

Subsidiary Legislation made under s.497.

**Insolvency (Administration of Insolvent Estates)
Regulations 2014**

LN.2014/197

Commencement **1.11.2014**

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In exercise of the powers conferred on him by section 497 of the Insolvency Act 2011, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Insolvency (Administration of Insolvent Estates) Regulations 2014 and come into effect on the 1st day of November 2014.

Interpretation.

2. In these Regulations, unless the context otherwise requires,—

“Act” means the Insolvency Act 2011;

“insolvent estate administration order” means an order for the administration in bankruptcy of the insolvent estate of a deceased individual debtor;

“section” means a section of the Act;

“specified secondary legislation” means the secondary legislation specified in Schedule 2;
and

“trustee” means the trustee of the deceased debtor’s estate.

Application of Act and secondary legislation to insolvent estates.

3.(1) The provisions of the Act specified in sub-regulation (2) apply to the administration in bankruptcy of the insolvent estate of a deceased individual who dies before any application is made for a bankruptcy order against him, subject to—

(a) the modifications specified in Schedule 1; and

(b) such other modifications as may be necessary to apply those provisions to the estate of a deceased individual.

(2) The following provisions of the Act are specified for the purposes of sub-regulation (1)—

(a) in Part 1—

(i) section 1;

- (ii) section 2, as far as necessary to apply the applicable provisions of the Act to the estate of a deceased individual;
- (iii) sections 6 to 9; and
- (iv) section 11;
- (b) in Part 5–
 - (i) section 134 (the definition of “prescribed minimum only”);
 - (ii) sections 135 to 140;
- (c) Part 13;
- (d) Part 15; and
- (e) Parts 17 to 20.

(3) The specified secondary legislation relating to bankruptcy applies as far as necessary to give effect to the application of the Act to the administration of insolvent estates, with such modifications as may be specified in the secondary legislation or as the context requires.

(4) To the extent that the specified secondary legislation conflicts with any provision of these Regulations, these Regulations prevail.

Estate administered otherwise than in bankruptcy.

4.(1) Where the estate of a deceased individual is insolvent and is being administered otherwise than in bankruptcy, subject to sub-regulations (2) and (3), the provisions of the Act and the specified secondary legislation relating to bankruptcy shall apply to the administration of the estate with respect to the respective rights of secured and unsecured creditors, to debts and liabilities provable, to the valuation of future and contingent liabilities and to the priorities of debts and other payments.

(2) If a debtor by or against whom an application for a bankruptcy order has been made dies before the application is determined, unless the court otherwise orders, the proceeding shall continue as if the debtor had not died, with such modifications as are necessary to give effect to this.

(3) If a debtor dies after an application for a bankruptcy order has been made against him, but before the before an application has been served, the Court may order service to be effected

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on the debtor's personal representatives or such other person as the Court considers appropriate.

(4) In either of the cases referred to in sub-regulations (1) and (2), the reasonable funeral, testamentary and administration expenses have priority over the preferential debts specified in the Insolvency Rules.

SCHEDULE 1

MODIFICATIONS OF THE ACT

General substitution of terms used in the Act.

1.(1) Unless the context otherwise requires, the terms specified in column 2 of the Table below shall be substituted for each reference in the Act to the terms specified in column 1.

(2) Where more than one term is specified in column 2, the term most appropriate given the context shall be substituted.

Term used in the Act	Substituted term
“application for bankruptcy order”	“application for insolvent estate administration order”
“bankrupt”	“deceased debtor”; or “personal representative of the deceased debtor”.
“bankruptcy”	“administration of an insolvent estate”
“bankruptcy order”	“insolvent estate administration order”
“trustee” or “bankruptcy trustee”	“trustee of the deceased debtor’s estate”
“bankrupt’s estate”	“deceased debtor’s estate”
“debtor”	“deceased debtor”; or “personal representative of the deceased debtor”.

Deceased debtor has no personal representative.

