

ANTIGUA AND BARBUDA



COMPANIES (AMENDMENT) BILL, 2020

No. of 2020

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AN ACT to amend the Companies Act 1995 No.18 of 1995 1995 to provide for the rehabilitation of an insolvent corporate debtor and for other incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as the Companies (Amendment) Act. 2020

2. Interpretation

In this Act –

“principal Act” means the Companies Act 1995 No. 18 of 1995

3. Amendment of section 236 of the principal Act – Re-organisation

Section 236 is amended in subsection (1) by inserting after paragraph (a) the following”
“(aa) a court order for rehabilitation issued under Part VI;”

4. Amendment of section 238 of the principal Act - Definitions

Section 238 is amended in the definition of “complainant” by inserting after subparagraph (b)(ii) the following new subparagraph (iia) as follows –

“(iia) a creditor of the company or of any of its affiliates;”

5. Amendment of section 241 – Oppression restrained

Section 241 of the principal Act is amended in subsection (3) by –

- (a) deleting “;” at the end of paragraph (m); and
- (b) inserting after paragraph (m) the following new paragraph –
“(ma) an order for rehabilitation of a Debtor under Part VI; or”

6. Amendment of section 336A – Filing of reports by non-profit

Section 336A of the principal Act is amended in subsection (1) by –

- (a) repealing the words, “and the amount thereof” and replacing these with the words, “in excess of ten thousand (\$10,000.) dollars;
- (b) repealing paragraph (e) and replacing it as follows –
 - “(e) the names and positions held by its employees”
- (c) by repealing paragraph (f) in its entirety.

7. Insertion of Part VI

The principal Act is amended by inserting at the end of Part V the following:

“PART VI

COMPANY REHABILITATION

DIVISION A: PRELIMINARY

551. Definitions

In this Part —

“affiliate” includes —

- (a) an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—
 - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (b) a company in which 20 percent or more of the outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—
 - (iii) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

- (iv) solely to secure a debt, if such entity has not in fact exercised such power to vote;
- (c) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
- (d) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement;

“claim” means—

- (a) a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
- (b) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;

“creditor” means an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor or that has a claim against the estate of a kind specified in section 572(f), 572(g), or 572(h).

“custodian” means—

receiver or receiver-manager of any of the property of the debtor, appointed in a case or proceeding not under this Part;

assignee under a general assignment for the benefit of the debtor’s creditors; or

trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors;

“debtor” means an entity concerning which a case under this Part has been commenced;

“entity” includes a person, estate, trust, and governmental unit;

“equity security” means a share in a company, whether or not transferable or denominated, stock or similar security, or a warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified herein;

“equity security holder” means holder of an equity security of the debtor;

“executory contract” means a contract under which the obligation of both the debtor and the other party to the contract are underperformed such that the failure of either party to complete performance would constitute a material breach excusing the performance of the other;

“governmental unit” means Antigua and Barbuda; parish of Antigua and Barbuda; department, agency, or instrumentality of Antigua and Barbuda or parish of Antigua and Barbuda; foreign state; or other foreign or domestic government;

“insider” means, in respect of a debtor —

- (a) a director or manager of the debtor;
- (b) an officer of the debtor;
- (c) a person in control of the debtor, including de facto control;
- (d) a partnership in which the debtor is a general partner;
- (e) a general partner of the debtor; or
- (f) a relative of a general partner, director, officer, or person in control of the debtor;

“insolvent” means a financial condition such that a company —

- (a) is unable to pay its liabilities as they become due, or
- (b) the value of the entity’s debts is greater than the realisable value of the entity’s assets, at a fair valuation, exclusive of assets transferred, concealed, or removed with intent to hinder, delay, or defraud the entity’s creditors;

“judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding;

“lien” means lien, security interest, mortgage, or any form of charge against or interest in property to secure payment of a debt or performance of an obligation;

“person” includes an individual, partnership, and company, but does not include governmental unit, except that a governmental unit that acquires an asset from a person as a result of the operation of a loan guarantee agreement or as receiver or liquidating agent of a person;

“petition” means petition filed under section 557 and 558, as the case may be, commencing a case under this Part;

“security” —

- (a) includes—
 - (i) note;

- (ii) stock;
- (iii) treasury stock;
- (iv) bond;
- (v) debenture;
- (vi) collateral trust certificate;
- (vii) pre-organization certificate or subscription;
- (viii) transferable share;
- (ix) voting-trust certificate;
- (x) certificate of deposit;
- (xi) certificate of deposit for security;
- (xii) other claim or interest commonly known as "security"; and
- (xiii) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(b) does not include—

- (i) currency, check, draft, bill of exchange, or bank letter of credit;
- (ii) commodity futures contract or forward contract;
- (iii) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;
- (iv) option to purchase or sell a commodity; or
- (v) debt or evidence of indebtedness for goods sold and delivered or services rendered;

“security agreement” means agreement that creates or provides for a security interest;

“security interest” means lien created by an agreement;

“statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute;

“substantial consummation” means—

- (a) transfer of all or substantially all of the property proposed by the plan to be transferred;
- (b) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
- (c) commencement of distribution under the plan;

“systemically important company” means a partnership or company –

- (a) that has either at least fifty million (\$50,000,000.) in assets or liabilities or has at least 300 employees who are citizens or residents of Antigua and Barbuda; or
- (b) That the Minister of Finance has determined is important to the economy of Antigua and Barbuda taking into consideration –
 - (i) the nature, scope, size, scale, concentration, interconnectedness of the activities of the company in relation to other aspects of the national economy;
 - (ii) whether such entity is subject to specific regulatory or public and safety matters; and
 - (iii) any other factors that the Minister deems appropriate for the national interest;

“transfer” means—

- (a) the creation of a lien;
- (b) the retention of title as a security interest;
- (c) the foreclosure of a debtor’s equity of redemption; or
- (d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - (i) property; or
 - (ii) an interest in property.

552. Power of court

(1) The court may issue any order, instructions, process, or judgment that is necessary or appropriate to carry out the provisions of this Part. No provision of this Part providing for the raising of an issue by a party in interest shall be construed to preclude the court from,

taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(2) Notwithstanding subsection (a) of this section, a court may not appoint a custodian in a case under this Part.

(3) The court, on its own motion or at the request of an interested party —

(a) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case;

(b) shall provide for notice and an opportunity to be heard that is appropriate under the circumstances to any relief sought under this Part, and, in conducting any evidentiary proceedings, may require the disclosure of information relevant to such proceedings and the appearance of witnesses as necessary to the fair adjudication of the matter; and

(c) may, unless inconsistent with another provision of this Part, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(i) sets the date by which the administrator must assume or reject an executory contract or unexpired lease; or

(ii) sets a date by which the administrator shall file a disclosure statement and plan;

(iii) sets the date by which the administrator shall solicit acceptances of a plan;

(iv) sets the date by which a party in interest other than the administrator may file a plan;

(v) sets a date by which a proponent of a plan, other than the administrator, shall solicit acceptances of such plan;

(vi) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vii) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

553. Extension of time

(1) If, an order was previously entered in another proceeding against the Debtor other than in proceedings under this Part, or an agreement between the Debtor and any other person fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the administrator may commence such action only before the later of—

(a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(b) two years after the order for relief.

