

Law of Insolvency and Bankruptcy
in Afghanistan of 2018

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Law of Insolvency and Bankruptcy in Afghanistan of 2018

Chapter 1-General Provisions

Article 1. Basis

This law has been enacted pursuant to provisions of the Constitution of the Islamic Republic of Afghanistan.

Article 2. Intent of Law

The purpose of this law is to:

- Provide a uniform, fair, and efficient procedure for payment of debts owed to Creditors of Debtors.
- Ensure that the administration of the Debtor is transparent with full reporting to Creditors.
- Maximize the value of the assets of the Debtor for the benefit of its Creditors.
- Provide equal distribution of assets according to priorities as established under this law.

Chapter 2-Parties Involved in an Insolvency Case.

Article 3. Definitions

The following terms in this law shall have the meaning set forth below:

- (a) **Administrative Claim.** Expenses and fees incurred for the maintenance and protection of the Estate Property as provided for in Article 33 (Administrative Claims).
- (b) **Agreement for Settlement.** An agreement under which the Debtor may reach an agreement with its Creditors for payment in instalments or on such other terms as may be agreed to by the Creditors and approved by the Commercial Court under Article 43 (Requirements for Approval of Agreement for Settlement).
- (c) **Business Day.** A day, other than a Thursday or Friday, on which banks are open for business in the Islamic Republic of Afghanistan.
- (d) **Civil Service Commission.** The Civil Service Commission of the Islamic Republic of Afghanistan.
- (e) **Claim.** A right to payment from the Trader for goods or services sold, money lent, injury to Person or property, or any other ground upon which a debt may arise under applicable law.
- (f) **Commercial Court.** The Commercial Court means the court established under the Law on Organization and Jurisdiction of Courts as having jurisdiction over commercial matters.

- (g) Creditor. A Person that holds a Claim against the Debtor.
- (h) Debtor. A Trader who files a case under this law or against whom an involuntary case is opened as a result of an involuntary petition being filed by the Trader's Creditors under this law.
- (i) Director. A Person who was a director of the Debtor, or on whose directions or instructions the directors of the Debtor were accustomed to act, prior to the Time of Commencement.
- (j) Estate Bank Account. The bank account opened by the Receiver in each case in which the Receiver serves into which proceeds from administration of the insolvency case are deposited in accordance with Article 31 (Money from Collection and Disposition of Estate Property).
- (k) Estate Property. All property in which the Debtor has any ownership interest as defined in Article 24 (Estate Property).
- (l) Exempt Property. Property that the Debtor is allowed to retain as exempt under Article 25 (Exemption of Property by the Debtor).
- (m) Independent Receiver Auditor. A Person appointed by the Commercial Court in accordance with Article 12 (Appointment of Independent Receiver Auditor).
- (n) Insolvent. Financial condition in which either a Person's debts exceed assets at current valuation or a Person is unable generally to pay debts as they become due.
- (o) Letter of Appointment. The letter issued by the Commercial Court appointing the Receiver and delegating to the Receiver full power and responsibility to carry out and enforce the provisions of this law.
- (p) Liquidation Plan. The plan approved by the Commercial Court under Article 23 (Liquidation Plan) for the sale of the Estate Property as a going concern or in individual lots to satisfy Claims and the costs of administration of the insolvency case.
- (q) Official Insolvency Register. The public file maintained by the Commercial Court in which all papers filed in an insolvency case are placed and registered.
- (r) Person. A natural person, a corporation, a limited liability company, a partnership (including a general or limited partnership), a business trust, or any other entity having a separate legal existence under applicable law, or a governmental entity or body.
- (s) Petition. The paper that is filed by either the Debtor or Creditor as the initial step required to commence an insolvency case.
- (t) Receiver. A Person appointed by the Commercial Court in accordance with Article 5 (Appointment of Receiver).
- (u) Secured Claim. A Claim held by a Creditor the repayment of which is secured by a lien, pledge, hypothecation, or other interest in moveable or immovable property to the extent valid under applicable law. Such a Claim shall be a Secured Claim to the extent of the value of the collateral securing such Claim.

- (v) Time of Commencement. The date and time of the opening of an insolvency case by the Commercial Court under Article 13 (Commencement of Insolvency Case).
- (w) Trader. A Person engaged in commerce for profit regardless of whether such commerce is in the form of manufacturing, trade, services or otherwise, except as noted in Article 4(b) (Eligibility to be a Debtor).

Article 4. Eligibility to be a Debtor

- (a) A Person who is or has been engaged in business as a Trader may become a Debtor under this law:
 - (i) in the case of the filing of a voluntary petition, if such Person has become Insolvent and on a good faith basis requests relief under this law; or
 - (ii) in the case of the filing of an involuntary petition against the Trader by one or more of the Trader's Creditors, if such Person is Insolvent.
- (b) This law does not apply to:
 - (i) Any individual who is insolvent and whose aggregate debts, excluding any debts secured by the individual's principal residence, are not more than AFN 700,000;
 - (ii) Insurance companies regulated by the Ministry of Finance, provided that other laws govern the process of rehabilitating or liquidating such companies in the event of insolvency;
 - (iii) Providers of utilities regulated by the Ministry of Energy and Water, the Ministry of Urban Development and Housing, Ministry of Rural Rehabilitation and Development, Ministry of Transportation, Ministry of Communications and Information Technology, or other such ministry;
 - (iv) Banks or other companies regulated by Da Afghanistan Bank provided that other laws govern the process of rehabilitating or liquidating such companies in the event of insolvency, or
 - (v) An agency, department, or other unit of the Islamic Republic of Afghanistan.

Article 5. Appointment of Receiver

- (a) The Commercial Court shall, upon appointing a Receiver, notify the Civil Service Commission of such appointment. The Civil Service Commission shall maintain and make publicly available a register of Persons who have been approved to serve as a Receiver in insolvency cases. Separate lists may also be maintained for Receivers qualified to serve in regions other than Kabul.
- (b) At the Time of Commencement, the Commercial Court shall assign a Receiver who meets the criteria set out in Article 6 (Qualifications of a Receiver) to serve in the case. The Commercial Court shall maintain a list available to the public of all Receivers assigned to cases.
- (c) The Receiver shall within two (2) Business Days of receipt of notification by the Commercial Court accept or reject his appointment in writing. If the Receiver accepts appointment, he shall file with the Court:

- (i) a statement of acceptance confirming that the Receiver shall, during the course of the Insolvency case, administer his duties from within the Islamic Republic of Afghanistan and in accordance with this Law; and
 - (ii) a verified statement of any connections he may have with the Debtor or any Creditor, including past and present business, family, or social relations with the Debtor or any Creditor. The Receiver shall supplement this statement within two (2) Business Days after the filing of the list of Creditors by the Debtor as required under Article 10 (Duties of Debtor). This statement shall be reviewed immediately by the Commercial Court to determine if the Person selected is free from any conflict of interest that could affect the impartiality of his work as Receiver.
- (d) If the Commercial Court determines that a conflict of interest exists or if the Receiver rejects his appointment in accordance with subclause (c) above, it shall assign a new Receiver.
 - (e) Upon the determination that the selected Receiver does not have a disqualifying conflict of interest, the Court shall issue to the Receiver a Letter of Appointment and delegate to the Receiver full power and authority to carry out his responsibilities under this law.
 - (f) The Commercial Court may remove the Receiver for cause, which shall include, without limitation, a decision by the Commercial Court based on the recommendation of an Independent Receiver Auditor appointed pursuant to Article 12 (Appointment of Independent Receiver Auditor). The Receiver shall serve in that capacity until the insolvency case has been concluded or until the individual appointed resigns, dies, or is removed for cause by the Commercial Court. If the Receiver resigns, dies, or is removed for cause, a successor Receiver shall be appointed by the Commercial Court.

Article 6. Qualifications of a Receiver

- (a) No Person may be appointed to act as a Receiver unless that Person:
 - (i) is an individual; and
 - (ii) is licensed to practice before the courts by a reputable insolvency practitioner body in Australia, India, Singapore, United Kingdom, the United States of America or other such jurisdiction as may be approved by the Commercial Court; or
 - (iii) is a member in good standing of the Association of Certified Chartered Accountants, American Institute of Certified Public Accountants, Association of International Accountants, Certified Practising Accountants of Australia, Chartered Accountants of Australia and New Zealand, the Institute of Chartered Accountants of England and Wales, or such other internationally recognized accountancy body; and
 - (iv) has at least five (5) years post-qualification experience acting as an accountant; and
 - (v) has previously acted as a Receiver in respect of at least three (3) previous Insolvency cases.

