
BANKRUPTCY (REGISTER OF DISPOSITIONS) REGULATIONS

Regulations made under section 42A(4).

Subsidiary
1990/158

BANKRUPTCY (REGISTER OF DISPOSITIONS) REGULATIONS

(LN. 1990/158)

1.12.1990

Amending enactments	Relevant current provisions	Commencement date
Act. 2007-17	rr. 3(1), (2), (3), 4(b), (c), (d), 5(4), (5), 6(b), 8(a) & 9(1)	14.6.2007
LN. 2011/033	r.7	1.4.2011
2012/045	r.7	1.4.2012

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In exercise of the powers conferred on me by section 42A(4) of the Bankruptcy Act, and of all other enabling powers, I make the, following Regulations—

Title and commencement.

1. These Regulations may be cited as the Bankruptcy (Register of Dispositions) Regulations, 1990, and shall take effect on the 1st day of December, 1990.

Interpretation.

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

“forms of enquiry” means the tests applied by the trustee to establish the solvency of the settlor;

“Register” means the Register established under Regulation 3 and “register” and “registration” shall have corresponding meanings;

“Registrar” means the Registrar appointed under Regulation 3;

“trustee” means a company with a permanent place of business in Gibraltar and authorised by the Commissioner to act as a trustee.

Establishment of Register.

3. (1) The Minister responsible for finance, or such person as he shall have appointed to carry out the duties of Minister responsible for finance under these Regulations, shall establish a Register of Dispositions and shall appoint a person as Registrar to keep that Register.

(2) There shall be entered on the Register the information specified in Schedule 1 in relation to any disposition which the Registrar is satisfied may be registered therein in accordance with these Regulations or which the Minister responsible for finance directs in accordance with Regulation 5(5) shall be registered.

(3) The Registrar shall maintain the Register and shall inform the Minister responsible for finance of—

(a) the registration of any disposition;

(b) the removal from the Register of the registration of a disposition;

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- (c) the failure by a trustee to submit the annual or other notification in relation to any disposition required by Regulation 6.

Trustees.

4. The Registrar shall register a disposition only where the trustee of that disposition making the application to register—

- (a) is the sole corporate trustee of the disposition;
- (b) is judged by the Minister responsible for finance to have adequate financial and administrative resources to act as trustees—
 - (i) in relation to that disposition; and
 - (ii) in relation to that and any other disposition registered by that trustee;
- (c) has obtained the prior written approval of the Minister responsible for finance of the forms of enquiry administered to the settlor;
- (d) has a level of professional indemnity insurance considered adequate by the Minister responsible for finance in relation to the value of the business it undertakes as trustee, and in any case of not less than £1,000,000.

Registration.

5. (1) An application to register a disposition shall be made to the Registrar by the trustee of that disposition.

- (2) An application to register a disposition shall—
 - (a) specify—
 - (i) the name and address of the trustee;
 - (ii) the name of the disposition;
 - (iii) the date of making of the disposition and the duration thereof;
 - (iv) the country of ordinary residence of the settlor;

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- (b) include undertakings from the trustee making the application that—
 - (i) the settlor has to the satisfaction of the trustee completed the forms of enquiry administered by the trustee;
 - (ii) the trustee has completed all reasonable enquiries based on the information available on public record necessary to substantiate the information provided by the settlor in the forms of enquiry;
 - (iii) the trustee has obtained an affidavit of the settlor confirming that the settlor is not insolvent;
 - (iv) the trustee satisfies the requirements of Regulation 4;
 - (c) be accompanied by the fee prescribed by Regulation 7 which fee shall not be refundable;
 - (d) be in the form prescribed by Schedule 2.
- (3) Where the Registrar registers a disposition, he shall supply to the trustee by whom the application to register the disposition was made—
- (a) a copy of the application endorsed with the serial number allocated to that disposition in the Register; and
 - (b) a copy of the entry in the Register in respect of that disposition.
- (4) In the event that the Registrar shall refuse to register a disposition the trustee by whom the application to register the disposition was made may refer the matter to the Minister responsible for finance who shall consider the application.
- (5) If in the opinion of the Minister responsible for finance any application referred to him by virtue of sub-regulation (4) satisfies the requirements of these Regulations he may require that the disposition be registered.