(2) Except as provided in subsection (a) of this section, if applicable law, an order entered in a proceeding other than a proceeding under this Part, or an agreement fixes a period within which the debtor may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the administrator may only file, cure, or perform, as the case may be, before the later of—

(a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(b) 60 days after the order for relief.

(3) Except as provided in section 580, if applicable law, an order entered in a proceeding other than a proceeding under this Part, or an agreement fixes a period for commencing or continuing a civil action in another court on a claim against the debtor, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(b) 30 days after notice of the termination or expiration of the stay under **section 566** with respect to such claim.

554. Who may be a debtor

Only a company that –

(i) is insolvent; and

(ii) either was organised under this Act; or

(iii) has a place of business or property in Antigua and Barbuda
may be a debtor under this Part.

DIVISION B: CASE ADMINISTRATION

555. Voluntary cases.

(1) A debtor may commence a voluntary case under this Part by filing a petition with the court for an order for rehabilitation.

(2) The commencement of a voluntary case under this Part shall constitute an order for relief under this Part.

556. Involuntary cases.

(1) An involuntary case may be commenced under this Part against a company that may be a debtor—

(a) by two or more creditors, including a government unit, each of which is either a holder of a claim against such company that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, or a debenture trustee representing such a holder, if such noncontingent, undisputed claims amount to at least thirty thousand (\$30,000.) or more than the value of any lien on property of the debtor securing such claims held by the holders of such claims

(b) if there are fewer than twelve (12) such holders, excluding any employer or insider of such person and any transferee of a transfer under section 585, 586, 588, 589, or 590, by one or more of such holders that hold in the aggregate of at least [EC\$30,000] of such claims;

(c) by the Minister of Finance, if the company –

- (i) is a company that may be a debtor; and
- (ii) is a systemically important company.

(iii) by a receiver or receiver manager appointed pursuant to Part III of this Act.

(2) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (1) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (1) of this section.

(3) The debtor may file an answer to a petition under this section.

(4) After notice and a hearing, and for cause, the court may require the petitioners, other than a governmental unit, under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (7) of this section.

(5) Notwithstanding [section 567](#), except to the extent provided under [section 559\(1\)](#) or that the court otherwise orders, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(6) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case, if the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to the liability or amount.

(7) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

- (a) against the petitioners and in favor of the debtor for—
 - (i) costs; or
 - (ii) reasonable attorney's fees; or
 - (b) against any petitioner that filed the petition in bad faith, for—
 - (i) any damages proximately caused by such filing; or
 - (ii) punitive damages;
- provided, however, that no governmental unit shall be liable for any costs, fees, or damages under this subsection.

(8) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

- (a) on the motion of a petitioner;
- (b) on consent of all petitioners and the debtor; or
- (c) for want of prosecution.

557. Appointment of an administrator.

(1) Subject to subsection (2) of this section, upon the filing of a petition under section 557 or upon an order for relief granted under section 558 the court shall appoint an administrator.

(2) As soon as practicable after the filing of a petition for a systemically important company under section 557 or 558, the Minister of Finance shall submit a list of three disinterested persons that are qualified and willing to serve as administrators in the case and the court shall appoint one of such persons to serve as the administrator.

(3) When an Administrator is appointed under subsection (1) or (2), the powers of the directors, managers, equity holders, members, general partners, or limited partners of the debtor may not be exercised by such entities until the case is dismissed or closed.

558. Role and capacity of administrator.

(1) The administrator in a case under this Part is the representative of the estate.

(2) The administrator in a case under this Part has the capacity to sue and be sued, provided that the administrator shall not be personally liable for any act or omission taken on behalf of the debtor or the estate except for willful misconduct.

(3) In addition to any specific authorization under this Part, the administrator shall have standing to sue to recover funds or to seek subordination of claims, in the name of and for the benefit of creditors, to redress any generalized harm occasioned upon creditors.

559. Duties of administrator.

(1) An administrator shall—

(a) be accountable for all property received;

(b) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;

(c) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;

(d) if the business of the debtor is authorized to be operated, file with the court, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the court requires;

(e) make a final report and file a final account of the administration of the estate with the court;

(f) file—

(i) a list of creditors; and

(ii) unless the court orders otherwise—

(A) a schedule of assets and liabilities

(B) a schedule of current income and current expenditures;

(C) a statement of the debtor's financial affairs;

(D) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(E) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(g) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(h) as soon as practicable—

(A) file a statement of any investigation conducted under subsection (g), including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and

(B) transmit a copy or a summary of any such statement to the court, and to such other entity as the court designates;

(i) as soon as practicable, file a plan under section 602, file a report of why the administrator will not file a plan, or recommend conversion of the case to a wind-down under Part IV of this title or dismissal of the case;

(j) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and

(k) after confirmation of a plan, file such reports as are required by law or as the court orders.

(2) Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, for cause, the administrator may direct the operation the debtor's business, including the continuation of management personnel to formulate a business plan and operate as a going concern.

560. Eligibility to serve as an administrator.

Only a person who would be eligible and qualified to be appointed as a receiver or receiver-manager under section 288 of this Act may be appointed and serve as an administrator under this Part.

561. Removal of administrator.

The court, after notice and hearing, may remove an administrator, for cause, and shall promptly appoint a successor administrator.

562. Effect of vacancy.

A vacancy in the office of administrator during a case does not abate any pending action or proceeding, and the successor administrator shall be substituted in such action or proceeding.

563. Adequate protection.

When adequate protection is required under section 566, 567, or 568 of an interest of an entity in property, such adequate protection may be provided by—

(a) requiring the administrator to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 566, use, sale, or lease under section 567, or any grant of a lien under section 568, results in a decrease in the value of such entity's interest in such property;

- (b) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (c) granting such other relief, other than entitling such entity to compensation allowable under section 573(b)(i) as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property; provided, however, the court may not grant as adequate protection administrative expense priority to any claim.

564. Automatic stay.

- (1) Except as provided in subsection (2) of this section, a petition filed under section 557 or 558 operates as a stay, applicable to all entities, of—
 - (a) the commencement or continuation, including the issuance or employment of process, of a judicial, statutory, administrative, or other action or proceeding against the debtor, except as required by this Part, that was or could have been commenced before the commencement of the case under this Part, or to recover a claim against the debtor that arose before the commencement of the case under this Part;
 - (b) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this Part;
 - (c) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
 - (d) any act to create, perfect, or enforce any lien against property of the estate;
 - (e) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this Part;
 - (f) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this Part; and
 - (g) the setoff of any debt owing to the debtor that arose before the commencement of the case under this Part against any claim against the debtor.
- (2) The filing of a petition under section 557 or 558 does not operate as a stay—
 - (a) under subsection (a), of the commencement or continuation of a criminal action or proceeding against the debtor;
 - (b) under subsection (a), of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the administrator's rights and powers are subject to such perfection under section 587(2) or to the extent that such act is accomplished within the period provided under section 588(5)(ii)(A);

- (c) under paragraph (a), (b), (c), or (d) of subsection (1), of the commencement or continuation of an action or proceeding by a governmental unit, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;
 - (d) under subsection (1), of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property; and
 - (e) under subsection (1), of any transfer that is not avoidable under section 585 and that is not avoidable under section 590.
- (3) Except as provided in subsection (4), the stay of an act against property of the estate under subsection (1) continues until—
- (a) such property is no longer property of the estate; or
 - (b) the earliest of—
 - (i) the time the case is closed; or
 - (ii) the time the case is dismissed.
- (4) At the request of an interested party and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a), such as by terminating, annulling, modifying, or conditioning such stay—
- (a) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
 - (b) with respect to a stay of an act against property under subsection (a), if—
 - (i) the debtor does not have an equity in such property; and
 - (ii) such property is not necessary to an effective rehabilitation of the debtor.
- (5) Thirty days after a request under subsection (4) for relief from the stay of any act against property of the estate under subsection (1), such stay is terminated with respect to the interested party making such request, then, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (4) of this section.
- (6) A hearing under subsection (5) may be a preliminary hearing, or may be consolidated with the final hearing under subsection (4) of this section.