- (b) In the event that no Afghan national meets the qualifications set out in subclause (a) above, the Commercial Court may appoint a foreign national to act as Receiver provided that such party meets the qualifications set out in this Article.
- (c) A Receiver shall vacate office if he or she ceases to be a person qualified to act as Receiver.

Article 7. Remuneration of a Receiver

- (a) A Receiver is entitled to receive remuneration for his services.
- (b) The remuneration shall be fixed either:
 - (i) as a percentage of the value of assets which are realized and/or distributed; or
 - (ii) by reference to the time properly given by the Receiver and his staff in attending to matters arising in the insolvency case;
- (c) The method of such remuneration shall be agreed between the Creditors and the Receiver in accordance with Article 20 (Meetings of Creditors) and shall be subsequently approved by the Commercial Court.
- (d) In the event that no remuneration has been fixed under this Article, the Receiver may petition the Commercial Court to fix his remuneration.

Article 8. Liability of Receiver

- (a) Subject to Article 8(b) below, the Receiver shall be personally liable for any loss of Estate Property arising from:
 - (i) Criminal activity or corruption by the Receiver in the form of bribes, favoritism, or other similar conduct undertaken while administering Estate Property;
 - (ii) Collusion by the Receiver with any Creditor, buyer, or other Person in connection with administering Estate Property;
 - (iii) Theft by the Receiver of Estate Property, including money in bank accounts, cash, or any other property;
 - (iv) Dishonesty by the Receiver in dealing with the Commercial Court in connection with his administration of the case; or
 - (v) Gross negligence, recklessness, or bad faith by the Receiver in dealing with Estate Property or in connection with his administration of the case.
- (b) The Receiver shall not be personally liable for any loss of Estate Property if:
 - (i) The action leading to the alleged loss was taken pursuant to authority granted under this law and was approved by a meeting of the Creditors or the Commercial Court after full disclosure of all material facts;
 - (ii) The action leading to the alleged loss was taken by the Receiver in the good faith exercise of his business judgment and was consistent with standards of business judgment as they exist in the community; or

- (iii) The action leading to the alleged loss arose from the simple negligence of the Receiver and was not the result of bad faith, theft, purposeful deception, or wilful and malicious behavior.
- (c) Any Creditor may file with the Commercial Court a statement containing facts constituting grounds for liability of the Receiver under this Article. If such a statement is filed and if the Commercial Court concludes that the allegations in the statement may constitute cause for liability of the Receiver under this Article, the Commercial Court may appoint independent counsel to investigate the allegations and, if the counsel deems it appropriate, to prosecute an action against the Receiver before the Commercial Court. Any recovery against the Receiver under this Article shall constitute Estate Property to be distributed in accordance with the provisions of this law for the benefit of all Creditors.

Article 9. Powers of Receiver

The Receiver shall have the following powers:

- (a) In accordance with the provisions of Article 38 (Receiver's Investigation Concerning Agreement for Settlement), the Receiver shall have all necessary powers to investigate the financial and business affairs of the Debtor and determine whether there is a reasonable likelihood of approval of an Agreement for Settlement that will produce a more favorable result for Creditors, the Debtor and other interested parties than under a Liquidation Plan.
- (b) Carry on the business of the Debtor so far as may be necessary for the benefit of Creditors.
- (c) Do all acts and execute, in the name and on behalf of the Debtor, all deeds, receipts and other documents and for that purpose to use, when necessary, the Debtor's seal.
- (d) Bring or defend any action or legal proceeding as Receiver or in the name of the Debtor in any court of competent jurisdiction including the Commercial Court, or in a foreign court having jurisdiction.
- (e) Subject to Article 21(b)(i) (Voting), make any compromise or arrangement with Creditors or persons claiming to be Creditors, or having or alleging themselves to have any Claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Debtor, or whereby the Debtor may be rendered liable arising in connection with administration of the insolvency case.
- (f) Sell any of the Estate Property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels, with the consent of a meeting of the Creditors in accordance with Article 30 (Sale of Assets).
- (g) Acquire financing after the Time of Commencement in accordance with Article 22(d) (Operation of the Debtor's Business).
- (h) Participate in alternative dispute resolution proceedings as may be appropriate in connection with administration of the insolvency case.
- (i) Schedule and preside over meetings of the Debtor and/or Creditors.
- (j) Hire attorneys, accountants, auctioneers, appraisers, or other professionals as necessary to administer the insolvency case.

- (k) Perform other responsibilities and duties imposed on the Receiver by this law.

Article 10. Duties of Receiver

The Receiver shall have the following duties:

- (a) Meet with the Debtor at the Debtor's primary place of business within two (2) Business Days of the execution of the Letter of Appointment.
- (b) Take control either by taking possession or securing all Estate Property as the Receiver may deem appropriate and necessary to preserve the Estate Property pending its final disposition, pursuant to Article 26 (Turnover of Estate Property).
- (c) Conduct an inventory of the Estate Property within ten (10) Business Days of the execution of the Letter of Appointment.
- (d) Investigate the financial affairs of the Debtor..
- (e) Make a recommendation to the Commercial Court in accordance with Article 18(a) (Continuation or Termination of Commercial Activities) as to whether the business of the Debtor should be closed immediately or continued on an interim basis pending final approval by the Commercial Court of a Liquidation Plan or an Agreement for Settlement.
- (f) Make a recommendation to the Commercial Court as to whether the insolvency case should proceed in an expedited manner concurrent with the recommendation described in Article 10(e) (Duties of Receiver) above.
- (g) Examine Claims filed by Creditors and file objections to Claims to the extent that they are not valid in accordance with the provisions of Article 36 (Filing and Verification of Claims).
- (h) Supervise the Debtor's operation of the business if the Debtor is authorized under Article 18(d) (Continuation or Termination of Commercial Activities) to operate the business during the administration of the case.
- (i) Provide periodic reports to the Commercial Court in a form and with a frequency as may be directed by the Commercial Court.
- (j) Pay expenses of administration of the insolvency case:
 - (i) as permitted in the ordinary course of business under Article 22 (Operation of the Debtor's Business), or
 - (ii) for non-ordinary course expenses, with the written consent of the Commercial Court.
- (k) Pay any class of Creditors in part or in full to the extent that funds are available in accordance with Article 37 (Distribution of Money from Collection and Disposition of Estate Property).
- (l) Where the value of Estate Property is in excess of AFN 70,000,000 (or its equivalent in any other currency), to hire qualified legal counsel to advise the Receiver in relation to the Insolvency case.

Article 11. Duties of Debtor

- (a) A Debtor filing a voluntary petition shall include with the petition a list of the names and addresses of the Debtor's Creditors and, if not a natural Person, the Debtor's owners.
- (b) Within fifteen (15) Business Days after the Time of Commencement the Debtor shall submit to the Receiver:
 - (i) a complete and accurate list of all of the Creditors of the Debtor together with their names, addresses, amounts owed, and collateral, if any; and
 - (ii) a complete and accurate list of all Estate Property including a listing of all tangible and intangible assets owned by the Debtor, whether owned wholly or in part, together with an estimate of the value of the Debtor's interest in each.
- (c) Within fifteen (15) Business Days after the Time of Commencement, the Debtor shall provide the Receiver with copies of all ongoing contracts to which the Debtor was a party and had contractual rights or duties as of the Time of Commencement.
- (d) The Debtor shall cooperate with, and upon reasonable request of the Receiver, assist the Receiver in the performance of the Receiver's duties.
- (e) The Debtor shall provide such additional information relating to the Debtor's assets, liabilities, and financial transactions as may be requested by the Receiver.
- (f) Upon being presented with the Letter of Appointment by the Receiver, the Debtor shall deliver to the Receiver either possession or control of all Estate Property including but not limited to immovable and moveable property, bank accounts, accounts receivable, and cash.
- (g) The Debtor shall attend meetings of the Creditors as may be scheduled by the Receiver. If the Debtor is for reasons acceptable to the Receiver unable to attend, the Debtor may appoint a representative to appear and take part in the proceedings on his behalf.
- (h) The Debtor shall not transfer any Estate Property after:
 - (i) in relation to a voluntary insolvency case, the filing of a petition in accordance with Article 13(a)(i);
 - (ii) in relation to an involuntary insolvency case, being presented with the Letter of Appointment except as authorized in writing by the Receiver with respect to transfers made in the normal course of business or as authorized by Article 18 (Continuation or Termination of Commercial Activities) or Article 22 (Operation of the Debtor's Business).
- (i) The Commercial Court may prescribe official forms to be used by the Debtor in fulfilling the Debtor's obligations under this Article.

