

Creditor objects, the Assigned Judge may schedule a hearing to decide on the objection, however such objection will not halt implementation of the Agreement for Settlement with the minor modification.

b. Permit more substantial modifications to the Agreement for Settlement if the Assigned Judge, in consultation with the Administrator, agrees that it is in the best interests of the creditors and the proposed modified plan continues to comply with the terms in this Act for an Agreement for Settlement. Such substantial modifications shall require notification by the Commercial Court to all creditors substantially affected in a negative manner and such Creditors' approval. Creditors who are affected by the modifications but not substantially must be notified of the proposed modification and such Creditors may object to the modifications in whole or in part within 30 days of being notified or the modifications or otherwise be deemed to have accepted the modification.

c. If the Assigned Judge determines that the Debtor cannot complete implementation of the Agreement for Settlement, the case may be

- i. converted to liquidation proceedings to be conducted under this Act or
- ii. dismissed, with the Creditors regaining their rights prior to the commencement of the case, except that their Claims shall be diminished by the amounts that have already been paid to them under the Agreement for Settlement.

§ 8.32 Post-Commencement Finance and Credit

- (1) The Assigned Judge may authorize **the Administrator or a Debtor-in-Possession** to obtain post-commencement financing or credit where the Administrator or Debtor-in-Possession requests and the Assigned Judge determines same to be necessary for the continued operation or survival of the business of the debtor or the preservation or enhancement of the assets of the debtor.
- (2) Subject to compliance with applicable laws and lending statute or regulations, the Administrator and/or Debtor-in-Possession may provide security for repayment of post-commencement financing or credit, including granting Security on unencumbered assets and a junior or lower priority security on encumbered assets.
- (3) A security interest in assets of the Debtor to secure post-commencement finance or credit does not have priority over any existing security interest in the same assets unless the Administrator notifies the existing security holder and obtains its agreement.
- (4) Where the holder of the existing security does not agree, the Court may authorize the granting of security with priority over all existing security interests provided the following conditions are satisfied:
 - (a) that the existing secured creditor has sufficient security in the assets that it will not be harmed by a priority given to the post-opening financing;

- (b) the secured creditor is given notice and an opportunity to be heard by the court;
- (c) the debtor cannot obtain the financing in any other way; and
- (d) The interests of the existing security holder will be adequately protected.

§ 8.33 Relief from Tax Arrears; Tax Treatments of Tax Waivers.

- (1) In any proceeding under this Act, Tax Authorities shall be entitled to participate as Creditors. Tax Authorities shall participate as Creditors in all negotiations and voting during proceedings for an Agreement for Settlement in the same manner as commercial Creditors, with the goal of reorganization and survival of the Debtor in order to maximize the overall returns to creditors.
- (2) Priority for arrears or obligations to Tax Authorities shall be limited as described in Section 8.53 of this Act. Any arrears, debts or obligations to Tax Authorities that do not enjoy priority according to Section 8.53 of this Act shall be treated as follows:
 - a. Any lien that has been placed on any property of the Debtor by the Tax Authorities for the purpose of collecting unpaid tax arrears or obligations owing and due to such Tax Authorities prior to the Time of Opening shall entitle the Tax Authorities to treatment as a Secured Creditor to the extent of that lien.
 - b. Any debts owed to Tax Authorities that do not enjoy priority under Section 8.53 of this Act and are not secured by a lien shall be treated as Unsecured Claims.
- (3) Partial or total relief from debts owed to Tax Authorities under an insolvency proceeding under this law shall not be treated as income to the Debtor, and shall therefore not be subject to any income taxation against the Debtor.
- (4) Debts that have been compromised or waived by other Creditors of the Debtors in the course of a Reorganization Case shall not create any tax burden for the Creditors who made the waiver.

§ 8.34 Employment of Professional Persons.

- (1) Except as otherwise provided in this section, the Administrator, with the approval of the Assigned Judge, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, to represent or assist the Administrator in carrying out the Administrator's duties under this law.