(7) The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (4) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing.

(8) If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(9) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(10) In any hearing under subsection (4) or (5) concerning relief from the stay of any act under subsection (1)—

(a) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(b) the party opposing such relief has the burden of proof on all other issues.

(11) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

565. Use, sale, or lease of property

(1) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 593(b), whether existing before or after the commencement of a case under this Part.

(2) The administrator, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

(3) Unless the court orders otherwise, -

(a) the administrator may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(b) the administrator may not use, sell, or lease cash collateral under paragraph (i) of this subsection unless—

- (i) each entity that has an interest in such cash collateral consents; or
 - (ii) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.
- (c) Except as provided in paragraph (ii) of this subsection, the administrator shall segregate and account for any cash collateral in the administrator possession, custody, or control.
- (4) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the administrator, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 566).
- (5) The administrator may sell property under subsection (2) or (3) of this section free and clear of any interest in such property of an entity other than the estate, only if—
- (a) otherwise applicable law permits sale of such property free and clear of such interest;
 - (b) such entity consents;
 - (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
 - (d) such interest is in bona fide dispute; or
 - (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
- (6) At a sale under subsection (2) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.
- (7) Subject to the provisions of section 569, the administrator may use, sell, or lease property under subsection (2) or (3) of this section, or a plan under this Part, may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this Part concerning the debtor, or on the appointment of or the taking possession by an administrator in a case under this Part or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.

(8) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(9) The administrator may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(10) In a hearing under this section—

(a) the administrator has the burden of proof on the issue of adequate protection; and

(b) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

566. Obtaining credit

(1) Unless the court orders otherwise, the administrator may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 573(2)(a) as an administrative expense.

(2) The court, after notice and a hearing, may authorize the administrator to obtain unsecured credit or to incur unsecured debt other than under subsection (1) of this section, allowable under section 573(2)(a) as an administrative expense.

(3) If the administrator is unable to obtain unsecured credit allowable under section 573(2)(a) as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(a) with priority over any or all administrative expenses specified in section 573(2) or 576(2);

(b) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(c) secured by a junior lien on property of the estate that is subject to a line.

(4) The court after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (a) the administrator is unable to obtain such credit otherwise; and
- b) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(5) In any hearing under this subsection, the administrator has the burden of proof on the issue of adequate protection.

(6) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

567. Executory contracts and unexpired leases

(1) Except as provided in subsections (2), (3), and (4) of this section, the administrator, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(2) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

- (a) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
- (b) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
- (c) provides adequate assurance of future performance under such contract or lease.

(iv)

- (3) Subsection (2) does not apply to a default that is a breach of a provision relating to—
- (a) the insolvency or financial condition of the debtor at any time before the closing of the case;
 - (b) the commencement of a case under this Part;
 - (c) the appointment of or taking possession by an administrator in a case under this title or a custodian before such commencement; or
 - (d) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.
- (4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in subsection (3) of this section, the administrator may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.
- (5) The administrator may not assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—
- (a) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
 - (b) such party does not consent to such assignment; or
 - (c) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or
 - (d) such lease is of nonresidential real property and has been terminated under applicable law prior to the order for relief.
- (6) The administrator shall timely perform all the obligations of the debtor, except those specified in subsection (2)(b), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 573(2)(1). The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the administrator obligations under the provisions of subsection (2) or (5) of this section. Acceptance

of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this Part.

(7) Subject to subsection (8), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the administrator shall immediately surrender that nonresidential real property to the lessor, if the administrator does not assume or reject the unexpired lease by the earlier of—

- (a) the date that is 120 days after the date of the order for relief; or
- (b) the date of the entry of an order confirming a plan.

(8) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the administrator or lessor for cause.

(9) If the court grants an extension under **clause (i)**, the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

(10) The administrator shall timely perform all of the obligations of the debtor, except those specified in **subsection (b)(ii)**, first arising from or after 60 days after the order for relief in a case under this Part under an unexpired lease of personal property until such lease is assumed or rejected notwithstanding section 573(2)(1), unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This paragraph shall not be deemed to affect the administrator's obligations under the provisions of subsection (2) or (5). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this Part.

(11) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

- (a) the insolvency or financial condition of the debtor at any time before the closing of the case;
- (b) the commencement of a case under this Part; or
- (c) the appointment of or taking possession by a trustee in a case under this Part or a custodian before such commencement.

(12) Subsection (11) does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties if—

- (a) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and
- (b) such party does not consent to such assumption or assignment; or
- (c) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(13) Except as provided in subsections (2) and (3) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under subsection (2).

(14) The administrator may assign an executory contract or unexpired lease of the debtor only if—

- (a) The administrator assumes such a contract or lease in accordance with the provisions of this section; and
- (b) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

(15) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the administrator.

(16) The rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease if such contract or lease has not been assumed under this section or under a plan confirmed under this Part, immediately before the date of the filing of the petition.

(17) Assignment by the administrator to an entity of a contract or lease assumed under this section relieves the administrator and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(18) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor's obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(19) For purposes of this section 569 and sections 582(2)(b) and 566(2)(4), leases of real property shall include any rental agreement to use real property.

(20) If the administrator rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

(a) to treat such contract as terminated by such rejection if such rejection by the administrator amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable law, or an agreement made by the licensee with another entity; or

(b) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable law), as such rights existed immediately before the case commenced, for—

(i) the duration of such contract; and

(ii) any period for which such contract may be extended by the licensee as of right under applicable law.

(21) If the licensee elects to retain its rights, as described in **paragraph (i)(B) of this subsection**, under such contract—

(a) the administrator shall allow the licensee to exercise such rights;

(b) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (i)(B) of this subsection for which the licensee extends such contract; and

(c) the licensee shall be deemed to waive—

(a) any right of setoff it may have with respect to such contract under this Part or applicable law; and

(b) any claim allowable under section 573(b) arising from the performance of such contract.

(22) If the licensee elects to retain its rights, as described in paragraph (i)(B) of this subsection, then on the written request of the licensee the trustee shall—

(a) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the administrator; and

(b) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(23) Unless and until the administrator rejects such contract, on the written request of the licensee the administrator shall—

(a) to the extent provided in such contract or any agreement supplementary to such contract—

(i) perform such contract; or

(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable law) held by the administrator; and

(b) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.