Article 12. Appointment of Independent Receiver Auditor

- (a) A Creditor may petition the Commercial Court for the appointment of an Independent Receiver Auditor to review the conduct of the Receiver for the purpose of establishing liability under Article 8 (Liability of Receiver).
- (b) Any Independent Receiver Auditor appointed by the Commercial Court under this Article shall meet the qualifications set out in Article 6 (Qualifications of a Receiver).
- (c) The remuneration of an Independent Receiver Auditor shall be established by the Commercial Court and treated as an Administrative Claim in accordance with Article 33(b)(v) (Administrative Claims).

Chapter 3--Administration of an Insolvency Case

Article 13. Commencement of Insolvency Case

- (a) Requirements for Commencing Case. An insolvency case shall be commenced upon the occurrence of:
 - (i) the filing of a petition by a Trader who is eligible to be a Debtor in accordance with Article 4(a) (Eligibility to be a Debtor); or
 - (ii) the filing of a petition by one or more Creditors of a Trader with an aggregate value of Claims not less than AFN 700,000, which Claims are due and unpaid for more than thirty (30) days; and
 - (iii) in each case, the opening of the case by the Commercial Court in accordance with the provisions of this Article.
- (b) Contents of Petition. The petition shall contain the information set forth in Appendix 1 to this law.
- (c) Nomination of Receiver.
 - (i) In a Voluntary Case, the Debtor may nominate a Receiver to be appointed by the Court in accordance with Article 5 (Appointment of Receiver).
 - (ii) In an Involuntary Case, a Creditor commencing the case may nominate a Receiver to be appointed by the Court in accordance with Article 5 (Appointment of Receiver).
- (d) Method of Filing Petition.
 - (i) In order to file a petition, the Debtor or the Creditor commencing the case shall submit the petition to the Commercial Court.
 - (ii) The Commercial Court shall upon receipt file the petition with:
 - (1) the registry maintained by the government office in Afghanistan that keeps records of ownership and other interest in immoveable property, and

- (2) the registry maintained by the government office in Afghanistan that keeps records of security interests and pledges of moveable property.

Article 14. Opening of Voluntary Case.

- (a) In a case filed by the Debtor, the Commercial Court, upon the filing of the petition together with the required filing fee of AFN 7,000, shall open the insolvency case by noting the date and time of the receipt of the insolvency case in the Official Insolvency Register.
- (b) The date and time so noted shall be considered the Time of Commencement of the insolvency case.

Article 15. Opening of Involuntary Case.

- (a) In a case filed by one or more Creditors, the Commercial Court, upon the filing of the petition together with the required filing fee of AFN 7,000, shall within 5 (five) Business Days render a judgment to determine whether:
 - (i) The case was properly commenced by a Creditor in accordance with this law, and
 - (ii) The Trader is Insolvent as defined in Article 3 (Definitions). If the Trader intends to dispute insolvency, the Trader shall be required to provide to the Commercial Court information concerning the Trader's financial condition as directed by the Commercial Court.
- (b) If the Commercial Court determines not to open the case because it was filed in bad faith and for an improper purpose, the Trader against whom the case was filed may bring an action against the Creditor who filed the case in the Commercial Court for any damages suffered as a result of the improper filing.
- (c) If the Commercial Court determines to open an insolvency case, a Receiver shall be appointed in accordance with the provisions of Article 5 (Appointment of Receiver).
- (d) The Commercial Court shall note the date and time of the decision to open the insolvency case in the Official Insolvency Register. The date and time so noted shall be considered the Time of Commencement of the insolvency case.

Article 16. Suspension of Legal Action

- (a) At the Time of Commencement of an insolvency case, all legal proceedings and other actions (including repossession of collateral or seizing of assets to satisfy debts) by Creditors or by counterparties to ongoing contracts with the Debtor shall be suspended and shall not be recommenced without permission from the Commercial Court.
- (b) This provision does not apply to any act by an agency, department, or other unit of the Islamic Republic of Afghanistan to enforce against the Debtor or the Receiver any laws or regulations governing health, safety, or welfare, including criminal, environmental, labor, consumer protection or competition laws.
- (c) Relief from Suspension for Holders of Secured Claims.

- (i) Any Creditor that holds a Secured Claim based on a lien or other interest in property valid under applicable law may file a request with the Commercial Court to be allowed to institute or recommence actions to enforce its rights against its collateral during the administration of insolvency case.
- (ii) The Commercial Court shall schedule a hearing within ten (10) Business Days of a request by any Creditor under the preceding paragraph with notice to the Creditor, Receiver, and Debtor.
- (iii) The Commercial Court shall grant the Creditor's request unless the Receiver or the Debtor in a case in which Debtor intends to enter into an Agreement for Settlement demonstrates that:
 - (1) The Secured Claim of the Creditor will be protected from decline in value or other loss during the period of the suspension, and
 - (2) The continuation of the suspension is necessary to the ability of the Receiver to maximize the value of Estate Property for the benefit of all interested Persons.
- (iv) The Commercial Court shall enter a decision either approving or disapproving the request within five (5) Business Days from the hearing.
- (v) If the Commercial Court denies the request, it shall impose such conditions on the continuance of the suspension as necessary to protect the Secured Claim as required by this law.

Article 17. Enforcement of Law.

- (a) Upon request from the Receiver, the Commercial Court shall issue an order to the parties involved in legal proceedings relating to the Debtor or Estate Property that the action is suspended pending conclusion of the insolvency case.
- (b) Upon being presented with the Letter of Appointment by the Receiver, law enforcement officers having jurisdiction over the area in which the Debtor resides or owns assets shall assist the Receiver in performing the Receiver's duties including gaining access to the Debtor's premises or seizing the Debtor's property by force if the Debtor or the Debtor's family, agents, or employees are not available or refuse to cooperate with the Receiver.

Article 18. Continuation or Termination of Commercial Activities

- (a) As promptly as possible, and in any event within five (5) Business Days following the initial meeting by the Receiver with the Debtor under Article 9 (Powers of Receiver), the Receiver shall file a recommendation with the Commercial Court as to whether the business of the Debtor should be closed immediately or continued on an interim basis pending final approval of a Liquidation Plan or Agreement for Settlement.
- (b) In a Case in which Debtor intends to enter into an Agreement for Settlement, pending a determination by the Commercial Court on the Receiver's recommendation, the Debtor is authorized to continue to operate the Debtor's business in the ordinary course, unless the Commercial Court determines that imposing restrictions on the operation of the Debtor's business is necessary to prevent fraud or similar misconduct.

- (c) Within ten (10) Business Days following receipt of a recommendation by the Receiver on continuation or closing of the business of the Debtor, the Commercial Court shall make a determination as to whether the Debtor may continue in business pending final consideration of a Liquidation Plan or Agreement for Settlement.
- (d) If the Commercial Court determines to allow the Debtor to continue in business pending final consideration of a Liquidation Plan or Agreement for Settlement, the Debtor may continue to operate the business under Article 22 (Operation of the Debtor's Business), subject to such additional limitations and conditions upon the Debtor as the Commercial Court deems appropriate, including a specification of the degree of control to be exercised by the Receiver over the conduct of the business during this interim period.

Article 19. Notice of Commencement of Case

- (a) Within three (3) Business Days following the filing of the list of Creditors required to be filed by the Debtor, the Receiver shall send a notice of the commencement of the case to all Creditors of the Debtor.
- (b) The notice of the commencement of the insolvency case to be provided by the Receiver to all Creditors shall contain the information set forth in Appendix 2 to this law.

Article 20. Meetings of Creditors

- (a) The Receiver shall schedule and preside over the meetings of Creditors.
- (b) The Receiver shall schedule an initial meeting of Creditors not fewer than ten (10) or greater than twenty (20) Business Days following the date of sending of the notice of commencement provided to all Creditors under Article 19 (Notice of Commencement of Case). The date, time, and place of the initial meeting of Creditors shall be included in the notice of commencement.
- (c) Prior to any meeting of the Creditors, the Receiver shall provide the Creditors free of charge with such information concerning the affairs of the Debtor as they may reasonably require. The Receiver shall not be required to comply with any request for information where it appears to him that:
 - (i) the request is frivolous or unreasonable; or
 - (ii) the cost of complying would be excessive, having regard to the relative importance of the information; or
 - (iii) there are not sufficient assets to enable him or her to comply; or
 - (iv) in the opinion of the Receiver, compliance would prejudice the position of other Creditors;
 - (v) there is a legal or regulatory duty not to do so; or
 - (vi) compliance would otherwise constrain the Receiver in the performance of his or her duties in the insolvency case.

