



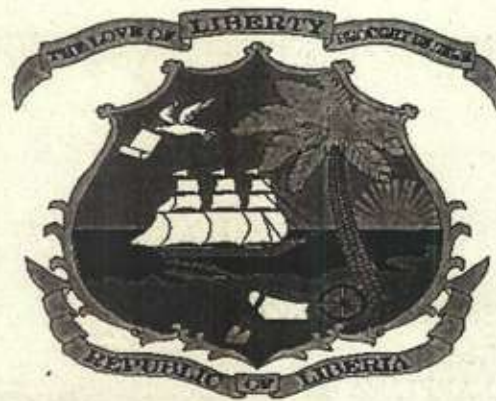
“AN ACT TO REPEAL THE FRAUDULENT CONVEYANCE ACT, CHAPTER 8 OF LIBERIAN COMMERCIAL CODE, TITLE 7 OF THE LIBERIAN CODE OF LAWS REVISED, AND TO ENACT IN LIEU THEREOF A NEW CHAPTER 8 OF THE LIBERIAN COMMERCIAL CODE ENTITLED THE INSOLVENCY AND RESTRUCTURING ACT”

APPROVED: DECEMBER 27, 2016

**PUBLISHED BY AUTHORITY
MINISTRY OF FOREIGN AFFAIRS
MONROVIA, LIBERIA**

PUBLISHED: JANUARY 26, 2017

AN ACT TO REPEAL THE FRAUDULENT
CONVEYANCE ACT, CHAPTER 8 OF LIBERIAN
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CHAPTER 8 OF THE LIBERIAN COMMERCIAL CODE
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CHAPTER 8: INSOLVENCY AND RESTRUCTURING ACT

PREAMBLE

WHEREAS, market conditions, the ability to obtain financing, business management choices, and other factors affect the profitability of businesses and do sometimes lead to varying situations of financial distress during which a business entity may become unable to meet its obligations to creditors as those obligations become due; and

WHEREAS, it is necessary to establish specific and transparent legal procedures to govern the determination and declaration of insolvency of business entities and the consequent administration thereof; and

WHEREAS, the existence and implementation of a balanced and comprehensive insolvency legal regime promotes the provision of credit which in turn leads to economic growth and stability;

NOW THEREFORE, it is enacted by the House of Representatives and the Senate, in Legislature assembled:

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SUB-CHAPTER 1: GENERAL PROVISIONS

§ 8.1 Short Title.

This Chapter of the Code shall be cited as the Insolvency and Restructuring Act.

§ 8.2 Scope and Application.

- (1) This Act shall apply to and govern the filing, hearing, determination of all matters and proceedings relating to insolvency, restructuring and/or liquidation of all business entities, not-for-profit entities or organizations and Persons. In particular, this Act shall regulate the conditions and the manner of initiating an insolvency proceeding and the consequent implementation of a judicially approved restructuring or liquidation of a Debtor.
- (2) The Act shall apply to all Persons resident or operating in Liberia.
- (3) This Act does not apply to the following entities:
 - (a) Bank and non-bank financial institutions regulated by the Central Bank of Liberia.
 - (b) Domestic non-resident corporations and maritime entities registered under Liberian laws; and
 - (c) Agencies and departments and other units of the Republic of Liberia, except that nothing contained in this Section shall prohibit a Legal Entity owned in whole or part by the Republic of Liberia that is engaged in business as a Trader from becoming a Debtor under this law.

§ 8.3 Purpose of the Act; Rules of Construction

- (1) The purpose of the Act is to achieve the following objectives:
 - (a) to provide uniform, fair, and efficient procedures for the payment of Claims held by Creditors against a Debtor;
 - (b) to provide for certainty in the marketplace, which in turn promotes economic stability and growth;

- (c) to ensure that the administration, and if necessary, the liquidation, of a Debtor is transparent and predictable, and that it provides incentives for gathering and providing information to Creditors and other parties in interest;
- (d) to maximize the value of the assets of a Debtor for the benefit of his/her Creditors and, where possible, to enable the sale and/or continuity of any business conducted by the Debtor;
- (e) to strike a balance between Liquidation and Reorganization;
- (f) to ensure equitable treatment of similarly situated Creditors;
- (g) to provide for the timely, efficient and impartial resolution of insolvency cases;
- (h) to identify, collect, preserve and protect an insolvency estate; and
- (i) to provide for the distribution of a Debtor's assets according to priorities as established under Section 8.53 of this Act, with creditors of equal rank taking equal proportionate share of the proceeds of the liquidated assets.