(23) If a lease of personal property is rejected or not timely assumed by the administrator under subsection (4), the leased property is no longer property of the estate and the stay under section 566(1) is automatically terminated.

DIVISION C: CREDITORS, THE DEBTOR, AND THE ESTATE

568. Filing of proofs of claims or interests

(1) A creditor or an indenture trustee may file a proof of claim; an equity security holder may file a proof of interest.

(2) If a creditor does not timely file a proof of such creditor's claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.

(3) If a creditor does not timely file a proof of such creditor's claim, the debtor or the administrator may file a proof of such claim.

(4) A claim of a kind specified in section 572(e)(ii), 572(f), 572(g), or 572(h) of this Part may be filed under subsection (a), (b), or (c) of this section the same as if such claim were a claim against the debtor and had arisen before the date of the filing of the petition.

569. Allowance of claims or interests

(1) A claim or interest, proof of which is filed under **section 568** of this Part, is deemed allowed, unless an interested party objects.

(2) Except as provided in subsections (5)(b), (6), (7), (8) and (9) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

- (a) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
 - (b) such claim is for unmatured interest;
 - (c) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
 - (d) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;
 - (e) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds
 - (i) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—
 - (A) the date of the filing of the petition; and
 - (B) the date on which such lessor repossessed, or the lessee surrendered, the leased property; and
 - (ii) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;
 - (f) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—
 - (i) the compensation provided by such contract, without acceleration, for one year following the earlier of—
 - (A) the date of the filing of the petition; or
 - (B) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; and
 - (ii) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;
 - (g) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or
 - (h) proof of such claim is not timely filed, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief.
- (3) There shall be estimated for purpose of allowance under this section—

(a) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(b) any right to payment arising from a right to an equitable remedy for breach of performance.

(4) Notwithstanding subsections (1) and (2) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 583, 584, 591, 594 of this Part or that is a transferee of a transfer avoidable under section 585, 586, 588, 589, or 590 of this Part, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 583, 584, 591, or 594 of this Part.

(5) Notwithstanding subsections (1), (2), and (3) of this section and paragraph (b) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(a) such creditor's claim against the estate is disallowed;

(b) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(c) such entity asserts a right of subrogation to the rights of such creditor under section 577 of this Part.

(6) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsections (1), (2), or (3) of this section, or disallowed under subsection (4) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(7) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of an administrator and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection(a), (b), or (c) of this section or disallowed under subsection(d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(8) A claim arising from the rejection, under section 569 of this Part or under a plan, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (1), (2), or (3) of this section or disallowed under subsection (4) or (5) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(9) A claim arising from the recovery of property under section 591 or 594 of this Part shall be determined, and shall be allowed under subsection (1), (2), or (3) of this section, or disallowed under subsection (4) or (5) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(10) A claim that has been allowed or disallowed may be reconsidered for cause.

(11) A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder.

(12) This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

570. Allowance of administrative expenses

(1) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(2) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 572(f) of this Part, including—

(a) the actual, necessary costs and expenses of preserving the estate—including (1) wages, salaries, and commissions for services rendered after the commencement of the case; and (2) wages and benefits awarded pursuant to a judicial proceeding as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees during the case under this Part;

(b) any tax—(1) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both; or (2) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

(c) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and

- (d) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;
- (d) reasonable compensation and reimbursement of the administrator or any professionals employed by the administrator or debtor for services rendered during the case;
- (e) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (iv) of this subsection, incurred by—
- (i) a creditor that files a petition under section 558 of this Part;
 - (ii) a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
 - (iii) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;
 - (iv) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors, in making a substantial contribution in a case under this Part; or
 - (v) a custodian superseded under section 584 of this Part, and compensation for the services of such custodian;
 - (vi) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under paragraph (iii) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;
- (f) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under this Part, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this Part;
- (g) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this Part in which the goods have been sold to the debtor in the ordinary course of such debtor's business.
- (3) Notwithstanding subsection (2), there shall neither be allowed, nor paid—
- (a) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that—
 - (i) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

(ii) the services provided by the person are essential to the survival of the business; and

(iii) either—

(A) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(2) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

(b) a severance payment to an insider of the debtor, unless—

(i) the payment is part of a program that is generally applicable to all full-time employees; and

(ii) the amount of the payment is not greater than 5 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

(iii) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.

571. Determination of tax liability

(1) Except as provided in section (2) of this section, the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

(2) The court may not so determine—

(a) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this Part;

(b) any right of the estate to a tax refund, before the earlier of—

- (i) 120 days after the administrator properly requests such refund from the governmental unit from which such refund is claimed; or
- (ii) a determination by such governmental unit of such request; or
- (iii) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under applicable nonbankruptcy law has expired.

(3) The clerk shall maintain a list under which a governmental unit responsible for the collection of taxes within the district may—

- (a) designate an address for service of requests under this subparagraph; and
- (b) describe where further information concerning additional requirements for filing such requests may be found.

(4) If such governmental unit does not designate an address and provide such address to the clerk under subsection (3)(a), any request made under this subparagraph may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.

(5) An administrator may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax at the address and in the manner designated in paragraph (i).

(6) Unless such return is fraudulent, or contains a material misrepresentation, the estate, the administrator, the debtor, and any successor to the debtor are discharged from any liability for such tax—

- (a) upon payment of the tax shown on such return, if—
 - (i) such governmental unit does not notify the administrator, within 60 days after such request, that such return has been selected for examination; or
 - (ii) such governmental unit does not complete such an examination and notify the administrator of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;
 - (iii) upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or
 - (iv) upon payment of the tax determined by such governmental unit to be due.

(7) Notwithstanding section 566 of this title, after determination by the court of a tax under this section, the governmental unit charged with responsibility for collection of such tax may assess such tax against the estate, the debtor, or a successor to the debtor, as the case may be, subject to any otherwise applicable law.

572. Determination of secured status and preferential payments

(1) The status of a claim is determined in accordance with the rules laid down in section 456.

(2) Payment of creditors of the debtor, to the extent provided in the plan, shall be done in accordance with section 457.

573. Debtors' duties

The debtor shall—

(a) file—

(i) a list of creditors; and

(ii) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs to include:

(A) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(B) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(C) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(b) cooperate with the administrator as necessary to enable the administrator to perform the administrator's duties under this Part.

574. Effect of discharge

A discharge in a case under this Part—

(a) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under **section 611**, whether or not discharge of such debt is waived; and

(b) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a liability of the debtor, whether or not discharge of such debt is waived.

575. Protection against discriminatory treatment

(1) A governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a company that is or has been a debtor under this Part, or another company or person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this Part, has been insolvent before the commencement of the case under this Part, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this Part.

(2) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been associated with a debtor under this Part, solely because such debtor is or has been a debtor under this Part, has been insolvent before the commencement of the case under this Part, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this Part.

576. Property of the estate

(1) The commencement of a case under section 557 or 558 of this Part creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(a) Except as provided in subsections (b) and (c)(ii) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(b) Any interest in property that the administrator recovers under section 567(i), 584, 591, or 594 of this Part.

(c) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 578(c) or 592 of this Part.

