the office of receiver, the Court may make any order that the Court considers necessary or desirable to facilitate the performance of the receiver's duties.

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**The Receiverships Act 2006 is administered in the Ministry of  
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