(2) This Act shall be interpreted in such consistent and fair manner as to further its purpose and objectives, having regard to the interest of all Claimants of the Debtors.

§ 8.4 Definitions

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

“Act” means this law and any amendment thereof.

“Administrator” means a competent professional person, natural or legal, duly licensed and/or approved by the Commercial Court to manage or oversee the management of the business of an insolvent debtor by performing the duties set forth in Section 8.17 of this Act.

“Agreement for Settlement” means an agreement under which the Debtor may retain ownership of its Property in exchange for the payment of all or a portion of the claims of Creditors in installments or on such other terms as may be agreed to by the Creditors and approved by the Assigned Judge.

“Assigned Judge” means a Judge of the Commercial Court assigned to an insolvency Case pursuant to Section 8.9 of this Act.

“Bank Account” means a bank account opened by an Administrator in each case in which an Administrator is appointed, and into which proceeds from administration of the bankruptcy case are deposited

“Bankruptcy” means both (i) the state of Insolvency, and (ii) the procedures by which an Insolvent undergoes a judiciary supervised reorganization or liquidation.

“Business Entities” mean legal entities created and operating for profit

“Chief Judge” means the Chief Judge of the Commercial Court.

“Claim” means a right to payment arising out of contract, statutory obligations or otherwise, and includes right to payment for unpaid taxes, goods sold, services provided, money lent, injury to person or property, or any other ground upon which a debt may arise under applicable law.

“Clerk” means the Clerk of the Commercial Court.

“Commencement Date” means the date on which an Insolvency Petition is filed with the Commercial Court.

“Conflict of Interest” means the existence of a situation where a person has pecuniary interest or relationship with one or more persons interested in an insolvency case, which makes it difficult for the person to be or perceived to be objective and independent in respect of matter relating the insolvency case.

“Court” means the Commercial Court

“Commercial Court” means the court established by an Act amending the Judiciary Law, Title 17 Liberian Code of Laws Revised, approved on September 29, 2010 and published in handbills on September 30, 2010.

“Creditor” means a person that holds a Claim against a Debtor.

“Debtor” means (i) a Person against whom another person has a Claim and/or (ii) who files an insolvency application or against whom an insolvency application is filed under this Act.

“Estate” means [insert definition].

“Debtor-in-Possession (DIP)” means a debtor, by agreement or consent of creditors, is allowed by the Insolvency Court to continue to manage his/her/its business under the supervision of an Administrator.

“Exempt Property” means any property that a Debtor is permitted to retain as exempt from liquidation procedures under Section 8.38 of this Act.

“Going Concern” means all of the things that are necessary for the continued operation of a business. A Going Concern can be of a unit of a business, the entire business, or an operationally restructured business.

“Insolvent” means a financial condition under which a Person is unable to pay his/her/its debt or meet his/her/his other contractual or statutory financial obligations as they become due.

“Insolvency Case” means a case or petition for (i) Reorganization or (ii) Liquidation.

“Insolvency Order” means an order of the Court declaring a Debtor to be insolvent and subjecting such Debtor to either reorganization or liquidation in accordance with the provisions of this Act.

“Involuntary Insolvency Case” means a case or petition filed by Creditor(s) of a Debtor requesting judicial declaration that a Debtor is insolvent and should therefore be a subject of one or more of the insolvency procedures established by this Act.

“Legal Entities” means corporations, partnerships, limited liability companies and other entities created by law and that have the ability and power to acquire assets, enter into contracts with other Persons and sue and be sued.

“Letter of Authority” means a letter signed by the Chief Judge or, in the absence of the Chief Judge, the Assigned Judge, appointing an Administrator and granting to the Administrator full power and responsibility to carry out and enforce the provisions of this law, subject to the oversight of the Assigned Judge as provided in this Act.

“Liquidation” means the satisfaction of the claims of Creditors by the application of the proceeds received from sale of the bankruptcy Debtor’s property, which in the case of a debtor who is a legal person, extinguishes the indebtedness or leads to the termination of the existence of said Debtor.

“Liquidation Plan” means a plan comprising of a schedule of the assets and liabilities of the Debtor and the proposed method for sale of the assets and payment of the liabilities as well as the time frame for completing such sale and payment of claims.