- (d) At the initial meeting of the Creditors, the Creditors shall determine whether the remuneration of the Receiver is to be fixed under Article 7(b)(i) or Article 7(b)(ii), and, if under Article 7(b)(ii), to determine the percentage to be applied.
- (e) In addition to the initial meeting of Creditors, the Receiver may schedule one or more additional meetings of Creditors in the case. The Receiver shall schedule a meeting of the Creditors prior to the sale of substantial assets of Estate Property. The Receiver shall provide the agenda and notice of the date, time, and place of any scheduled meetings of Creditors to all Creditors and the Debtor.
- (f) All Creditors may attend and vote in any scheduled meetings of Creditors. In the event that a Creditor is unable to attend in person, he may authorize a representative to attend and vote in his place.
- (g) The Debtor, if so directed by the Receiver, shall be available to attend and answer questions submitted by the Receiver and any Creditor at any scheduled meetings of Creditors.
- (h) The agenda for the meetings of Creditors shall be generally in the form set forth in Appendix 3 to this law.

Article 21. Voting

- (a) Except in relation to a vote under Article 43(b) (Requirements for Approval of Agreement for Settlement), any vote of a meeting of the Creditors shall be determined by a simple majority by value of each Creditor's Claim in accordance with an accepted proof of debt.
- (b) The Receiver shall call a meeting of the Creditors for the purpose of obtaining the consent of the Creditors prior to undertaking:
 - (i) any settlement or compromise of a Claim by or against a Creditor or Creditors which would (in aggregate or alone) exceed a value of AFN 1,400,000 or its equivalent (including without limitation payments in kind);
 - (ii) the payment of Administrative Claims accrued under Article 33(b)(iv) (Administrative Claims) which in aggregate amount to more than 10 percent of the estimated total value of Estate Property.
 - (iii) the sale of Estate Property in accordance Article 30 (Sale of Assets); or
 - (iv) the acquisition of post-commencement financing in accordance with Article 22(d) (Operation of the Debtor's Business).
- (c) Where a meeting of the Creditors has voted and not provided consent in accordance with subclause (b) above, the Receiver may petition the Commercial Court to confirm such actions, whether in accordance with Article 30(b)(vi), Article 22(d), or as otherwise appropriate.

Article 22. Operation of the Debtor's Business

- (a) If the Debtor is authorized to operate the business in accordance with Article 18(d) (Continuation or Termination of Commercial Activities) during the administration of the case:

- (i) The Debtor may purchase goods and services in the ordinary course of business, and shall timely pay for such goods and services.
 - (ii) The Debtor may enter into and perform contracts in the ordinary course of business.
 - (iii) The Debtor shall pay the wages and other amounts owed to employees for work performed by them after the start of the case. Executive compensation shall be subject to approval of the Commercial Court.
 - (iv) The Debtor shall comply with applicable laws in operating the business.
 - (v) The Debtor shall comply with any restrictions or limitations imposed by the Commercial Court concerning the operation of the business.
- (b) Operation of the Debtor's business outside the ordinary course requires prior approval of the Commercial Court, which includes any act not commonly undertaken by Persons engaged in similar businesses or involving a financial commitment larger than the Debtor ordinarily entered into prior to the start of the case.
 - (c) The Receiver shall supervise the Debtor's operation of the business.
 - (d) The Receiver may file a request to obtain financing, in the form of loans or other extensions of credit, including financing secured by liens on Estate Property provided that no liens shall be given on Estate Property that are superior to existing liens under applicable law. The Receiver shall schedule a meeting of Creditors promptly thereafter. Notice of the meeting shall be provided to the Debtor and all Creditors. After hearing from interested parties at the meeting, the Creditors shall make a determination as to whether to approve the financing. In the event that the Creditors decline to approve financing in accordance with this Article, the Receiver may petition Commercial Court for its approval to enter into such arrangements.
 - (e) Upon recommendation of the Receiver, the Commercial Court may direct the Receiver to remove or replace the Debtor or its management from operation of the business, may direct the closing of the business, or may impose additional restrictions on operations.

Article 23. Liquidation Plan

- (a) For all cases other than cases in which the Debtor intends to enter into an Agreement for Settlement, the Receiver shall file a proposed Liquidation Plan with the Commercial Court for filing in the Official Insolvency Register within thirty (30) Business Days following the initial meeting of Creditors.
- (b) In cases where the Commercial Court determines that it is not feasible to pursue an Agreement for Settlement, the Receiver shall submit to the Commercial Court for filing in the Official Insolvency Register a proposed Liquidation Plan within thirty (30) Business Days after a determination by either the Receiver or the Commercial Court that approval of an Agreement for Settlement is not likely to be achieved in a reasonable period of time and the filing of a Liquidation Plan is in the best interests of the Creditors.
- (c) The Liquidation Plan shall include:

- (i) A list of all Estate Property of the Debtor as set forth in Article 24 (Estate Property).
 - (ii) A list of all liabilities.
 - (iii) A list of leased or third-party assets to be returned to their lawful owners.
 - (iv) The proposed method for sale of Estate Property, approved by a meeting of the Creditors in accordance with Article 30(b)(v) (Sale of Assets) or the Commercial Court, in a commercially reasonable manner and whether sale of the business of the Debtor should be as a going concern or in individual lots.
 - (v) The proposed treatment of contracts in compliance with Article 29 (Treatment of Contracts).
 - (vi) A timetable for completion of the liquidation.
- (d) The Commercial Court shall within fifteen (15) Business Days after filing of the Liquidation Plan approve, require modifications, or reject the Liquidation Plan.

Chapter 4--Collection and Disposition of Estate Property.

Article 24. Estate Property

- (a) Estate Property shall include:
 - (i) All property in which the Debtor has any ownership interest as of the Time of Commencement of the insolvency case.
 - (ii) All money owed to the Debtor as of the Time of Commencement of the insolvency case as a result of goods or services sold by the Debtor, money lent by the Debtor, injury to the Debtor or property of the Debtor, or any other ground upon which a debt may arise under applicable law.
 - (iii) All property that may be acquired by the Receiver during the administration of the case shall include property subject to turnover under Article 26 (Turnover of Estate Property).
 - (iv) All property that may be obtained by the Receiver from a transaction subject to rescission under Article 27 (Transactions Subject to Rescission).
 - (v) All property that may be obtained by the Receiver from a contribution under Article 48 (Wrongful Trading).
 - (vi) All property generated from the operation of the Debtor's business during the administration of the case.
- (b) Estate Property shall not include property that is allowed as exempt under Article 25 (Exemption of Property by the Debtor).

Article 25. Exemption of Property by the Debtor

- (a) A Debtor who is an individual Person may exempt from Estate Property a single family residence (provided that the debtor and his immediate family have resided in the home continuously for the two (2) year period preceding the Time of

Commencement), clothes, furniture, tools of trade, and other items needed by the Debtor and the Debtor's family, in each case to the extent such property is necessary for the maintenance and support of the Debtor and the Debtor's immediate family.

- (b) In order to exempt property, the Debtor must file a list of property claimed as exempt with the Commercial Court and the Receiver no later than three (3) Business Days prior to the meeting of Creditors scheduled by the Receiver under Article 20 (Meetings of Creditors).
- (c) The Receiver or any Creditor may file an objection to the property claimed as exempt with the Commercial Court within ten (10) Business Days following the conclusion of the initial meeting of Creditors. Any objection shall state the specific basis for the objection. The Commercial Court shall make a final determination as to the permissibility of any exemption within ten (10) Business Days of receiving an objection.

Article 26. Turnover of Estate Property

- (a) Estate Property in Possession or Control of Third Party.

Any Person in possession or control of movable or immovable property that is Estate Property at the Time of Commencement shall account for, and deliver possession and control of the property to the Receiver, or the value of such property as determined by the Commercial Court following an application from the Receiver, immediately upon being presented by the Receiver with a demand for turnover together with a copy of the Letter of Appointment.

- (b) Debt Owed to Debtor.
 - (i) Any Person or entity owing money to the Debtor at the Time of Commencement shall account for, and turnover to the Receiver, all money owed to the Debtor upon being presented by the Receiver with a demand for turnover together with a copy of the Letter of Appointment.
 - (ii) Any bank, entity or Person with which the Debtor maintains an account at the Time of Commencement shall account for, and turnover to the Receiver, all money on deposit in such bank account immediately upon being presented by the Receiver with a demand for turnover together with a copy of the Letter of Appointment.
- (c) Any Person, entity, or bank, after being provided with a demand for turnover together with a copy of the Letter of Appointment, which objects to turning over the property described in the demand for turnover, may within ten (10) Business Days of receiving the demand for turnover file an objection with the Commercial Court. The Commercial Court will thereafter schedule a hearing to determine whether turnover of such property is required under this law.