(d) Proceeds, product, offspring, rents, or profits of or from property of the estate.

(e) Any interest in property that the estate acquires after the commencement of the case.

(2) Property of the estate does not include—

(a) any power that the debtor may exercise solely for the benefit of an entity other than the debtor; or

(b) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case.

(3) Except as provided in subsection (ii) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(i), (a)(ii), or (a)(v) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

- (a) that restricts or conditions transfer of such interest by the debtor; or
- (b) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(4) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable law is enforceable in a case under this title.

(5) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

577. Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity in possession, custody, or control, during the case, of property that the administrator may use, sell, or lease under section 567 of this Part shall deliver to the administrator, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the administrator, except to the extent that such debt may be offset under section 594 of this Part against a claim against the debtor.

(c) Except as provided in section 566(a)(vii) of this Part, an entity that has neither actual notice nor actual knowledge of the commencement of the case concerning the debtor may transfer property of the estate, or pay a debt owing to the debtor, in good faith

and other than in the manner specified in subsection(d) of this section, to an entity other than the administrator, with the same effect as to the entity making such transfer or payment as if the case under this Part concerning the debtor had not been commenced.

- (d) Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the administrator.

578. Turnover of property by a custodian

- (a) A custodian with knowledge of the commencement of a case under this Part concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.

- (b) A custodian shall—

- (i) deliver to the administrator any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and
- (ii) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

- (c) The court, after notice and a hearing, shall—

- (i) protect all entities to which a custodian has become obligated with respect to such property or proceeds, product, offspring, rents, or profits of such property;
- (ii) provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and
- (iii) surcharge such custodian, other than an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition for any improper or excessive disbursement, other than a disbursement that has been made in accordance with applicable law or that has been approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the case under this title.

- (d) After notice and hearing, the bankruptcy court—

- (iv) may excuse compliance with subsection(a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property, and
- (v) shall excuse compliance with subsections (a) and (b)(1) of this section if the custodian is an assignee for the benefit of the debtor's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, unless compliance with such subsections is necessary to prevent fraud or injustice.

579. Administrator as lien creditor and as successor to certain creditors and purchasers

(1) The administrator shall have, as of the commencement of the case, and without regard to any knowledge of the administrator or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

- (a) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;
- (b) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or
- (c) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.
- (d) Except as provided in **paragraph(ii)**, the administrator may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section572 of this Part or that is not allowable only under section 572(e) of this Part.

580. Statutory liens

- (1) The administrator may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien
- (2) first becomes effective against the debtor—
 - (a) when a case under this Part concerning the debtor is commenced;

- (b) when an insolvency proceeding other than under this Part concerning the debtor is commenced;
- (c) when a custodian is appointed or authorized to take or takes possession;
- (d) when the debtor becomes insolvent;
- (e) when the debtor's financial condition fails to meet a specified standard; or
- (f) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;
- (g) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists;
- (h) is for rent; or
- (i) is a lien of distress for rent.

581. Limitations on avoiding powers

- (1) An action or proceeding under section 585, 586, 588, 589, or 594 of this Part may not be commenced after the earlier of—
 - (a) 2 years after the entry of the order of relief; or
 - (b) the time the case is closed or dismissed.
- (2) The rights and powers of an administrator under sections 585, 586, and 590 of this Part are subject to any generally applicable law that—
 - (a) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or
 - (b) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.
- (3) If—
 - (a) a law described in paragraph (i) requires seizure of such property or commencement of an action to accomplish such perfection, or maintenance or continuation of perfection of an interest in property; and
 - (b) such property has not been seized or such an action has not been commenced before the date of the filing of the petition;

such interest in such property shall be perfected, or perfection of such interest shall be maintained or continued, by giving notice within the time fixed by such law for such seizure or such commencement.

- (4) Except as provided in section 576(c) and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the administrator under sections 585(a), 586, 588, and 590 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—
- (a) not later than 45 days after the date of receipt of such goods by the debtor;
or
 - (b) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.
- (5) If a seller of goods fails to provide notice in the manner described in subsection (1), the seller still may assert the rights contained in paragraph 573(b)(vi).

582. Preferences

- (1) In this section—

“inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

“new value” means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the administrator under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

“receivable” means right to payment, whether or not such right has been earned by performance; and

- (vi) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.
- (2) Except as provided in **subsections (c) and (i)** of this section, the administrator may, based on reasonable due diligence in the circumstances of the case and taking into

account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

- (a) to or for the benefit of a creditor;
 - (b) for or on account of an antecedent debt owed by the debtor before such transfer was made;
 - (c) made while the debtor was insolvent;
 - (d) made—
 - (i) on or within 90 days before the date of the filing of the petition; or
 - (ii) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
 - (e) that enables such creditor to receive more than such creditor would receive if—
 - (i) the case were a case under Part IV of this Act;
 - (ii) the transfer had not been made; and
 - (iii) such creditor received payment of such debt to the extent provided by the provisions of this Part.
- (3) The administrator may not avoid under this section a transfer—
- (a) to the extent that such transfer was—
 - (i) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
 - (ii) in fact a substantially contemporaneous exchange;
 - (b) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
 - (i) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
 - (ii) made according to ordinary business terms;
 - (c) that creates a security interest in property acquired by the debtor—
 - (i) to the extent such security interest secures new value that was—(1) given at or after the signing of a security agreement that contains a description of such property as collateral; (2) given by or on behalf of the secured party under such agreement; (3) given to enable the debtor to acquire such property; and (4) in fact used by the debtor to acquire such property; and

- (ii) that is perfected on or before 30 days after the debtor receives possession of such property;
 - (d) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor—
 - (i) not secured by an otherwise unavoidable security interest; and
 - (ii) not secured by an otherwise unavoidable security interest; and
 - (e) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of—
 - (i) with respect to a transfer to which subsection (b)(iv)(A) of this section applies, 90 days before the date of the filing of the petition; or
 - (ii) with respect to a transfer to which subsection (b)(iv)(B) of this section applies, one year before the date of the filing of the petition; or
 - (iii) the date on which new value was first given under the security agreement creating such security interest;
 - (f) that is the fixing of a statutory lien that is not avoidable under section 586 of this Part;
- (4) The administrator may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the administrator under subsection (b) of this section. The liability of such surety under such bond or obligation shall be discharged to the extent of the value of such property recovered by the administrator or the amount paid to the administrator.
- (5) For the purposes of this section—
- (a) a transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of such property from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee; and
 - (b) a transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

- (6) For the purposes of this section, except as provided in paragraph (iii) of this subsection, a transfer is made—
- (a) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 30 days after, such time, except as provided in subsection (c)(3)(B);
 - (b) at the time such transfer is perfected, if such transfer is perfected after such 30 days; or
 - (c) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—(1) the commencement of the case; or (2) 30 days after such transfer takes effect between the transferor and the transferee.
- (7) For the purposes of this section, a transfer is not made until the debtor has acquired rights in the property transferred.
- (8) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.
- (9) For the purposes of this section, the administrator has the burden of proving the avoidability of a transfer under subsection(b) of this section, and the creditor or party in interest against whom recovery or avoidance is sought has the burden of proving the nonavoidability of a transfer under subsection (c) of this section.
- (10) If the administrator avoids under subsection(b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

583. Fraudulent transfers and obligations

- (1) The administrator may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—
- (a) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
 - (b) 1) received less than a reasonably equivalent value in exchange for such transfer or obligation; and (2)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or

obligation; (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

- (2) The administrator of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.
- (3) Except to the extent that a transfer or obligation voidable under this section is voidable under section 585, 586, 588 of this Part, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.
- (4) For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.
- (5) In this section “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor.
- (6) In addition to any transfer that the administrator may otherwise avoid, the administrator may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—
 - (a) such transfer was made to a self-settled trust or similar device;
 - (b) such transfer was by the debtor;
 - (c) the debtor is a beneficiary of such trust or similar device; and
 - (d) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

- (7) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by any violation of securities laws or fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security.