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"Not-For Profit Organizations" mean legal entities that are created and operating not for profit, but for charity or other socially beneficial purpose.

"Ordinary Course of Business" means the normal activities of a Debtor in its day-to-day operations prior to becoming Insolvent or the filing of an Insolvency Petition.

"Person" means a natural or legal person carrying on a business, including a corporation, a limited liability company, a partnership (including a general or limited partnership), a business trust, or any other entity or group having a separate legal existence under applicable law, or a governmental entity or body.

"Petition" means a written application that is filed by either the Debtor or a Creditor to commence an insolvency case under this Act. A petition filed by the Debtor shall be referred to as a "voluntary petition" while a petition filed by Creditor(s) of the Debtor shall be referred to as an "involuntary petition."

"Property" means all property in which the Debtor has any ownership interest as defined in Section 8.37 and every species of valuable right or interest that is subject to ownership, has an exchangeable value, or adds to one's wealth or estate. Examples include but are not limited to common, real, incorporeal, intangible, personal, public, intellectual, patented and tangible property.

"Reorganization" means a restructuring of the business of a Debtor in accordance with a plan approved by Creditors through redefining of the Debtor-Creditor relationship, change of the legal status of the Debtor and/or such other change or manner envisaged by the reorganization plan approved by creditors of the debtor.

"Reorganization Case" means a case or petition filed voluntarily by a debtor, seeking temporary relief from the payment of claims based on the Debtor's submission of a reorganization plan and the approval of the submitted reorganization plan by the Court; a Reorganization Case may also originate as an involuntary case that continues with the intention of reorganization rather than liquidation, as provided for in this Law

"Reorganization Petition" means a Petition in which the Debtor states the intent to reorganize under an Agreement for Settlement, or any other case filed under this Law in which the Administrator or Debtor-in-Possession (DIP) intends to obtain approval of an Agreement for Settlement.

"Secured Claim" means 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. A claim shall be a Secured Claim to the extent of the value of the collateral securing such Claim.

“Secured Creditor” means any Creditor that holds a Secured Claim.

“Small Business” means a Debtor with less than Fifteen (15) **employees**, less than Five Million Liberian Dollars (**LS5,000,000.00**) turnover per year, with twelve (12) or less Creditors, and less than One Million Liberian Dollars (**LS1,000,000.00**) as the total amount of debt.

“Tax Authorities” means the Liberia Revenue Authority and any other agency of the Government of Liberia as well as any other public authority, such as a municipality, entitled to collect taxes from a Debtor.

“Commencement Date” means the filing date and time that is indicated or stamped on an insolvency petition by the Clerk.

“Trader” means a natural or legal person engaged in commerce regardless of whether such commerce is in the form of manufacturing, trade, services or otherwise. A director/manager/owner of a legal entity that is a Debtor, who has guaranteed the Debtor’s debts personally, may be considered a Trader for purposes of this Act.

“Unsecured Claim” means a Claim that is not secured by any collateral or lien on real and/or personal property, or by special priority provided in this Act.

“Voluntary Insolvency Case” means a case or petition filed by a Debtor requesting judicial declaration that such Debtor is insolvent and should therefore be a subject of one or more of the insolvency procedures established by this Act.

§ 8.5 Eligibility to be a Debtor.

- (1) A Person who is or has been engaged in business may become a Debtor under this Act:
 - (a) in the case of the filing of a voluntary petition, if such person is insolvent or is experiencing financial difficulties that may lead to insolvency and exercises good-faith in requesting relief under this Act; or
 - (b) in the case of the filing of an involuntary petition against the Person by one or more of the Person's Creditors, if such person is determined to be Insolvent by the Commercial Court.

SUB-CHAPTER 2: ASSIGNMENT AND HEARING OF INSOLVENCY CASES

§ 8.6 Jurisdiction

The Commercial Court shall have **exclusive jurisdiction** over all insolvency cases under this Act, regardless of the amount involved and notwithstanding any monetary limits or thresholds, and all matters relating to the administration of a Debtor's Property and Estate or the disposition thereof.