- (2) If the Administrator is authorized to operate the business of the Debtor in keeping with the provisions of this Act, and if the Debtor has regularly employed attorneys, accountants, or other professional persons on salary, the Administrator may retain or replace professional persons if necessary in the operation of the business.
- (3) If the Assigned Judge has authorized the business of the estate to be conducted by a Debtor-in-Possession, that entity may also employ professional persons under this Section.

§ 8.35 Compensation of Officers and Professionals

- (1) After notice to the parties in interest and a hearing, the Administrator or the Debtor-in-Possession, as the case may be, may pay to professionals employed professional person employed in connection with administration of the Insolvency case:
 - (a) reasonable compensation for actual, necessary services rendered; and
 - (b) reimbursement for actual, necessary expenses.
- (2) On the motion of the Administrator, or any other party in interest, the court may award compensation that is less than the amount of compensation requested.
- (3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of the services, taking into account all relevant factors, including:
 - (a) the time spent on the services;
 - (b) the rates charged for the services;
 - (c) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this Act;
 - (d) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; and
 - (e) whether the compensation is reasonable based on the customary compensation charged by comparably skilled professionals in cases other than cases under this Act.
- (4) The court shall not allow compensation for:
 - (a) unnecessary duplication of services; or
 - (b) Services that was not reasonably likely to benefit the debtor's trust; or necessary to the administration of the case.

- (5) The court shall reduce the amount of compensation to be paid under this section by the amount of any interim compensation awarded under Section 8.35 of this Act, and, if the amount of interim compensation exceeds the amount of compensation awarded under this section, may order the return of the excess to the Administrator.
- (6) An Administrator, an attorney for a Debtor-in-Possession, or any professional person employed under this Act may apply to the Assigned Judge not more than once every 90 days after his or her appointment for compensation for services rendered to that date or reimbursement for expenses incurred to that date. The Assigned Judge may allow the payment of compensation or reimbursement of expenses on an interim basis.

§ 8.36 Treatment of a Secured Claim under Agreement for Settlement.

- (1) In order for an Agreement for Settlement to be approved by the Assigned Judge 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 Assigned Judge must determine that the Agreement for Settlement complies with the following paragraph.
- (2) As an alternative to requiring the vote of the holder of the Secured Claim, the Assigned Judge shall approve the treatment to be provided with respect a Secured Claim if each of the following conditions is satisfied:
 - (a) Terms of Repayment.
 - i. The holder of the Secured Claim will retain the liens and collateral securing the Claim, or will receive substitute liens and collateral in all respects no less beneficial to the Creditor until the debt is paid in the amount provided in the Agreement for Settlement, and
 - ii. The holder of the Secured Claim will receive periodic cash payments of principal that will be at least equal to the amount of the Secured Claim, and the terms of the Agreement for Settlement for the treatment to be provided with respect to the Secured Claim will be terms that are at least as favorable as those that are common for secured loans of similar type and quality, including having a market rate of interest and conditions to protect the Secured Claim from decline in the value of the collateral.
 - (b) The Debtor's promises under the Agreement for Settlement to the Creditor are realistic and likely to be fully performed.

§ 8.37 Property.

- (1) For purpose of this Act, Property shall include:

- (a) All property in which the Debtor has any ownership interest in as of the Commencement Date of the insolvency case.
 - (b) All money owed to the Debtor as of the Commencement Date 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.
 - (c) All property that may be acquired by the Administrator during the administration of the case, including property obtained by turnover or any third party.
 - (d) All property obtained by the Administrator from a transaction subject to rescission under this Act.
 - (e) All property generated from the operation of the Debtor's business during the administration of the case.
- (2) Property shall not include property that is exempt under Section 8.39 of this Act.

§ 8.38 Exemption of Property by the Debtor.