584. Postpetition transactions

- (1) Except as provided in subsection(b) or (c) of this section, the administrator may avoid a transfer of property of the estate—
- (a) that occurs after the commencement of the case; and
 - (b) that is either authorized only under section 558(e) or 583(c) of this Part, or that is not authorized under this Part or by the Court.
- (2) In an involuntary case, the administrator may not avoid under subsection(a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.
- (3) The administrator may not avoid under subsection (a) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.
- (4) An action or proceeding under this section may not be commenced after the earlier of—
- (a) two years after the date of the transfer sought to be avoided; or
 - (b) the time the case is closed or dismissed.

585. Liability of transferee of avoided transfer

- (1) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 585, 586, 588, 589, 590, or 594(b) of this Part, the administrator may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from—
 - (a) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
 - (b) any immediate or mediate transferee of such initial transferee.
- (2) The administrator may not recover under subsection(a)(ii) of this section from—
 - (a) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
 - (b) any immediate or mediate good faith transferee of such transferee.
- (3) If a transfer made between 90 days and one year before the filing of the petition—
 - (a) is avoided under section 588(b) of this Part; and
 - (b) was made for the benefit of a creditor that at the time of such transfer was an insider;
 - (c) the administrator may not recover under subsection(a) from a transferee that is not an insider.
- (4) The administrator is entitled to only a single satisfaction under subsection(a) of this section.
- (5) A good faith transferee from whom the administrator may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of—
 - (a) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
 - (b) any increase in the value of such property as a result of such improvement, of the property transferred.
- (6) In this subsection, "improvement" includes—
 - (a) physical additions or changes to the property transferred;
 - (b) repairs to such property;
 - (c) payment of any tax on such property;
 - (d) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and
 - (e) preservation of such property.

- (7) An action or proceeding under this section may not be commenced after the earlier of—
- (a) one year after the avoidance of the transfer on account of which recovery under this section is sought; or
 - (b) the time the case is closed or dismissed.

586. Automatic preservation of avoided transfer

Any transfer avoided under section 585, 586, 588, 589, or 590 of this Part, or any lien void under section 575(d) of this Part, is preserved for the benefit of the estate but only with respect to property of the estate.

587. Postpetition effect of security interest

- (1) Except as provided in subsection (2) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.
- (2) Except as provided in sections 567, 575(c), 585, 586, 588, and 589 of this Part, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.
- (3) Except as provided in sections 567, 575(c), 585, 586, 588, and 589 of this Part, and notwithstanding section 587(b) of this Part, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

588. Setoff

(1) Except as otherwise provided in this section and in sections 566 and 567 of this Part, this Part does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(a) the claim of such creditor against the debtor is disallowed;

(b) such claim was transferred, by an entity other than the debtor, to such creditor—

(i) after the commencement of the case; or

(ii) after 90 days before the date of the filing of the petition and while the debtor was insolvent; or

(c) the debt owed to the debtor by such creditor was incurred by such creditor—

(i) after 90 days before the date of the filing of the petition;

(ii) while the debtor was insolvent; and

(iii) for the purpose of obtaining a right of setoff against the debtor.

(2) If a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the administrator may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(a) 90 days before the date of the filing of the petition; and

(b) 90 days before the date of the filing of the petition; and

(3) In this subsection, “insufficiency” means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

(4) For the purposes of this section, the debtor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the filing of the petition.

589. Abandonment of property of the estate

(1) After notice and a hearing, the administrator may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

- (2) On request of a party in interest and after notice and a hearing, the court may order the administrator to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
- (3) Unless the court orders otherwise, any property scheduled under section 579(a)(i) of this Part not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered.
- (4) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

DIVISION D: REORGANISATION

590. Creditors' and equity security holders' committees

- (1) On request of a party in interest, the court may order the appointment of a committee of creditors holding unsecured claims to the extent the court deems necessary to ensure the adequacy of representation of such interests.
- (2) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organised by creditors before the commencement of the case under this Part, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

591. Powers and duties of committees

- (1) At a scheduled meeting of a committee appointed under section 596 of this Part, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorise the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.
- (2) An attorney or accountant employed to represent a committee appointed under section 596 of this Part may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.
- (3) A committee appointed under section 596 of this Part may—
 - (a) consult with the administrator or debtor concerning the administration of the case;

(b) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(c) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan; and

(d) perform such other services as are in the interest of those represented.

(4) As soon as practicable after the appointment of a committee under section 596 of this Part, the administrator shall meet with such committee to transact such business as may be necessary and proper.

592. Authorisation to operate business

Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the administrator may operate the debtor's business.

593. Right to be heard

A party in interest, including the debtor, the administrator, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

594. Claims and interests

(1) A proof of claim or interest is deemed filed under section 571 of this Part for any claim or interest that appears in the schedules filed under section 579(a)(i) of this Part, except a claim or interest that is scheduled as disputed, contingent, or unliquidated.

(2) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 572 of this Part the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—

(a) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (ii); or

(b) such holder does not have such recourse and such property is sold under section 567 of this Part or is to be sold under the plan.

(3) A class of claims may not elect application of paragraph (ii) if—

(i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or

(ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 567 of this Part or is to be sold under the plan.

(4) If such an election is made, then notwithstanding section 575(a) of this Part, such claim is a secured claim to the extent that such claim is allowed.

595. Dismissal

(1) Except as provided in subsections (b) and (c), on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this Part for cause if it is in the best interests of creditors and the estate.

(2) The court may not dismiss a case under this Part if the court finds and specifically identifies unusual circumstances establishing that dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (i) of subsection (e):

(a) for which there exists a reasonable justification for the act or omission; and

(b) that will be cured within a reasonable period of time fixed by the court.

(3) The court may not dismiss a case under this Part if the case involves a debtor that is a systemically important company unless the Minister of Finance & Corporate Governance has either consented to such dismissal or the Court determines that the decision to withhold consent by Minister of Finance & Corporate Governance is arbitrary and capricious.

(4) The court shall commence the hearing on a motion under this section not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this section.

(5) For purposes of this subsection, the term “cause” includes—

(a) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(b) gross mismanagement of the estate;

(c) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

(d) unauthorised use of cash collateral substantially harmful to 1 or more creditors;

(e) failure to comply with an order of the court;

- (f) unexcused failure to satisfy timely any filing or reporting requirement established by this Part or by any rule applicable to a case under this chapter;
- (g) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;
- (h) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this Part or by order of the court;
- (i) revocation of an order of confirmation under section 614;
- (j) inability to effectuate substantial consummation of a confirmed plan;
- (k) material default by the debtor with respect to a confirmed plan; and
- (l) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan.