§ 8.7 Functions and Power of the Commercial Court in respect of Insolvency Cases

- (1) In keeping with the provisions of this Act and the purpose hereof, the Commercial Court shall also have the power to:
 - (a) Determine the existence of insolvency;
 - (b) Issue an interim order staying any proceedings against the Debtor following the Commencement Date of an insolvency case but before a final Insolvency Order;
 - (c) Appoint an Administrator;
 - (d) Remove an Administrator for Cause;
 - (e) Approve Administrative expenses for administration of an insolvency case;
 - (f) Approve the amount of compensation for the Administrator;
 - (g) Decide objections relating to activities of the Administrator;
 - (h) Consider a proposed reorganization plan with the right to (i) reject it, (ii) amend it or (ii) schedule a hearing for review of a submitted reorganization plan;
 - (i) Issue a ruling confirming the adoption of a reorganization plan or its rejection;
 - (j) Issue an order on the main distribution of the assets of the bankruptcy estate;
 - (k) Review periodic and final reports from the Administrator;

- (1) Make other rulings and issue such other interim and final orders, processes or judgments that are necessary or appropriate to effectuate the provisions of this Act.
- (2) The Commercial Court shall also have the right and power to refer a dispute arising at every state of an Insolvency case to Alternative Dispute Resolution procedures, including but not limited to mediation, according to the provisions of Section 8.25; provided that no such referral shall work to prejudice to any party to the proceeding.

§ 8.8 Requirement of a Written Petition to commence an Insolvency case

- (1) Every Insolvency Case shall be commenced by an Insolvency Petition filed in accordance with the Civil Procedure Law.
- (2) An Insolvency Petition may be filed by a Debtor or a Creditor or a group of Creditors. A petition filed by the Debtor shall commence a Voluntary Insolvency Case in accordance with Section 8.19 of this Act while a petition filed by or on behalf of any Creditor(s) shall be required for the commencement of an Involuntary Insolvency case in accordance with Section 8.20 of this Act.

§ 8.9 Assignment of Insolvency Cases to Commercial Court Judges

- (1) Upon the filing of an insolvency case, the Chief Judge of the Commercial Court shall assign it to one of the Commercial Court Judges who shall thereby become an Assigned Judge in respect of that case.
- (2) Assignment of cases shall be done in a rotating order and in a manner that ensures fair balance of workload for all the Judges of the Commercial Court. When one of the Judges has a larger workload compared to the others, either because of (i) the number or (ii) the complexity of cases assigned to the judge, the Chief Judge shall ensure that no additional insolvency case assignment is made to the Judge until the caseload is equalized and assignments of equal number or complexity are made to the remaining Judges.

§8.10 Hearing of an Insolvency Case or Petition

- (1) A person or party who has been served a copy of a petition for insolvency shall, be required to assert any claim or defense or interpose any objection he/she/it has by filing a responsive pleading to the Petition within ten (10) days of the service as provided for such pleadings in the Civil Procedure Law.
- (2) Upon showing that a Petition filed to commence an insolvency case has been served physically or by publication in keeping with law, the assigned Judge shall promptly issue a notice of assignment for hearing of the Petition. Subject to the provisions of

the Civil Procedure Law, a hearing of an Insolvency Petition shall be assigned and/or commenced within fifteen (15) days as of the service of the Petition,

- (3) The hearing of an Insolvency Petition shall be conducted in accordance with the Civil Procedure Law, with the Assigned Judge serving as the trier of facts. An Insolvency Case or Petition shall be proven by showing the existence of insolvency in keeping with the provisions of this Act.

§ 8.11 Relief That Court May Grant Upon Hearing of an Insolvency Petition

(1) On hearing an Insolvency Case or Petition, the Assigned Judge may:

- A. Dismiss it for failure to prove that the Debtor is insolvent pursuant to Paragraph C; provided that the failure to grant an insolvency petition shall not at any time be based on the ground that the Debtor has no known assets;
- B. Make any interim order as warranted by the circumstances and equity, pending a further hearing of the Petition and/or a final order; or
- C. Enter an Insolvency Order, declaring the Debtor insolvent, if the Debtor meets the following test:
 - (i) the Debtor's debts exceed the debtor's assets at current valuation, or
 - (ii) the person is unable generally to pay debts as they become due and demand for payment of same is made.
- D. If, following a demand for payment, a debtor is in arrears in the payment of more than 20% of the debt(s) for more than ninety (90) days, the debtor is **presumed** to be Insolvent under Paragraph C (ii) of this Section 8.11, although the presumption may be rebutted.

(2) The Assigned Judge shall appoint an Administrator to take over Debtor's operations, or allow the Debtor to continue to operate his/her/its business with supervision of an Administrator, and such appointment or approval shall be made part of the Insolvency Order or subsequent to the Insolvency Order.