- (1) The following personal property of a Debtor who is an individual person are exempt from the Debtor's Property and may therefore not be applied in satisfaction of the Debtor's debt:
 - (a) All necessary household furniture and utensils to the value of L\$7,000.00 (Seven Thousand Liberian Dollars) or its United States Dollars equivalent;
 - (b) The family Bible, Koran or other religious or holy text, family pictures, and any books not exceeding in value Four thousand Liberian Dollars or its United States Dollars equivalent, and which is used as part of the family or judgment debtor's library;
 - (c) All food and provisions necessary for the support of the judgment debtor or his family for thirty days;
 - (d) Wearing apparel of the judgment debtor to the value of L\$7,000.00 or its United States Dollars equivalent;
 - (e) A wedding ring of the debtor;
 - (f) Work tools and implements, including those of a mechanic, farm machinery, farm animals, and professional instruments, not exceeding in value Fourteen

Thousand Liberian Dollars (L\$14,000.00) or its United States Dollar equivalent, together with the necessary food for farm animals for thirty days; provided, however, that the Sections specified in this clause are necessary to the carrying on of the judgment debtor's profession or calling.

- (2) The following personal property is exempt from application to the satisfaction of a money judgment, except such part as a court determines to be unnecessary for the reasonable requirements of the judgment debtor and his dependents:
 - (a) Ninety percent of the income or other payments from a trust for the debtor where the trust has been created by a person other than the debtor;
 - (b) Ninety percent of the earnings of the judgment debtor for his personal services rendered within sixty days before, and at any time after, an income execution is delivered to the sheriff or a motion is made to secure the application of the judgment debtor's earnings to the satisfaction of the judgment;
 - (c) Payments pursuant to an award in a matrimonial action for the support of a wife, where the wife is the judgment debtor, or for the support of a child, where the child is the judgment debtor. Where the award was made by a court of Liberia, determination of the extent to which the amount of the award is unnecessary shall be made by that court.
- (3) In order to exempt property, the Debtor must file a list of property claimed as exempt with the Court no later than three (3) business days prior to the Initial meeting of Creditors provided for under this Act.
- (4) The Administrator or any Creditor may file an objection to the property claimed as exempt with the Court within 30 days following the conclusion of the initial meeting of Creditors. If an objection is filed, the Assigned Judge shall schedule a hearing to consider the objection. At such hearing, after hearing from the Administrator, Debtor, and any Creditor in attendance, the Assigned Judge shall make a final determination as to what property will be allowed as exempt. The decision of the Assigned Judge shall be filed with the Clerk and served on all Creditors.

§ 8.39 Surrender of Property.

- (1) Any person or entity in possession or control of property that is owned by the Debtor at the Commencement Date shall account for, and turnover to the Administrator, such property or the value of such property immediately upon being presented by the Administrator with a demand for turnover together with a copy of the Letter of Authority.

- (2) Any person or entity owing money to the Debtor at the Commencement Date shall account for, and turnover to the Administrator, all money owed to the Debtor upon being presented by the Administrator with a demand for turnover together with a copy of the Letter of Authority. If the debt owing to the Debtor is not yet due pursuant to a contract or promissory note in writing, the person or entity shall make the payments to the Administrator as they come due.
- (3) Any bank in which the Debtor maintains a bank account at the Commencement Date shall account for, and turnover to the Administrator, all money on deposit in such bank account immediately upon being presented by the Administrator with a demand for turnover together with a copy of the Letter of Authority.
- (4) Any person, entity, or bank which, after being provided with a demand for turnover together a copy of the Letter of Authority, objects to turning over the property described in the demand for turnover, may within 10 days of receiving the demand for turnover file an objection in the Commercial Court. Upon receiving such an objection the Clerk shall schedule and provide 20 days' notice to interested parties including the party objecting to the turnover and the Administrator, of a hearing before the Assigned Judge to determine whether turnover of such property is required under this law. At the hearing, the Assigned Judge shall hear from interested parties with respect to the demand for turnover. The decision of the Assigned Judge shall be written and filed with the Clerk and the Clerk shall serve a copy to the Administrator, the Debtor and the counterparty against which demand was made.
- (5) The Administrator has the authority to call on the assistance of the Commercial Court and its officers directly to compel or enforce an order of the Commercial Court for with respect to turnover of property under this Section.

§ 8.40 Transactions Subject to Rescission.