596. Who may file a plan

- (1) The administrator may file a plan at any time in a voluntary case or an involuntary case.
- (2) Except as otherwise provided in this section, only the administrator may file a plan until after 120 days after the date of the order for relief under this chapter.
- (3) Any party in interest, including the debtor, the administrator, a creditors' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if and only if—
 - (a) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or
 - (b) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.
- (4) Subject to subsection (2), at the request of an interested party made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.
- (5) The 120-day period specified in paragraph (i) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.
- (6) The 180-day period specified in paragraph (i) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

597. Classification of claims or interests

(1) Except as provided in subsection (2) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(2) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

598. Contents of plan

Notwithstanding any otherwise applicable law, a plan shall—

- (a) specify any classes of claims or interests that is not impaired under the plan;
- (b) specify the treatment of any class of claims or interests that is impaired under the plan;
- (c) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;
- (d) provide adequate means for the plan's implementation, such as:
 - (i) retention by the debtor of all or any part of the property of the estate;
 - (ii) transfer of all or any part of the property of the estate to one or more entities, whether organised before or after the confirmation of such plan;
 - (iii) merger or consolidation of the debtor with one or more persons;
 - (iv) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
 - (v) satisfaction or modification of any lien;
 - (vi) cancellation or modification of any indenture or similar instrument;
 - (vii) curing or waiving of any default;
 - (viii) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
 - (ix) amendment of the debtor's charter; or
 - (x) issuance of securities of the debtor, or of any entity referred to in subparagraph (ii) or (iii) of this section, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

- (e) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (v)(B) or (v)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; and
- (f) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee.
- (g) Subject to subsection (a) of this section, a plan may—
- (h) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
- (i) subject to section 569 of this Part, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;
- (j) provide for (A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or (B) the retention and enforcement by the debtor, administrator, or by a representative of the estate appointed for such purpose, of any such claim or interest;
- (k) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;
- (l) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
- (m) include any other appropriate provision not inconsistent with the applicable provisions of this Part.
- (n) Notwithstanding subsection (a) of this section and sections 575(b), 610(a)(vii), and 610(b) of this Part, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable law.

599. Impairment of claims or interests

- (5) Except as provided in section 604(a)(iv) of this Part, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan
 - (6) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or
 - (7) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—
 - (o) cures any such default that occurred before or after the commencement of the case under this Part, other than a default of a kind specified in section 569(b)(ii) of this Part or of a kind that section 569(b)(ii) expressly does not require to be cured;
 - (p) reinstates the maturity of such claim or interest as such maturity existed before such default;
 - (q) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;
 - (r) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 569(b)(i)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and
 - (s) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

600. Acceptance of plan

- (1) The holder of a claim or interest allowed under section 572 of this Part may accept or reject a plan. If Antigua and Barbuda is a creditor or equity security holder, the [Secretary of the Treasury] may accept or reject the plan on behalf of Antigua and Barbuda.
- (2) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this Part is deemed to have accepted or rejected such plan, as the case may be, if—

- (a) the solicitation of such acceptance or rejection was in compliance with any applicable law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or
 - (b) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 606(a) of this Part.
- (3) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection(e) of this section, that have accepted or rejected such plan.
 - (4) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.
 - (5) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this Part.
 - (6) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.
 - (7) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

601. Modification of a plan

- (1) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 603 and 604 of this Part. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.
- (2) The proponent of a plan or the reorganised debtor may modify such plan at any time after confirmation of such plan and before substantial consummation of such plan, but may not modify such plan so that such plan as modified fails to meet the

requirements of sections 603 and 604 of this Part. Such plan as modified under this subsection becomes the plan only if circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 610 of this Part.

- (3) The proponent of a modification shall comply with section 606 of this Part with respect to the plan as modified.
- (4) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.
- (5) The plan, as modified, shall become the plan only after there has been disclosure under section 606 as the court may direct, notice and a hearing, and such modification is approved.

602. Confirmation hearing

- (1) After notice, the court shall hold a hearing on confirmation of a plan.
- (2) A party in interest may object to confirmation of a plan.

603. Confirmation of plan

- (1) The court shall confirm a plan only if all of the following requirements are met—
 - (a) the plan complies with the applicable provisions of this Part;
 - (b) the proponent of the plan complies with the applicable provisions of this Part;
 - (c) the plan has been proposed in good faith and not by any means forbidden by law;
 - (d) any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable;
 - (e) the proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

- (f) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganised debtor, and the nature of any compensation for such insider.
- (2) With respect to each impaired class of claims or interests—
- (a) each holder of a claim or interest of such class (1) has accepted the plan; or (2) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were subject to a winding up order under Part IV of this Act on such date; or
 - (b) if section 600(b)(ii) of this Part applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.
- (3) With respect to each class of claims or interests—
- (a) such class has accepted the plan; or
 - (b) such class is not impaired under the plan.
- (4) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—
- (a) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this Part, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
 - (b) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this Part, each holder of a claim of such class will receive: (1) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (2) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and
 - (c) with respect to a claim of a kind specified in section 507(a)(8), [the holder of such claim will receive on account of such claim regular installment payments in cash: (1) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim; (2) over a period ending not later than 5 years after the date of the order for relief under section 557 or 558; and (3) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan

(other than cash payments made to a class of creditors under section 603(b)).

- (5) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.
- (6) Confirmation of the plan is not likely to be followed by the winding down, or the need for further financial reorganisation, of the debtor or any successor to the debtor under the plan, unless such winding down or reorganisation is proposed in the plan.
- (7) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.
- (8) Notwithstanding section 510(a) of this Part, if all of the applicable requirements of subsection (a) of this section other than subsection (vii) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such subsection if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.
- (9) For the purpose of this subsection (b), the conditions that a plan be fair and equitable with respect to a class includes the following requirements:
 - (a) With respect to a class of secured claims, the plan provides—
 - (i) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and (ii) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
 - (ii) for the sale, subject to section 567(f) of this Part, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (1) or (3) of this subsection; or
 - (iii) for the realisation by such holders of the indubitable equivalent of such claims.
 - (b) With respect to a class of unsecured claims—

- (i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
 - (ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.
- (10) Notwithstanding subsections (a) and (b) of this section and except as provided in section 608(b) of this Part, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 614 of this Part. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

604. Effect of confirmation

- (1) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.
- (2) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
- (3) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.
- (4) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan (A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 572(g) or 572(h) of this Part, whether or not (1) a proof of claim based on such debt was filed or deemed filed under section 571 of this Part; (2) such claim is allowed under section 572 of this Part; or (3) the holder of such claim has accepted the plan; and (B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

- (5) The confirmation of a plan does not discharge a debtor if (A) the plan provides for the liquidation of all or substantially all of the property of the estate; and (B) the debtor does not engage in business after consummation of the plan.
- (6) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this Part.
- (7) Notwithstanding subsection (i), the confirmation of a plan does not discharge a debtor that is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax or such customs duty.