§ 8.12 Notice of Commencement of an Insolvency Case and Orders Therein

1. The commencement of an Insolvency Case shall be notified to all known creditors and interested Persons through statutorily mandated procedures and publication on the premises of the Debtor and also the Commercial Court.
2. The notice of the commencement of an Insolvency Case shall be served by the Court on all known creditors either (i) by personal service or (ii) through service by publication, in keeping with Sections 8.3 and 9.2 of the Civil Procedure Law.

3. Besides service of notice to known creditors, additional notice of the commencement of an insolvency case shall also be published in a reputable newspaper of general circulation at least once a week for two (2) consecutive weeks as a notice to all other potential interested parties as well as the public, provided that the additional notice provided under this Subsection shall suffice as notice to the public and any Creditor or interested person whose address or identity was not known and could not have been found by diligent investigation at the time of the service of the notice of commencement of the Insolvency case.
4. A certified copy of the order of insolvency shall forthwith be delivered to the Registrar of the Liberia Business Registry for filing along with other information in the file of the Registrar pertaining to the Debtor, as well as any order converting a Reorganization Case to a Liquidation Case, and the order closing the case. A copy of each of such order shall also be posted on the premises of the Court.
5. Creditors subsequently identified by the Debtor pursuant to Section 8.22 of this Act shall be notified of the Insolvency case directly by the Commercial Court in keeping with the procedures for service of papers, as established by Section 8.3 of the Civil procedure Law.

SUB-CHAPTER 3: ADMINISTRATOR-APPOINTMENT, QUALIFICATIONS, DUTIES, POWERS AND LIABILITIES

§ 8.13 Appointment of Administrator

- (1) Following the filing of an insolvency case but (i) prior to or (ii) upon a hearing of the Petition, the Assigned Judge shall designate a person who does not have a conflicting interest with the Debtor or any Creditor of the Debtors to serve as Administrator of the Case. The Debtor's management may also remain in place, at the discretion of the Assigned Judge, as an interim Debtor-in-Possession under the supervision of the Administrator, if the case is proposed to be a Reorganization Case or there is reason to believe the Debtor will continue operating even in liquidation.
- (2) A Person may not be appointed and shall not accept appointment as an Administrator of a Debtor if such Person has or has had a conflict of interest as a result of any business, financial, social or other tie, directly or indirectly, with the Debtor, persons associated with the Debtor, or any other person having a material interest in the estate of the Debtor.
- (3) For purpose of this Act, a "conflict of interest" exists where (i) the Administrator's pecuniary interest or (ii) relationship with any person interested in the insolvency case may make it difficult or appear to make it difficult for the Administrator to exercise objectivity, impartiality and independence in the performance of his/her/its work, which

includes, but is not limited to, circumstances in which the Administrator may exploit his/her professional capacity for personal gain or benefit.

(4) In particular a Person may not be appointed and shall not accept appointment as an Administrator of a Debtor if the Person:

- i. Is a relative, by birth or marriage, of the Assigned Judge or the director or a member of the board of directors of the Debtor;
- ii. Is jointly or otherwise liable with the Debtor for its obligations;
- iii. Has been a director or manager of the Debtor;
- iv. Has been employed by the Debtor;
- v. Is a creditor of the Debtor;
- vi. Is indebted to the Debtor;
- vii. Has worked as an advisor to the Debtor; or
- viii. Is engaged in a business that is competitive with that of the Debtor

For the avoidance of doubt, the above list of relationships in this subsection (4) is not exhaustive.

§ 8.14 Qualification of an Administrator

- (1) An Administrator shall be a person duly licensed or approved by the Commercial Court to serve as an insolvency administrator and whose name shall be on a list of current eligible, qualified administrators to be maintained publicly as provided in this Section 8.14; provided, however, that for a period of not more than eighteen (18) months following the effective date of this Act, the administrator need not be a licensed professional, but may be anyone deemed competent by the Commercial Court, preferably a licensed public accountant in good standing with the Liberia Institute of Certified Public Accountants.
- (2) The licensing and supervision of Administrators shall be carried out by the Commercial Court.
- (3) An administrator may be a natural person or a legal person, except that the same qualification and minimum competency shall be required of every administrator. Appointment of Administrators shall be made considering the qualifications of the Administrator.
- (4) In unusual circumstances, such as the filing of a large or complex case, the Assigned Judge may, with the consent of a majority of the Creditors, assign a particular Administrator to a case if, in the judgment of the Assigned Judge, such Administrator is particularly qualified to handle the case.