- (1) **Meanings and interpretation:** In this Section:
 - (a) the term 'transaction' includes but is not limited to a payment of money, a transfer or other disposition of property of the Debtor, a creation of a lien, mortgage or charge over the property of the Debtor, the forgiveness or other satisfaction of a debt payable to the Debtor, the incurring of a debt or other obligation.
 - (b) the term 'related person' means a director or shareholder of the debtor and a person related to such director or shareholder by birth or marriage and also includes any company in which the related person or a relative of the related person is a director or shareholder
 - (c) the term 'transaction at an undervalue' means a transaction in which the person who enters into a transaction with a Debtor receives a significantly greater benefit than that received by the Debtor

- (2) **Duty of administrator:** An administrator shall be required to review transactions of the type identified in the following parts of this Section and undertake application for rescission when appropriate as described herein.
- (3) **Preference transaction:** A transaction made by or on behalf of a Debtor:
- (a) with a Creditor of the Debtor
 - (b) within the period of **three** months prior to the commencement date or, in the case where the Creditor was a related person, within **six (6)** months prior to the commencement date
 - (c) in respect of an antecedent debt due to the Creditor or otherwise payable by the Debtor to the Creditor
 - (d) at a time when the Debtor was insolvent may be rescinded upon order of the Assigned Judge on an application by the Administrator. The insolvency of the Debtor at the time of the transaction shall be presumed and the Creditor or other party defending the transaction shall have the onus of establishing otherwise.
- (4) Notwithstanding sub-section (3) above, the transaction shall not be rescinded if the transaction:
- (a) was made in the ordinary course of business and in accordance with normal business terms; or
 - (b) was made in return for the contemporaneous provision of new value; or
 - (c) was made pursuant to a domestic support obligation; or
 - (d) resulted in the creditor receiving no more than other creditors may expect to receive in the liquidation of the Debtor.
- (5) **Undervalue transaction:** A transaction made:
- (a) by or on behalf of a Debtor with another person
 - (b) at an undervalue
 - (c) within the period of one (1) year prior to the commencement date or, in the case where the other party was a related person, within two (2) years prior to the commencement date
 - (d) at a time when the debtor was or, as a result of the transaction, became insolvent may be rescinded upon order of the Assigned Judge on an application by the Administrator. In a case in which the transaction was with or involved a related person, the insolvency of the Debtor at the time of the

transaction or subsequent to as a result of the transaction, shall be presumed and the related person shall have the onus of establishing otherwise.

- (6) Notwithstanding subsection (5) above, the transaction shall not be rescinded if the person against whom the application is made establishes that the person acted in good faith and had no reason to suspect that the Debtor was insolvent at the time of the transaction or would become so as a result of the transaction.
- (7) **Transaction made with the purpose of defeating or delaying creditors:** A transaction made:
 - (a) by or on behalf of a Debtor with another person
 - (b) with the purpose of defeating or delaying existing or future Creditors of the Debtor
 - (c) within the period of (1) year prior to the commencement date may be rescinded upon order of the Assigned Judge on an application by the Administrator.
- (8) A purpose of defeating or delaying Creditors shall be inferred if:
 - (a) the transaction involved a transfer of property of the Debtor for no or insufficient consideration. For the purposes of this subsection, "insufficient consideration" shall be mean consideration that is less than the market value of the property in question.
 - (b) the transaction amounted to a gift of property of the Debtor
 - (c) the transaction created a lease over property of the Debtor on non-commercial terms
 - (d) the transaction created a lien, mortgage or charge over property of the Debtor in the absence of any underlying debt or other obligation to be secured

In a case in which the transaction was made with or involved a related person, the transaction shall be presumed to have been made with the purpose of defeating or delaying Creditors of the Debtor and the related person shall have the onus of establishing otherwise.

- (9) **Application by administrator:** An administrator may file an application for a transaction to be rescinded and shall give notice to the person against whom rescission is claimed. The Assigned Judge shall conduct a hearing and the normal practice and procedure of the Commercial court shall apply to such application and hearing.