Article 27. Transactions Subject to Rescission

- (a) The Receiver, as part of the investigation of the financial affairs of the Debtor, shall review all transfers made, and obligations incurred, by the Debtor that occurred within a two (2) year prior to the Time of Commencement.

- (b) Any transfer of money or property made, or obligation incurred, by the Debtor within two (2) years prior to the Time of Commencement is subject to being rescinded if the transfer was made, or the obligation was incurred:
 - (i) for consideration, in cash or in kind, worth less than the property's value, and the Trader was at the time of the transfer, or became as a result of the transfer, Insolvent; or
 - (ii) in bad faith with the intent to evade the rights of Creditors generally or to prefer any Creditor over any other Creditor.
- (c) The Commercial Court may, on the application of the Receiver, demand that the recipient of a transfer or obligation subject to being rescinded under this Article return any money or property so transferred, or the value thereof. If the recipient acted in good faith in connection with the transaction, the liability of the recipient shall be reduced by the amount of the value given to the Trader in connection with the transaction.
- (d) The Commercial Court may, on application of the Receiver, demand a restoration of property, the reduction of security or other remedy as it deems fit, in relation to any transaction which is not in the ordinary course of business and which is entered into by the debtor within one (1) year prior to the Time of Commencement and has the effect of creating a preference in favor of a Creditor to the detriment of the general body of Creditors.

Article 28. Abandonment of Assets

- (a) The Receiver may propose by written notice to all Creditors to abandon any asset that is included within the Estate Property on the basis that the costs of securing, maintaining, and selling the asset is more than will be realized for the benefit of Creditors holding unsecured Claims upon sale of the asset.
- (b) Creditors shall be permitted to object to any proposed abandonment for a period of fifteen (15) Business Days following the date of receipt of the notice. Upon the expiration of this period, in the event that no Creditors have provided an objection, the abandonment shall be deemed approved by the Creditors. Any decision to abandon Estate Property shall be submitted by the Receiver to the Commercial Court for filing in the Official Insolvency Register.
- (c) If a Creditor objects to the abandonment of Estate Property within the period prescribed above, the Receiver may petition the Commercial Court to determine whether such Estate Property may be abandoned.
- (d) Abandoned Estate Property shall vest in the Islamic Republic of Afghanistan.

Article 29. Treatment of Contracts

- (a) In accordance with (Article 10) (Duties of Receiver) the Receiver shall be provided with copies of all ongoing contracts to which the Debtor was a party and had contractual rights or duties as of the Time of Commencement.
- (b) As promptly as reasonably possible after the start of the case, the Receiver shall make an assessment as to each such contract with respect to whether it should be continued, assigned for a valuable consideration to a third party, or terminated, and the consequences and costs associated with each of these alternatives.

- (c) Upon conclusion of such assessment, the Receiver shall submit to the Commercial Court a determination as to the continuation, assignment, or termination of each such contract.
- (d) With respect to contracts that are terminated, the counterparty to any such contract will be entitled to file a Claim in accordance with Article 34 (Filing and Verification of Claims) for damages permitted under applicable law resulting from the termination of the contract within twenty (20) Business Days from the date of notification by the Receiver to terminate the contract. The Claim will have the same priority as other Claims against the Debtor arising prior to the Time of Commencement.
- (e) With respect to contracts that are continued, any monetary or performance defaults under the contract occurring prior to the Time of Commencement may give rise to an unsecured Claim. If the contract is breached following the Time of Commencement, the Claim of the other party for damages shall be an Administrative Claim under Article 33 (Administrative Claims) to the extent damages are permitted under applicable law.
- (f) With respect to contracts that are assigned, the Person to whom the contract is assigned must demonstrate the ability to perform the contract, shall promptly remedy any monetary or performance defaults under the contract, and will be obligated to perform the contract on an ongoing basis as provided in the contract.
- (g) If a contract to which the Debtor is a party contains a provision providing that the contract is or may be terminated, or that the Debtor's rights in the contract are or may be eliminated or otherwise adversely altered, because of the filing of an insolvency or insolvency proceeding by or against the Debtor, then the counterparty must seek permission from the Commercial Court before terminating the contract or enforcing any alteration of the Debtor's rights. If a contract that is to be assigned by the Receiver contains a provision providing that the contract is not assignable without the consent of the counterparty, then the counterparty may not enforce such provision without permission of the Commercial Court.

Article 30. Sale of Assets

- (a) If the Commercial Court determines to allow the Debtor to continue in business in accordance with Article 18(d) (Continuation or Termination of Commercial Activities), the Debtor may continue to sell goods and services in the ordinary course of business as provided in Article 22 (Operation of the Debtor's Business). The Debtor shall provide an account to the Receiver of all such sales on a weekly basis unless directed otherwise by the Receiver.
- (b) The Receiver may sell movable and immovable Estate Property other than in the ordinary course of business subject to the following requirements:
 - (i) All sales of Estate Property by the Receiver shall be subject to such terms and conditions as may be imposed by the Commercial Court.
 - (ii) All sales shall be either by private contract or by public auction.
 - (iii) Prior to conducting a sale of Estate Property, the Receiver shall schedule a meeting of the Creditors to consider the proposed sale.

- (iv) The Receiver will provide at least ten (10) Business Days' notice of the meeting proposed sale to the Debtor and all Creditors that shall include the information contained in Appendix 4.
- (v) At the meeting of the Creditors to consider approval of the proposed sale, the Receiver shall provide all interested parties an opportunity to be heard in connection with the sale. If a vote of the Creditors approves the sale, the Receiver shall be authorized to conduct the sale. The minutes of the meeting of the Creditors shall be submitted by the Receiver to the Commercial Court for filing in the Official Insolvency Register and a copy shall be sent to all Creditors.
- (vi) If a meeting of the Creditors does not approve a sale, the Receiver may petition the Commercial Court for approval to proceed with such sale.
- (vii) If the property to be sold is perishable or otherwise rapidly declining in value, the Receiver may petition the Commercial Court to expedite the procedures for consideration of the sale. Upon receipt of a petition for expedited sale, the Commercial Court shall issue a determination as to whether the sale may proceed within five (5) Business Days.
- (viii) Following the conclusion of a sale, the Receiver shall submit to the Commercial Court for filing in the Official Insolvency Register a statement of the property sold, the name of each purchaser, the price received for each item or lot or for the property as a whole if sold in bulk. If the property is sold by auctioneer, the Receiver shall also file a statement setting forth all compensation paid to the auctioneer in connection with the sale.
- (ix) All proceeds from the sale shall be deposited into the Estate Bank Account.
- (x) After sale, the Receiver or the Debtor shall execute any document necessary to complete the transfer of Estate Property to purchasers.
- (xi) Property sold under this Article shall be transferred to the buyer free of all unsecured Debts of the Debtor and such property shall not be liable for any such Debts, unless otherwise provided by the sale agreement. Property may be sold free of a Secured Claim only if the holder of the Secured Claim consents or the cash proceeds of the sale are sufficient to pay the Secured Claim in full, and the proceeds are paid to or escrowed for the benefit of the holder of the Secured Claim.

Article 31. Money from Collection and Disposition of Estate Property

- (a) The Receiver shall open a separate Estate Bank Account to be used exclusively in connection with each case in which the Receiver serves.
- (b) All money received by the Receiver from the collection and disposition of Estate Property shall be deposited into the Estate Bank Account.
- (c) The Receiver shall furnish accountings for all deposits and withdrawals or other activities with respect to the Estate Bank Account to the Commercial Court as requested and in no event less than on a monthly basis.
- (d) If the Debtor is a company owned in whole or part by the Islamic Republic of Afghanistan eligible to be a Debtor under this law as provided in Article 4 (Eligibility

to be a Debtor), the Receiver shall comply with all other laws governing accounting for funds of government owned companies.

Chapter 5--Administration and Payment of Claims.

Article 32. Treatment of Secured Claims

- (a) In accordance with Article 16 (Suspension of Legal Action), all legal proceedings and other actions by Creditors holding Secured Claims shall be suspended for the duration of the administration of the insolvency case unless the Commercial Court grants a request by the Creditor holding the Secured Claim to be relieved from the suspension and be allowed to enforce its rights against its collateral.
- (b) Creditors holding Secured Claims shall be paid from the proceeds from the sale of the collateral securing their Claims less the reasonable expenses incurred by the Receiver in preserving or selling their collateral, unless a Secured Claim receives a different treatment under an Agreement for Settlement approved by the Commercial Court in accordance with Article 43 (Requirements for Approval of Agreement for Settlement).
- (c) After crediting the proceeds from the sale of the collateral, the balance of a Claim shall be treated as unsecured and shall be paid along with other unsecured Claims in the insolvency case.