2. If the deceased debtor does not have a personal representative, any reference to the deceased debtor’s personal representative in these Regulations shall be taken as a reference to such person as the Court may order to stand in the place of the personal representative for the purposes of these Regulations.

Definition of “insolvent” disappplied.

3. The definition of “insolvent” in section 2 is disappplied.

Meaning of “insolvent estate administration order”.

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4.(1) An insolvent estate administration order is an order of the Court vesting the assets of an insolvent estate in a trustee appointed by the Court for the purposes of division amongst the creditors of the estate in accordance with Part 13 of the Act, as modified.

(2) Section 318 is disapplied.

Commencement and duration of administration of insolvent estate

5.(1) The administration of the insolvent estate of a deceased debtor commences at the time at which the insolvent estate administration order is made and continues until the order is discharged.

(2) During the period specified in subparagraph (1), the insolvent estate is considered to be under administration.

(3) Section 319 shall be construed accordingly.

Section 320 disapplied.

6. Section 320 is disapplied.

Section 321 modified.

7. Section 321 is modified—

- (a) by deleting “for a bankruptcy order in respect of a debtor” and substituting “for an insolvent estate administration order”; and
- (b) by omitting paragraph (a).

Section 324 substituted.

8. Section 324 is deleted and the following substituted—

“Application by personal representative.

324.(1) The Court may make an insolvent estate administration order on the application of the personal representative of a debtor if it is satisfied that—

- (a) there is no reasonable prospect that personal representative will be able to satisfy the liabilities of the debtor when they fall due;

- (b) the unsecured liabilities of the debtor exceed the prescribed minimum; and
 - (c) if a bankruptcy order is made, the value of the debtor's assets available for distribution to his unsecured creditors will exceed the prescribed minimum.
- (2) An application for an insolvent estate administration order filed under subsection (1) shall be accompanied by a verified statement of the assets and liabilities of the estate.”.

Section 325 modified.

9. Section 325 is modified—

- (a) in subsection (1), by inserting after “at the time of the application”, the words “had the debtor been alive”;
- (b) by deleting paragraphs (a) and (b) in subsection (1) and substituting the following—
 - “(a) the amount of the liability, or the aggregate amount of the liabilities, owed by the debtor would have exceeded the prescribed minimum; and
 - (b) the liability, or each of the liabilities, owed by the debtor would have been for a liquidated sum payable to the applicant creditor either immediately or at some certain future time, and would have been unsecured.”; and
- (c) in subsection (2), by deleting “to the debtor”.

Section 329 substituted.

10. Section 329 is deleted and the following substituted—

“Hearing of application for insolvent estate administration order.

329.(1) The Court may make an insolvent estate administration order if it is satisfied—

- (a) that the liability, or one of the liabilities, in respect of which the petition was presented is a liability which,
 - (i) having been payable at the date of the application or having since become payable, has neither been paid nor secured or compounded for;
- or

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- (ii) has no reasonable prospect of being able to be paid when it falls due;
and
 - (b) that there is a reasonable probability that the value of the liabilities of the estate, including the reasonable funeral and testamentary expenses, will exceed the assets in the estate.
- (5) Nothing in sections 320 to 323 or 325 to 329 shall invalidate any payment made or any act or thing done in good faith by the personal representative before the date of the insolvent estate administration order.

Section 338 disapplied.

11. Section 338 is disapplied.

Section 341 modified.

12. Section 341 is modified—

- (a) in subsection (1), by deleting “date of the bankruptcy order” and substituting “date of death of the deceased debtor”;
- (b) by inserting after subsection (1), the following—
 - “(1A) References in this Part to assets in relation to a deceased debtor, include the capacity to exercise and take proceedings for exercising all such powers in or over or in respect of assets as might have been exercised by debtor’s personal representative for the benefit of the estate on the date of the insolvent estate administration order and as are specified in subsection (1)(c).

Section 344 modified.

13.(1) In section 344, a reference to “bankrupt” shall be construed as a reference to the personal representative of the deceased debtor.