- (5) The Commercial Court shall maintain a register of persons eligible or licensed to serve as Administrators along with their years of experience, compliance with professional performance requirements and compliance with established requirements, including ethical duties, licensing requirements and continuing education requirements.
- (6) The Commercial Court shall:
 - a. Maintain a publicly accessible list of (i) persons who have been qualified and licensed to serve as Administrators in cases and (ii) current assignment of each Administrator, including whether an assignment was random or as directed by the Assigned Judge;
 - b. Establish standards and procedures to ensure that all persons on the list of licensed Administrators are competent, qualified, honest and diligent; and
 - c. Require regular reporting of activities and accounts from all Administrators, and ensure their regular supervision and examination, including auditing when necessary.

§ 8.15 Requirement for Approval of Appointment by Creditors

- (1) The Administrator designated by the Assigned Judge in keeping with the provisions of Section 8.13 shall be approved at the first meeting of creditors by a simple majority of votes. Any number of all creditors duly informed of an Insolvency Case and cited to a meeting of Creditors shall constitute a quorum of Creditors for all purposes provided under this Act. If the Administrator is not approved, another candidate shall be recommended by the Assigned Judge, subject to the same approval process. The Debtor or Creditors may also recommend candidates for designation by the Assigned Judge as the Administrator, subject to the same approval process. The Administrator appointed pursuant to Section 8.13 shall remain in place as an interim Administrator, fulfilling the duties of Administrator, until he or she is approved or replaced.

§ 8.16 Reporting and Addressing Administrator's Conflict of Interest

- (1) Any Creditor(s) may challenge the appointment of an Administrator either for conflict of interest or lack of qualification. A challenge to an Administrator's appointment shall be promptly determined or resolved based on preponderance of evidence, taking into consideration the need for transparency and efficiency as well as the existence of safeguards and other factors as are equitable to all parties
- (2) A designated Administrator shall, within two (2) business days of his/her/its designation, make a declaration that no association or relationship or other circumstance constituting or resulting in a conflict of interest exists. If the Administrator cannot make such a

declaration within the indicated time, his/her/its appointment or designation shall be automatically revoked.

- (3) The Administrator shall file with the Clerk a verified statement of any connections the Administrator may have with the Debtor or any Creditor, including past and present business, familial, or social relations with the Debtor or any Creditor. The Administrator shall supplement this statement with any new findings that may create a conflict of interest within two (2) business days after the filing of the list of Creditors by the Debtor as required hereunder. This statement shall be reviewed immediately by the Assigned Judge and/or Supervisor of Administrators to determine if the person selected is free of any conflict of interest in relation to a particular case.
- (4) Upon the determination that the selected Administrator does not have a disqualifying conflict of interest, the Assigned Judge shall immediately issue a Letter of Authority appointing the Administrator and delegating to the Administrator full power and responsibility to carry out the Administrator's responsibilities under this law and with respect to the specified insolvency case
- (5) From the time of his/her/its appointment, an Administrator shall be under a continuing obligation to inform the Supervisor of Administrator and the Assigned Judge of any conflict of interest if it should occur or become apparent after the appointment. The Assigned Judge shall terminate the appointment of the Administrator at any time if it is determined that the Administrator has an association or relationship constituting a conflict of interest and shall appoint another person to be the Administrator.
- (6) The Assigned Judge may remove the Administrator for cause. A Creditor or Debtor may raise a reason as "cause" for removal of the Administrator by motion to the Assigned Judge. An Administrator may only be removed after a hearing, which shall occur following twenty (20) days written notice to the Administrator, the Debtor and all Creditors. The notice shall state the basis for the application for the removal. The Administrator and/or any party may oppose the removal of the Administrator. The Assigned Judge shall remove an Administrator where cause is shown in keeping with this Act.
- (7) Where an Administrator is removed, the Assigned Judge shall determine, on a prorata basis, a fair compensation to be paid to him/her/it for services performed in the case prior to the removal; provided that such services are unrelated to the reasons for the removal of the Administrator.
- (8) The Administrator shall serve until the insolvency case has been concluded or until the Administrator resigns, is incapacitated or removed for cause by the Assigned Judge. If the Administrator resigns, dies, or is removed for cause, a successor Administrator shall be appointed in keeping with the same procedures established herein for the designation, appointment and approval of an Administrator.