Article 33. Administrative Claims

- (a) Administrative Claims are the expenses incurred in administration of the case. Administrative Claims are entitled to priority over payments to Creditors holding unsecured Claims as set forth in Article 35 (Priority of Claims).
- (b) The following shall be considered Administrative Claims:
 - (i) Fees approved to be paid to the Receiver under Article 34 (Compensation of Receiver) following approval by the Commercial Court.
 - (ii) Expenses reasonably incurred by the Receiver during the course of administration of the insolvency case.
 - (iii) In cases where the Commercial Court authorizes the Debtor's business to continue in operation, any claims arising from credit extended but unpaid or liabilities otherwise incurred but unpaid arising out of the operation of the business including any financing authorized under Article 22 (Operation of the Debtor's Business).
 - (iv) The fees and expenses of professionals employed during the course of the administration of the insolvency case, approved where necessary in accordance with Article 21(b)(ii) (Voting).
 - (v) The fees and expenses of an Independent Receiver Auditor appointed pursuant to Article 12 (Appointment of Independent Receiver Auditor).
- (c) To the extent that expenses are reasonably expended for the maintenance and protection of Estate Property that is the collateral for a Secured Claim, such expenses shall be reimbursed from the proceeds of the sale of such property before distribution to the Secured Creditor.

Article 34. Compensation of Receiver

- (a) The Receiver shall be paid reasonable compensation for the actual and necessary services rendered in connection with the administration of an insolvency case as determined by a meeting of the Creditors.
- (b) In determining the compensation to be paid to the Receiver in accordance with Article 7 (Remuneration of a Receiver), the Creditors shall consider the value of the Receiver's services taking into account all relevant circumstances, including the time spent on such services, the rates charged for such services in the business community, and whether the services were necessary and beneficial to an orderly and prompt administration of the case.
- (c) Payment of the fees owed to the Receiver under this Article shall only be made with the approval of a meeting of the Creditors. All Creditors and the Debtor will be entitled to 20 Business Days prior notice of the meeting and the amounts requested and will have an opportunity to attend and be heard at the meeting. In the event that the Creditors do not approve a payment of fees in accordance with this Article, the Receiver may petition the Commercial Court for approval of such payment.

Article 35. Priority of Claims

- (a) Payments of Claims under a Liquidation Plan shall be made in the following order of priority:
 - (i) Secured Claims.
 - (ii) Funding acquired post-Time of Commencement, to the extent provided for in Article 22(d) (Operation of the Debtor's Business).
 - (iii) Administrative Claims allowed under Article 33 (Administrative Claims).
 - (iv) Claims for unpaid employee wages incurred before the Time of Commencement, provided that such payments do not exceed a sum equivalent to the salary of that employee for a period of three (3) months as a maximum.
 - (v) Claims for taxes incurred before the Time of Commencement owed to any governmental entity under applicable law.
 - (vi) Unsecured Claims.
 - (vii) Rights of the Debtor or representing ownership of the Debtor.
- (b) To the extent that money received by the Receiver from the disposition or collection of Estate Property is insufficient to pay all Claims in full, Claims shall be paid in the order and manner described in the foregoing paragraph and within each category pro rata to the extent of available funds.

Article 36. Filing and Verification of Claims

- (a) A Creditor must file a Claim in accordance with the terms of this Article in order to receive any distribution in connection with the insolvency case.

- (b) The Claims shall be filed with the Receiver at the address listed in the notice of commencement of the case.
- (c) The Claims shall be filed within the date set out in the notice of commencement of the case, which shall be 60 Business Days after the sending of the notice of commencement except with respect to Claims arising as a result of termination of a contract which shall be filed in accordance with the time specified in Article 29 (Treatment of Contracts).
- (d) A Claim shall be in writing on the form provided by the Receiver, and shall include the information set forth in Appendix 5.
- (e) Assessment and Verification of Claim.
 - (i) The Receiver shall make an assessment of the validity, amount, and classification of all Claims submitted to determine whether or not each Claim should be allowed, in whole or in part, to be entitled to distribution in the insolvency case.
 - (ii) The assessment of the Claims shall be concluded within ninety (90) Business Days after the last date for submission of Claims or such later date as may be approved by the Commercial Court.
 - (iii) Upon conclusion of the assessment, the Receiver shall provide notice in writing to the Creditor filing the Claim as to whether the Claim has been, in whole or in part, admitted or denied and the basis for that assessment. A Creditor shall have twenty (20) Business Days following the notice of the Receiver's assessment to file an objection to the assessment with the Commercial Court.
 - (iv) The validity and amount of a Claim shall be determined based on the applicable law governing the Claim. All defenses to the amount and validity of a Claim that were available to the Debtor shall be available to the Receiver. Claims that are contingent or unliquidated in amount shall be determined in a fixed amount taking into account all relevant circumstances.
 - (v) The Receiver shall prepare and maintain a public list of Claims that have been verified to be paid in connection with the insolvency case and shall file the list with the Commercial Court. Any Creditor may, within ten (10) Business Days of receiving notice from the Receiver in relation to the conclusion of the Claims assessment, make an application to the Commercial Court to challenge the acceptance or rejection of any Claim.
- (f) A Debtor may set off the amount of a Claim against an amount owed to the Debtor by the Creditor where, in respect to a transaction that occurred prior to the Time of Commencement, there have been mutual credits, mutual debts or other mutual dealings, and the amount owed by the Creditor arises from such dealings.
- (g) If a Creditor fails to timely file a Claim because the Creditor did not receive proper notice, the Creditor may within one (1) year following the final Claim submission date as notified to Creditors by the Receiver, petition the Commercial Court for its late filed Claim to be treated as timely filed. If the Commercial Court so determines, the Creditor shall be entitled to distributions made in the insolvency case to the extent possible taking into account the then remaining property available for distribution.

Article 37. Distribution of Money from Collection and Disposition of Estate Property

- (a) This Article shall govern distribution of money received from the administration of the insolvency case in which a Liquidation Plan has been approved. This Article shall not apply to cases in which an Agreement for Settlement has been approved.
- (b) Payment of Claims shall be ordinarily made at the conclusion of the administration of the insolvency case. However, the Receiver may propose to make one or more interim distributions to holders of Claims.
- (c) Prior to making any distributions to Creditors, the Receiver shall file with the Commercial Court a notice of the proposed distribution setting forth the names of recipients and amounts of all payments to be made. A copy of the notice of proposed distribution shall be sent to the Debtor and all Creditors. Any objection to the proposed distribution shall be notified by a Creditor to the Receiver within ten (10) Business Days of receipt of the notice of proposed distribution. If no Creditor objects within the period above, the distribution shall be deemed approved. If a Creditor submits an objection, the Receiver may petition the Commercial Court for approval to proceed with the distribution.
- (d) At the time of any proposed interim distribution, if there are Claims that are still in dispute or there are potential future expenses in connection with administration of the insolvency case, the Receiver shall describe in any notice of proposed distribution a reserve to be established to cover later distributions for the amount of such Claims.
- (e) In any distribution approved by either Creditors or the Commercial Court, Claims shall be satisfied in the order of priority set forth in Article 35 (Priority of Claims). Where funds are insufficient to fully satisfy all Claims of a given priority, the Claims of that class shall be satisfied pro rata in proportion to the amount of each Claim.

Chapter 6—Agreement for Settlement.**Article 38. Receiver's Investigation Concerning Agreement for Settlement**

- (a) Promptly after the commencement of the case, the Receiver shall investigate the financial and business affairs of the Debtor to determine whether there is a reasonable likelihood of approval of an Agreement for Settlement that will produce a more favorable result for Creditors, the Debtor, and other interested parties than under a Liquidation Plan. In conducting this investigation, the Receiver will consult with the Debtor, the Creditors, and such other Persons as the Receiver deems appropriate.
- (b) Within thirty (30) Business Days after the initial meeting of Creditors, the Receiver shall deliver to the Commercial Court a recommendation whether the case should proceed as a case in which Debtor intends to enter into an Agreement for Settlement.
- (c) The Commercial Court shall determine within fifteen (15) Business Days after the filing of the Receiver's recommendation whether the case should proceed towards an Agreement for Settlement.
- (d) If the Commercial Court determines that the case should proceed towards an Agreement for Settlement, the Receiver shall perform the duties set forth in this law concerning approval of an Agreement for Settlement. If the Commercial Court determines the case should not proceed as a case in which Debtor intends to enter into an Agreement for Settlement, the Receiver shall file a proposed Liquidation Plan as required under Article 23 (Liquidation Plan).