- (10) **Application by creditor:** A Creditor may apply to the Assigned Judge for leave to file an application for a transaction to be rescinded and the Assigned Judge may grant such leave if it is established that there is a prima facie case for rescission and the administrator has refused or failed to make an application. If such leave is granted, paragraph (9) of this Section shall apply, and the Creditor may apply in the Administrator's stead.
- (11) **Hearing of application:** Upon the hearing of an application for the rescission of a transaction, the Assigned Judge may order that the transaction be rescinded or dismiss the application.
- (12) **Orders on rescission:** If a transaction is rescinded, the Assigned Judge may further order that the person against whom such order is made, who may be a director or officer of the company:
- (a) repay any money received by the person in the transaction to the administrator; or
 - (b) re-transfer the property received by the person as a result of the transaction to the Debtor; or
 - (c) make payment of the value of any property received by the person as a result of the transaction to the administrator; or
 - (d) discharge any lien, mortgage or charge over property of the Debtor;
 - (e) compensate the Estate for the losses caused by the rescinded transaction, or
 - (f) make any other order as may appear to be required to do justice to the case.

§ 8.41 Liabilities of Directors.

The directors of a Debtor that is a business corporation shall be held liable for any gross breach of duty that led to the insolvency of the Debtor or caused/contributed to any transaction subject to rescission pursuant to Section 8.40 of this Act.

§ 8.42 Abandonment of Property.

- (1) The Administrator may propose in writing filed in the Official Insolvency Register and mailed to the Debtor and all Creditors to abandon any asset that is included within the 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.

- (2) The abandonment of any asset shall be considered effective upon approval in writing by the Assigned Judge. The Debtor and all Creditors shall receive notice of the decision to abandon the property. The Debtor or a Creditor affected by the abandonment may object within 20 days of receipt of the order. If a party objects, the Assigned Judge shall schedule a hearing, with the Clerk notifying the Debtor and Creditor objecting of the time and date of the hearing, to determine the disposition of the property.

§ 8.43 Treatment of Contracts.

- (1) In keeping with the purpose and provision of this Act, the Debtor shall provide the Administrator with copies of all executory and leases to which the Debtor was a party and had contractual rights or duties as of the Commencement Date of an Insolvency case.
- (2) Within sixty days after the start of the case, the Administrator shall make an assessment as to each such contract with respect to whether or not 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.
- (3) Upon conclusion of such assessment, the Administrator shall make a recommendation in writing to the Assigned Judge as to the continuation, assignment, or termination of each such contract. The Clerk shall send a copy of the Administrator's recommendation to the Persons affected by the decision to continue, assign or terminate the contract. Any of such affected Persons may within 15 days object to the action. If such an objection is received, a hearing will be scheduled with the affected Person and the Administrator within 30 days and the date and time of the hearing to be held in connection with the recommendation shall be provided 20 days prior to the meeting to the counterparty to each contract, the Debtor, and all Creditors. The decision of the Assigned Judge on the Administrator's recommendations shall be served on all parties in interest, including the counterparty to the contract and the Debtor and any Creditor who attended the hearing.
- (4) With respect to contracts that are terminated, the counterparty to any such contract will be entitled to file a Claim, to be verified in keeping with for damages as permitted by law, but subject to the procedures for filing and verification of claims under this Act. Where the claim is proved, it shall have the same priority as other Claims against the Debtor arising before the Commencement Date.
- (5) With respect to contracts that are continued, the Administrator shall promptly remedy any monetary or performance defaults under the contract and will be required to cause the contract to be performed on an ongoing basis as provide in the contract. If the contract is thereafter breached, the Claim of the other party for

damages shall be an Administrative Claim under Section 35 (Administrative Claims) to the extent damages are permitted under applicable law.

- (6) With respect to contracts that are assigned, the person to whom the contract is assigned must demonstrate the ability to perform the contract, and shall promptly remedy any monetary or performance defaults under the contract and will be obligated to perform the contract on an ongoing basis as provide in the contract.

§ 8.44 Sale of Assets.