(2) Section 344 is modified by disapplying subsection (5).

Section 346 modified.

14. Section 346 is modified by deleting subsection (1) and substituting the following—

“(1) Subject to sections 341(2) and 349, the trustee may by notice in writing served on the personal representative of the deceased debtor, claim for the bankrupt's estate any assets which have been acquired by, or have devolved upon, the personal representative after the date of death of the deceased debtor.”.

Section 347 modified.

15. Section 347(2) is modified by deleting “the date of the bankruptcy order” and substituting “the date of death of the deceased debtor.”.

Section 357 modified.

16. Section 357 is modified by inserting after subsection (6) the following—

“(6) In the exercise of his functions under this section, where an insolvent estate administration order has been made, the trustee shall have regard to any claim by the personal representative of the deceased debtor, to payment of reasonable funeral, testamentary and administration expenses incurred by him in respect of the deceased debtor's estate or, if there is no such personal representative, to any claim by any other person to payment of any such expenses incurred by him in respect of the estate, provided that the trustee has sufficient funds for the purpose, and such expenses have priority over the preferential debts specified in the Insolvency Rules.”.

Section 367 modified.

17. Section 367 takes effect subject to section 357(6).

Section 381 modified.

18. Section 381 is modified by deleting “the bankrupt is entitled to any surplus remaining after payment in full of the costs, expenses and claims referred to in section 367(1)” and substituting “the surplus remaining after payment in full of the costs, expenses and claims referred to in section 367(1) shall be paid to the personal representative.

Section 388 disapplied.

19. Section 388 is disapplied.

Section 399 modified.

20.(1) Section 399 is modified by deleting subsection (1) and substituting the following—

“(1) Where an insolvent estate administration order has been made, the personal representative, or if there is no personal representative such person as the Court may, on the application of the trustee direct, shall submit to the trustee a verified statement of the deceased debtor's assets and liabilities affairs containing particulars of the assets and liabilities of the estate as at the date of the order, within 21 days of the order.”.

(2) References in section 399 to the bankrupt shall, in relation to the completion of a statement of assets and liabilities, be construed as references to the person referred to in the substituted subsection (1).

Section 400 modified.

21.(1) Section 400 is modified—

Section 401 substituted.

22. Section 401 is deleted and the following substituted—

“Official Receiver not under a duty to investigate

401. The Official Receiver is not under a duty to carry out an investigation, even where he receives a report from the trustee under section 400.”.

Section 402 modified.

23. Section 402 is modified—

(a) by deleting subsection (1) and substituting the following –

“(1) Where an insolvent estate administration order is made, an application may be made to the Court, ex parte, by the trustee or by the Official Receiver at any time before the discharge of the order for an order that a person specified in subsection (2) appear before the Court to be examined concerning the affairs, dealings and assets of the deceased debtor.”;

(b) in subsection (2), by disapplying paragraph (a);

(c) by deleting subsection (3) and substituting the following –

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- “(3) The examination of a person under this section shall be held in private.”; and
(d) by disapplying subsection (4).

Section 403 modified.

24. Section 403 is modified—

- (a) in subsection (3), by disapplying paragraphs (b) and (f); and
(b) by disapplying subsection (5).

Section 404 modified.

25. Section 404 is modified by disapplying subsection (5).

Sections 408 to 414 disappplied.

26. Sections 408 to 414 are disappplied.

Section 415 modified.

27. Section 415 is modified by disapplying subsection (2).

Sections 418 and 419 disappplied.

28. Sections 418 and 419 are disappplied.

Section 433 modified.

29. Section 433 is modified in the definition of “vulnerability period”, by deleting “ending on the date of the bankruptcy order” in each place it occurs and substituting “ending on the date of death of the deceased debtor”.

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SCHEDULE 2

SECONDARY LEGISLATION APPLICABLE TO

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1. Insolvency Rules
2. Cross-Border Insolvency Regulations
3. Transitional Regulations