Article 39. Formulation of an Agreement for Settlement

- (a) If the Commercial Court determines that the case should proceed towards an Agreement for Settlement, the Receiver shall formulate an Agreement for Settlement that:
 - (i) Will, under the prevailing circumstances, provide the greatest available recoveries;
 - (ii) Is reasonably achievable and based on realistic assumptions;
 - (iii) Treats Creditors and other Persons fairly in light of their legal rights;
 - (iv) Considers the interests of Creditors, the Debtor, and other interested Persons in each case in accordance with their priority under Article 35 (Priority of Claims); and
 - (v) Complies with this law.
- (b) The Receiver will consult with the Debtor, the Creditors, and other interested parties as the Receiver deems appropriate concerning the terms of an Agreement for Settlement.
- (c) An Agreement for Settlement may propose any treatment of Claims of Creditors and may deal with Estate Property in any lawful manner, including:
 - (i) Modifying the terms for repayment of the Claims of Creditors, whether secured (subject to Article 41 (Contents of Agreement for Settlement) and Article 42 (Treatment of a Secured Claim under Agreement for Settlement)) or unsecured.
 - (ii) Extinguishing of debt.
 - (iii) Issuance to Creditors of new debt of the Debtor or of ownership of the Debtor's assets in exchange for the Creditors' existing Claims, with the existing ownership of the Debtor being extinguished in whole or in part.
 - (iv) The retention by the Debtor of all or part of the Estate Property.
 - (v) The sale of all or part of the Estate Property, with the proceeds of such sales being used to repay Creditors or to invest in the Debtor's business.
 - (vi) The investment by one or more Persons of money or property in the Debtor, with such investment to be in return for the issuance of debt and/or ownership, and with the proceeds of such investment to be used to make payments to Creditors or to invest in the business of the Debtor.
 - (vii) Any combination of the above transactions or any other lawful transactions.

Article 40. Agreement for Settlement Negotiated Before the Start of the Case

- (a) If the Debtor proposed to Creditors an Agreement for Settlement before the start of the case, the Receiver's investigation under Article 38 (Receiver's Investigation Concerning Agreement for Settlement) shall include an assessment of the Debtor's proposal.

- (b) If the Receiver determines that pursuing approval of the proposal is in the best interests of Creditors and other interested Persons, the Receiver shall adopt the Debtor's Agreement for Settlement and pursue its approval in accordance with the provisions of this law with such modifications the Receiver deems appropriate and consistent with the terms of this law.

Article 41. Contents of Agreement for Settlement

- (a) The Receiver will endeavor to file an Agreement for Settlement as promptly as possible after the case is approved as a case in which Debtor intends to enter into an Agreement for Settlement by the Commercial Court, but in no event more than ninety (90) Business Days after the date of the meeting at which the Receiver's recommendation that the case proceed towards an Agreement for Settlement was approved, unless that date is extended by the Commercial Court for cause.
- (b) The proposed Agreement for Settlement shall include:
 - (i) A list of all Secured Claims specifying the type and value of the collateral and the terms of repayment for each such Secured Claim.
 - (ii) The amount to be paid and terms of repayment of Unsecured Claims.
 - (iii) The proposal for commencing, continuing, or taking any actions pursuant to Article 26 (Turnover of Estate Property), Article 27 (Transactions Subject to Rescission), Article 28 (Abandonment of Assets), Article 29 (Treatment of Contracts), or Article 30 (Sale of Assets).
 - (iv) Information concerning the Debtor's prospects and ability to perform the Agreement for Settlement to better enable the Creditors to make an informed decision whether to accept the Agreement for Settlement.
- (c) The Agreement for Settlement shall include a time schedule for the implementation thereof not exceeding five (5) years from the date of approval by the Commercial Court. The Agreement for Settlement may be extended for a period not exceeding three (3) years with the consent of the Commercial Court.

Article 42. Treatment of a Secured Claim under Agreement for Settlement

- (a) Prior to a Settlement being approved by the Commercial Court with respect to treatment of a Secured Claim, either the holder of the Secured Claim must vote in favor of the Agreement for Settlement, or the Commercial Court must determine that the Agreement for Settlement complies with Article 42(b).
- (b) As an alternative to requiring the vote of the holder of the Secured Claim, the Commercial Court may approve the treatment to be provided with respect a Secured Claim if each of the following conditions is satisfied:
 - (i) Terms of Repayment.
 - (1) The holder of the Secured Claim will retain the lien on the collateral securing the Claim, and
 - (2) The holder of the Secured Claim will be paid in full the amount of the Secured Claim under terms that the Commercial Court

determines are similar to the terms contained in the original loan agreement between the Debtor and the Creditor.

- (ii) The Commercial Court determines that, in respect of any non-consenting secured Debtor, the Debtor is capable of fully performing its obligations under the Agreement for Settlement.

Article 43. Requirements for Approval of Agreement for Settlement

- (a) The Receiver shall schedule a meeting of the Creditors to occur within thirty (30) Business Days after the filing of the proposed Agreement for Settlement to consider approval of the agreement. Notice of the meeting scheduled to consider approval of the proposed Agreement for Settlement shall be provided to the Debtor and all Creditors at least twenty (20) Business Days prior to the date of the meeting.
- (b) In order for a proposed Agreement for Settlement to be accepted by the Creditors, the proposed Agreement for Settlement must receive the consent of the Creditors as follows:
 - (i) Each Creditor holding a Secured Claim must vote in favor of the treatment provided for the repayment of the Secured Claim as provided for in the proposed Agreement for Settlement. Notwithstanding the foregoing, the Commercial Court may treat a Creditor holding a Secured Claim as if it had voted in favor of the Agreement for Settlement upon satisfaction of the conditions set forth in Article 42 (Treatment of a Secured Claim under Agreement for Settlement).
 - (ii) Approval of the Agreement for Settlement by Creditors holding unsecured Claims is shall be by:
 - (A) 66 percent of Creditors by Claim value; and
 - (B) a simple majority by number of those Creditors voting in person or by proxy.
- (c) For purposes of this Article only, the holder and the amount of a Claim shall be presumed to be the same as listed by the Debtor pursuant to Article 10 (Duties of Receiver) unless the Receiver has filed an objection to the Claim with the Commercial Court.
- (d) The Commercial Court shall approve the proposed Agreement for Settlement if each of the following conditions is satisfied:
 - (i) The Agreement for Settlement will produce a more favorable result for Creditors, the Debtor, and other interested parties than under a Liquidation Plan.
 - (ii) The Creditors shall have voted in favor of the Agreement for Settlement as required by this Article.
 - (iii) The Debtor shall have given a written commitment to comply with the terms of the Agreement for Settlement containing such terms and conditions as the Commercial Court deems appropriate under the circumstances. The written commitment shall be filed with the Commercial Court.

- (iv) The Commercial Court shall have determined that the Debtor is capable of fully performing its obligations under the Agreement for Settlement and that the Agreement for Settlement was proposed in good faith and complies with the requirements of this law.

Article 44. Effect of Approval or Disapproval of an Agreement for Settlement

- (a) Approval of an Agreement for Settlement shall have the following effects:
 - (i) The Agreement for Settlement shall be binding on all Persons, whether or not such Persons voted for or against the Agreement for Settlement or filed a Claim in the case; and
 - (ii) Approval of the Agreement for Settlement releases and discharges the Debtor from liability on Claims, except as otherwise provided in the Agreement for Settlement.
- (b) If the Agreement for Settlement is disapproved, the Commercial Court shall determine whether the case should continue towards an Agreement for Settlement or whether the Receiver should be directed to file a Liquidation Plan. In making such determination, the Commercial Court shall take into account the reasons the Agreement for Settlement was not approved, the recommendation of the Receiver, and the interests of the Creditors, the Debtor and other interested parties. If the Commercial Court determines that the case should continue as a case in which Debtor intends to enter into an Agreement for Settlement, the Commercial Court shall establish an appropriate time period for filing of an amended Agreement for Settlement together with such other conditions as the Commercial Court considers appropriate.