- (1) If the Assigned Judge determines to allow the Debtor to continue in business, the Debtor may continue to sell goods and services in the ordinary course of business. The Debtor shall provide an accounting to the Administrator of all such sales on a weekly basis unless directed otherwise by the Administrator.
- (2) The Administrator may sell Property other than in the ordinary course of business subject to the following requirements:
 - (a) All sales of Property by the Administrator shall require approval of the Assigned Judge and shall be subject to such terms and conditions as may be imposed by the Assigned Judge. The notice of the sale will be published as described in Section 8.12, paragraph (1). If a party objects to the Administrator's proposed sale or any aspect or condition of the sale, the Administrator shall move the Court for a hearing to consider the proposed sale and the terms and conditions that may be imposed by the Assigned Judge. Such motion shall be served and heard in keeping with the Civil Procedures Law.
 - (b) Sales may be by public auction or, with the approval of the Assigned Judge, such other sale process recommended by the Administrator to obtain the highest and best price under the circumstances.
 - (c) For Small Business Debtors, public auctions shall not be required, and the Administrator shall have the discretion to sell the assets in the manner he deems most efficient, while notifying the Assigned Judge, and a Creditors' Committee if one has been formed. If the Assigned Judge does not object within 15 days of notice of sale of assets of a Small Business, the Administrator shall have the power to complete the sale.
 - (d) The Administrator shall provide notice of the proposed sale to the Debtor and all Creditors that shall include the following information:
 - i. The date, time, and place proposed by the Administrator for conducting the sale.
 - ii. A description of the property to be sold.

- iii. Anticipated expenses to be incurred in connection with the sale to include any fee to be paid to an auctioneer.
- (e) A Creditor or the Debtor or other interested party may object to the Commercial Court in writing within 20 days of the notice of the sale. If such an objection is received, the Clerk shall schedule a hearing within 20 days and notify the interested party, the Debtor and Administrator of the hearing. At the hearing to consider approval of the proposed sale, the Assigned Judge shall provide all interested parties either in person, or through their designated representatives, or in writing, an opportunity to be heard in connection with the sale. After hearing from interested parties, if the Assigned Judge approves the sale, the Clerk will issue to the Administrator an authorization for the sale setting forth the terms and conditions.. The authorization shall be filed with the Clerk and the Clerk shall mail a copy to all Creditors.
- (f) If the property to be sold is perishable or otherwise rapidly declining in value, the Administrator and the Assigned Judge may expedite the procedures for consideration of the sale as deemed necessary to complete the sale in a timely fashion so as to preserve its value and maximize the price recovered.
- (g) Following the conclusion of the sale as approved by the Assigned Judge, the Administrator shall file with the Clerk 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 auction, the Administrator shall also file a statement setting forth all compensation paid to the auctioneer in connection with the sale.
- (h) All proceeds from the sale after payment of expenses authorized to be paid by the Assigned Judge, shall be deposited into the Bank Account.
- (i) After sale, the Administrator or the Debtor shall execute any document necessary to complete transfer to the purchasers.
- (j) Property sold under this Section 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 approved by the Assigned Judge. 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.

§ 8.45 Money from Collection and Disposition of Property.

- (1) The Administrator shall open a separate Bank Account to be used exclusively in connection with each case in which the Administrator serves. The Bank Account shall be opened in a bank and in a manner approved by the Assigned Judge.
- (2) The Bank Account shall require the signatures of both the Administrator and the Assigned Judge for all withdrawals, except as may otherwise be authorized by the Assigned Judge in connection with the operation of the of the Debtor's business in the ordinary course under Section 19 (Operation of the Debtor's Business). If the Assigned Judge authorizes withdrawals in connection with the operation of the debtor's business, the Administrator shall provide to the Assigned Judge a detailed list and copies of all withdrawal statements or checks drawn upon the Bank Account on a weekly basis or as otherwise directed by the Assigned Judge.
- (3) All money received by the Administrator from the collection and disposition of Property shall be deposited into the Bank Account.
- (4) The Administrator shall furnish accountings for all deposits and withdrawals or other activities with respect to the Bank Account to the Clerk as requested and in no event less than on a monthly basis.

§ 8.46 Treatment of Secured Claims.