605. Implementation of plan

- (1) Notwithstanding any otherwise applicable law, rule, or regulation relating to financial condition, the debtor and any entity organised or to be organised for the purpose of carrying out the plan shall carry out the plan and shall comply with any orders of the court.
- (2) The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the plan.

606. Distribution

If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the plan.

607. Revocation of an order of confirmation

- (1) On request of a party in interest at any time before 180 days after the date of the entry of the order of confirmation, and after notice and a hearing, the court may revoke such order if and only if such order was procured by fraud. An order under this section revoking an order of confirmation shall—
- (2) contain such provisions as are necessary to protect any entity acquiring rights in good faith reliance on the order of confirmation; and
- (3) revoke the discharge of the debtor.

608. Special tax provisions

- (1) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 610 of this Part, may not be taxed under any law imposing a stamp tax or similar tax.
- (2) The court may authorise the proponent of a plan to request a determination, limited to questions of law, by a governmental unit charged with responsibility for collection or determination of a tax. In the event of an actual controversy, the court may declare such effects after the earlier of—
- (3) the date on which such governmental unit responds to the request under this subsection; or
- (4) 270 days after such request.

DIVISION E: ANCILLARY AND OTHER CROSS-BORDER CASES**609. Purpose and scope of application**

In this Division—

(1) The purpose of this Division is to incorporate the United Nations Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

(a) Cooperation between—

- (i) courts of Antigua and Barbuda, administrators, and debtors; and
- (ii) courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(b) greater legal certainty for trade and investment;

(c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(d) protection and maximization of the value of the debtor's assets; and

(e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(2) This Division applies where—

(a) assistance is sought in Antigua and Barbuda by a foreign court or a foreign representative in connection with a foreign proceeding;

- (b) assistance is sought in a foreign country in connection with a case under this Part;
- (c) a foreign proceeding and a case under this Part with respect to the same debtor are pending concurrently; or
- (d) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this Part.

610. Definitions

For the purposes of this Division, the term—

“debtor” means an entity that is the subject of a foreign proceeding;

“establishment” means any place of operations where the debtor carries out a nontransitory economic activity;

“foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

“foreign main proceeding” means a foreign proceeding pending in the country where the debtor has the center of its main interests;

“foreign nonmain proceeding” means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment;

“administrator” includes an administrator in a case under any Division of this Part;

“recognition” means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this Division; and

“within the territorial jurisdiction of Antigua and Barbuda”, when used with reference to property of a debtor, refers to tangible property located within the territory of Antigua and Barbuda and intangible property deemed under applicable law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in Antigua and Barbuda.

611. International obligations of Antigua and Barbuda

To the extent that this Division conflicts with an obligation of Antigua and Barbuda arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

612. Commencement of ancillary case

A case under this Division is commenced by the filing of a petition for recognition of a foreign proce

613. Protection of creditors and other interested persons

(1) The court may grant relief under section 635 or 637, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

(2) The court may subject relief granted under section 635 or 637, or the operation of the debtor's business under section 636(a)(3), to conditions it considers appropriate, including the giving of security or the filing of a bond.

(3) The court may, at the request of the foreign representative or an entity affected by relief granted under section 635 or 637, or at its own motion, modify or terminate such relief.

614. Duty to avoid acts detrimental to creditors

(1) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another Division of this Part to initiate actions under sections 585, 586, 588, 589, 591, and 594.

(2) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under Antigua and Barbuda law, should be administered in the foreign nonmain proceeding.

.....
Clerk to the House of Representatives.

.....
Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Companies Act 1995, No. 18 of 1995 to make it possible for an insolvent Company that is registered under the Act, or has a principal place of business or assets in Antigua and Barbuda, to undertake a programme of rehabilitation through the restructuring of the Debtor entity.

Presently, under the Companies Act 1995, a Company that finds itself in financial difficulties may be wound up either voluntarily or by the court (what is called involuntary winding up). Whether the winding up is voluntary or involuntary, the end result is that the company ceases to exist. Although there is a possibility that the court may refuse to wind up a company and instead appoint a Receiver Manager to manage the affairs of the Company for the benefit of some or all of its Creditors, this is not a usual step.

This amendment will make it possible for a company to petition the court for a restructuring rather than a winding up. Not only the company, but also creditors of the company, as well as the government, where the company is a systemically important company, can petition the court to have the company restructured rather than wind up.

The Bill contains seven (7) clauses:

Clause 1 is the short title;

Clause 2 is the interpretation

Clause 3 to 7 are the substantive amendments to the Companies Act.

Clause 3 – Amendment of section 236 (Reorganisation)

The Bill seeks to amend section 236 (1) by inserting in the definition of reorganisation a new paragraph which makes an order for rehabilitation issued under Part VI another basis for rehabilitation.

When an order for reorganisation is made, it allows the court to take certain actions with respect to the company including making an order that the Articles of the company be amended, and the option is also available for the court to order the replacement of some or all of the directors of the company.

Clause 4 – Amendment of section 238 (Definitions) this amendment puts it beyond doubt that a creditor to the company may approach the court for a civil remedy against the company and that remedy could include an order under section 241 which deals with restraining oppression, and this order is also regarded as an order for reorganisation.

Clause 5 – Amendment of section 241 (Oppression restrained).

A complainant who applies to the court for an order under section 241 has to first satisfy the court that in respect of a company or any of its affiliates,

- (a) any act or omission; or
- (b) the manner in which the affairs of the company are being or have been conducted; or
- (c) the manner in which the directors of the company have exercised their powers;

is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, any shareholder or debenture holder, creditor, director or officer of the company, the court may make an order to rectify the matters complained of.

A creditor was allowed to bring an action, but such creditor would first have to go through the preliminary motion of satisfying the court under section 236 that he or she is a proper person to bring the action. This amendment puts it beyond doubt that a creditor may bring an action to restrain oppression and as a result of such action, may get an order from the court for reorganisation of the companies affairs or in the alternative, seek a winding up of the company.

Clause 6 Amendment of section 336A – Filing of reports by non-profit

This amendment is at the request of the Registrar who has complained that an amendment done in 2017 to the Companies Act and which requires non-profits to report on every individual that makes a donation to the non-profit regardless of amount, was extremely onerous and counterproductive. The result is that many non-profits have fallen foul of the law by failing to submit annual reports. This amendment corrects that situation.

Clause 7 – Insertion of Part VI – Company Rehabilitation

This is the major amending clause. It inserts approximately 63 sections into the present Companies Act. The purpose is, as stated earlier, is to insert an option for restructuring the company rather than liquidating it or winding it up.

Division A of the inserted Part deals with preliminary concerns – definitions, Powers of the Court and who can be a debtor.

This Part will apply **only** to insolvent companies.

“insolvent” means a financial condition such that a company –

- (a) is unable to pay its liabilities as they become due, or
- (b) the value of the entity’s debts is greater than the realisable value of the entity’s assets, at a fair valuation, exclusive of assets transferred, concealed, or removed with intent to hinder, delay, or defraud the entity’s creditors;

Where a company becomes insolvent, this amendment gives an option for the company to voluntarily approach the court for an order to allow it to restructure its business affairs. In the alternative, a petition may be made to the court by two or more of the company's creditors, including a governmental unit, or by the Minister of Finance for the involuntary restructuring of the company.