Article 45. Receiver's Oversight of Debtor's Compliance with Agreement for Settlement

- (a) Following the approval of an Agreement for Settlement, the Receiver shall monitor the Debtor's compliance with the Agreement for Settlement and report the status of such compliance to the Commercial Court quarterly or on a more frequent basis as directed by the Commercial Court.
- (b) Upon fulfilment of the Debtor's obligations imposed under the Agreement for Settlement, the Receiver shall certify such compliance to the Commercial Court. All Creditors shall receive notice of such certification and be given twenty (20) Business Days to submit to the Commercial Court any objection to the certification. If no objection is received, the certification shall be considered final. If an objection is received, the Commercial Court shall within ten (10) Business Days make a determination whether the obligations imposed by the Agreement for Settlement have been fully performed.
- (c) Following certification that the Debtor has fulfilled its obligations under the Agreement for Settlement, the Debtor will deemed to have been released from the insolvency proceeding.

Chapter 7--Conclusion of Case and Appeals.

Article 46. Final Accounting by Receiver

- (a) Upon conclusion of the administration of the insolvency case to include resolution of all disputes regarding Claims and Estate Property, turnover of property, collection of

transactions subject to rescission, and sale or abandonment of all Estate Property, the Receiver shall submit to the Commercial Court a report of final accounting for filing in the Official Insolvency Register.

- (b) The report of final accounting shall include the following information together with such other information as the Commercial Court may direct:
 - (i) A list of all Estate Property as of the Time of Commencement.
 - (ii) A list of all Estate Property collected during the administration of the insolvency case after the Time of Commencement.
 - (iii) A list of the disposition of all Estate Property to include the proceeds obtained from the disposition of all Estate Property as listed above.
 - (iv) A list of all disbursements made during the administration of the case to include the party receiving the disbursement, the amount, the date, and the purpose of the disbursement.
- (c) The final accounting shall be available to the Debtor and all Creditors for review in the Official Insolvency Register.
- (d) The Receiver shall schedule a final meeting of the Creditors to consider approval of the final accounting. Notice of the meeting shall be provided at least twenty (20) Business Days prior to the meeting. After hearing from interested parties, the Creditors shall vote to approve the final accounting, in whole or in part, or may direct the Receiver to take further actions and resubmit a final accounting.
- (e) Upon approval of the final accounting, the case will be considered concluded and the Receiver shall have no further responsibility in connection with the case. Discharge from any further responsibility in connection with the case shall not affect the Receiver's liability for having committed an improper act described in Article 8(a) (Liability of Receiver).

Article 47. Appeals

- (a) All decisions of the Receiver are subject to appeal to the Commercial Court.
- (b) All appeals must be filed within fifteen (15) Business Days of the date the decision by the Receiver.
- (c) Unless and until specifically ordered by the Commercial Court, the filing of an appeal shall not suspend the administration of the insolvency case or the decision of the Receiver. In order for the Commercial Court to suspend the enforceability of all or any part of the decision of the Receiver, the Commercial Court must determine that each of the following conditions have been established at a hearing at which all interested parties have had an appropriate opportunity to be heard:
 - (i) The appealing party has proved a substantial likelihood of prevailing on the appeal,
 - (ii) The appealing party has proved it will suffer irreparable injury if the suspension is not granted,

- (iii) The appealing party has posted a bond or other security with the Commercial Court in an amount sufficient to pay all loss or damages that may be suffered by the Receiver, Creditors or other parties in interest by the suspension, taking into account all relevant circumstances including the expected length of the suspension, and
- (iv) Suspension will be in the public interest.

Article 48. Wrongful Trading

- (a) If the Receiver determines that at a time prior to the Time of Commencement, a Director knew or should have known that there was no reasonable prospect that the Debtor would avoid becoming Insolvent, the Commercial Court may, on the application of the Receiver, declare that Director liable to make a contribution to the Debtor's assets as the Commercial Court considers appropriate.
- (b) The Commercial Court shall not make a declaration under this Article with respect to any Director if it is satisfied that the Director took every step with a view to minimizing the loss to the Creditors which should have been taken.

Article 49. Notice

Unless otherwise specified, notice provided by any party in accordance with this law shall be made:

- (a) by hand;
- (b) by reputable courier; or
- (c) with prior agreement between the parties, by electronic communications including, without limitation, e-mail, facsimile or other such method as may be agreed.

Article 50. Final Provisions

- (a) Any provision violating or contradicting the provisions of this law shall be abrogated.
- (b) The Law on Government Fees in the Courts of the Islamic Republic of Afghanistan shall not apply in relation to any procedures undertaken in accordance with this law.
- (c) This law is effective [180 Business Days] after the date of President's signature and publication in the Official Gazette. Upon such effectiveness of this law, the Law of Insolvency and Bankruptcy in Afghanistan of 1942 shall be repealed.

Law of Insolvency and Bankruptcy
in Afghanistan of 2018

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Appendices

Appendix 1. Contents of Petition.

The petition filed pursuant to Article 13 (Commencement of Insolvency Case) shall include the following information and any other information that may be required under any rule issued by the Commercial Court:

- (i) The name, street and mailing address, phone number, and email address of the Debtor.
- (ii) The name, street and mailing address, phone number, and email address of any attorney representing the Debtor.
- (iii) If known, all names the Debtor has used during the previous two years.
- (iv) A general description of the type of business in which the Debtor is engaged and, to the extent known, addresses of all locations at which the Debtor conducts business.
- (v) Facts demonstrating that the Debtor meets the eligibility requirements of Article 4 (Eligibility to be a Debtor).
- (vi) Name, employer and address of individual nominated to act as Receiver.
- (vii) The identity and contact details of any proposed Receiver, together with details of qualification and experience.
- (viii) In a voluntary case, a statement whether the Debtor intends to enter into an Agreement for Settlement, and if so a summary of facts demonstrating the business can be reorganized.

Appendix 2. Contents of Notice of Commencement.

The notice of the commencement of the Insolvency case to be provided by the Receiver to all Creditors pursuant to Article 19 (Notice of Commencement of Case) shall contain the following information:

- (i) The name and address of the Debtor together with all names used by the Debtor in the last two years, if known to the Receiver.
- (ii) The case number assigned to the case by the Commercial Court.
- (iii) The date, time, and place of the initial meeting of Creditors.

- (iv) The name, address, phone number, and email address of the Receiver.
- (v) The date by which all Creditors must file Claims and the address to which such Claims must be sent.

Appendix 3. Agenda for Meeting of Creditors.

The agenda to be prepared by the Receiver and distributed to the Creditors and Debtor at the initial meeting of creditors scheduled pursuant to Article 20 (Meetings of Creditors), shall include but not be limited to the following:

- (i) Questioning the Debtor concerning the Debtor's acts, conduct, property, liabilities, or other matters relating to the Debtor's financial affairs.
- (ii) Discussion of whether the business should be continued pending a final resolution on a Liquidation Plan or an Agreement for Settlement.
- (iii) Determining the best method to pay Claims of Creditors including sale of the business of the Debtor as a going concern or in individual lots.
- (iv) Considering the need for a obtaining an appraisal of the Estate Property.
- (v) Considering any proposals by the Debtor or the Receiver for a continuation of the business under an Agreement for Settlement.
- (vi) Considering the property claimed as exempt by the Debtor and whether to object to the claimed exemption under Article 25 (Exemption of Property by the Debtor).

Appendix 4. Contents of Notice of Sale.

The Notice of Sale to be provided by the Receiver to all Creditors in accordance with Article 30 (Sale of Assets) shall contain the following information:

- (i) The date, time, and place of the meeting of the Creditors scheduled to consider approval of the sale.
- (ii) The date, time, and place proposed by the Receiver for conducting the sale.
- (iii) A description of the property to be sold.
- (iv) Estimated value of property, and source of such estimate.
- (v) Consideration to be paid.
- (vi) Anticipated expenses to be incurred in connection with the sale to include any fee to be paid to an auctioneer.

Appendix 5. Contents of Claim.

Claims filed by Creditors in accordance with Article 36 (Filing and Verification of Claims) shall contain the following information:

- (i) The name of Creditor, name of Person executing the claim form, address of Creditor, and, if available, phone numbers and email addresses at which the Creditor and, if different, the Person executing the claim form, can be reached.

- (ii) Amount of Claim, basis for Claim, and description of any asset claimed as collateral for the Claim.
- (iii) If the Claim is a Secured Claim, the Claimant must include sufficient documentation to demonstrate that the security interest is valid and enforceable under applicable law.
- (iv) If the Claim is for unpaid employee wages, the Claimant must identify the time periods for which payment was not made and the rate at which payment was due.
- (v) To the extent available, supporting documentation should be attached to the Claim to demonstrate its validity.