- (1) In accordance with Section 8.27 of this Act, all legal proceedings and other actions by Creditors holding Secured Claims except collateral under Finance leases shall be suspended for the duration of the administration of insolvency case unless the Assigned Judge grants a request by the Creditor holding the Secured Claim to be relieved of the moratorium to enforce its rights against its collateral, or the case is a Liquidation Case.
- (2) Secured Creditors including holders of collateral from Finance lease who sell their collateral and obtain an excess from the amount they are owed, are obligated to return the excess proceeds, less reasonable costs of sale, to the Debtor as Property.
- (3) If Creditors holding Secured Claims have not retained their rights to enforce against their collateral as above, or they have retained their rights in the collateral but have not taken possession of their collateral in due course, or the business is sold as a going concern, or for any other reason the collateral is subsequently sold by the Administrator as part of the Property, such 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 Administrator in preserving or selling their collateral as may be allowed by the Assigned Judge, unless a Secured Claim

receives a different treatment under an Agreement for Settlement approved by the Assigned Judge.

- (4) After crediting the proceeds from the sale of the collateral, the balance remaining shall be treated as an unsecured Claim to be paid along with other unsecured Claims in the insolvency case.

§ 8.47 Administrative Claims.

- (1) Administrative Claims are the expenses incurred in administration of the Insolvency Case. Administrative Claims are entitled to priority over payments to Creditors holding Unsecured Claims as set forth in Section 8.54 of this Act.
- (2) The following shall be considered Administrative Claims:
 - (a) Fees approved to be paid to the Administrator by the Assigned Judge under Section 8.46 of this Act.
 - (b) Expenses reasonably incurred by the Administrator during the course of administration of the insolvency case (other than business overhead expenses of the Administrator such as office rent, furniture, supplies and similar items) as approved to be paid by the Assigned Judge.
 - (c) In cases where the Assigned Judge 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 by this Act.
 - (d) The fees and expenses of professionals employed during the course of the administration of the insolvency case, as approved by the Assigned Judge at or about the time of the retention of the professional. Prior to any payment, the Assigned Judge must approve the reasonableness of the fees and expenses charged.
 - (e) Funds required to be paid for the maintenance and protection of the Property. To the extent that expenses are reasonably expended for the maintenance and protection of 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.

§ 8.48 Compensation of Administrator.

- (1) **Compensation under a Liquidation Plan**

- (a) The Administrator shall be paid as compensation for services rendered in connection with the administration of an insolvency case a fee equal to a percentage (as calculated in the following paragraph) of all amounts that are disbursed to holders of unsecured Claims under a Liquidation Plan. Payment of compensation to the Administrator shall be made at the same time as the disbursements to Creditors.
 - (b) The fee payable to the Administrator shall be calculated as follows: 25 percent of the first tier amount or less, 10 percent on any amount in excess of the first tier amount but not in excess of the second tier amount, 5 percent on any amount in excess of second tier amount but not in excess of the third tier amount, and 3 percent of such moneys in excess of the fourth tier amount.
 - (c) The first tier, second tier, third tier, and fourth tier amounts shall be established by regulation promulgated in connection with this Act, and revised yearly or as frequently as practice and economic realities necessitate a change to the tariff.
 - (d) The Assigned Judge may reduce the amount payable to the Administrator, as calculated above, if the Assigned Judge determines that payment of such amount would be unjustified or inappropriate after taking into account all relevant circumstances, including the nature, quality, quantity and efficiency of the work performed by the Administrator in the Insolvency Case.
- (2) Compensation under an Agreement for Settlement
- (a) Compensation of the Administrator in cases in which an Agreement for Settlement is approved shall be determined by the Assigned Judge on a case-by-case basis.
 - (b) In determining the compensation to be paid to the Administrator, the Assigned Judge shall consider the value of the services rendered by the Administrator taking into account the time spent on such services, the rates charged for such services, and whether the services were necessary and beneficial to an orderly and prompt administration of the case.
- (3) Payment of the fees owed to the Administrator under this Section shall only be made with the prior written approval of the Assigned Judge. All Creditors and the Debtor shall be notified of the payment, and may object to the Commercial Court within 20 days of notice. If a Debtor or Creditor objects, the Assigned Judge shall schedule a hearing within 30 days, providing at least 20 days' notice of the hearing to the Debtor and Creditors of the hearing and the amounts requested and will have an opportunity to attend and be heard at the meeting.