Annual and Other Notifications.

6. The trustee of a disposition registered under regulation 3 shall—
- (a) at annual intervals after the date of registration; and within 28 days of the anniversary of the date of registration, either—

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- (i) notify the Registrar that none of the matters specified in Regulation 5(2)(a) have changed; or
 - (ii) provide to the Registrar details of any changes which have taken place in the matters specified in Regulation 5(2)(a),

and shall pay to the Registrar the fee prescribed by Regulation 7;
- (b) within 28 days of being so requested in writing provide to the Minister responsible for finance information in relation to such disposition as the Minister responsible for finance may require.

Fees.

7. The fee prescribed in respect of an application for registration of a disposition and in respect of annual notification in accordance with Regulation 6(a) is £300 and £113 respectively and shall be paid to the Registrar.

Termination of Registration.

8. The registration of a disposition under these Regulations shall terminate—
- (a) if the trustee by whom the application for registration was made ceases to be a trustee of the disposition:

Provided that the registration may continue if such trustee shall have been replaced by a trustee satisfying the requirements of regulation 4 and such change shall have been notified to the Registrar and approved by the Minister responsible for finance;
 - (b) if the trustee ceases to satisfy the requirements of regulation 4;
 - (c) if the trustee indicates it wishes to withdraw from the undertakings referred to in regulation 5(2)(b);
 - (d) if notifications required under regulation 6 have not been received by the due date:

Provided that the Registrar may in his absolute discretion reinstate a registration where notification has been received after the due date and upon payment of twice the fee prescribed by Regulation 7;

- (e) on termination or expiration of the disposition:

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- (f) if the trustee by whom the application for registration was made applies to the Registrar for the termination of the registration:

and in that event the trustee shall return to the Registrar the endorsed application and the Registrar shall strike out the entry in the Register in relation to that disposition.

Secrecy.

9.(1) Subject to the provisions of this Regulation, the Minister responsible for finance and every person having any official duty in the administration of these Regulations shall regard and deal with all documents, information and declarations relating to dispositions in respect of which application for registration is made or which are or have been registered or in respect of which annual or other notifications are made under the provisions of these Regulations as secret and confidential.

(2) A person having possession of or control over any document, information or declaration relating to such a disposition as is mentioned in sub-regulation (1) who at any time communicates or attempts to communicate such information or anything contained in any such document or declaration to any person otherwise and for the purposes of these Regulations or the Income Tax Act or the Estate Duties Act or for the purposes of any criminal or civil proceedings in which such document, information or declaration is material is guilty of an offence and is liable on summary conviction to a fine of £1,000.

(3) No person employed in carrying out the provisions of these Regulations shall be required to produce in any court or before any authority or person for any purpose whatsoever any document or declaration in his possession in pursuance of these Regulations or to divulge or communicate to any court any matter or thing coming to his notice in the performance of his duties under these Regulations except as may be necessary for the purpose of carrying into effect the provisions of these Regulations or for the purposes of any criminal or civil proceedings in which such document, declaration, matter or thing is material.

Penalties for incorrect information.

10. A person who without reasonable excuse gives any incorrect information, such information being required of him for the purpose of obtaining registration of a disposition or otherwise carrying these Regulations into effect, is guilty of an offence and is liable on summary conviction to a fine of £1,000 or to three months imprisonment or to both.

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SCHEDULE 1.

Regulation 3(1)

INFORMATION TO BE ENTERED ON THE REGISTER.

There shall be entered on the Register by the Registrar the information specified below in respect of each disposition registered.

1. Name of Trustee.
2. Address of the permanent place of business in Gibraltar of the Trustee.
3. Name of the Disposition.
4. Serial Number of Disposition in the Register.
5. The date of making of the disposition.
6. The duration of the disposition.
7. The country of ordinary residence of the Settlor.
8. Confirmation that the requirements of 5(2)(b) of the Regulations have been met to the satisfaction of the Registrar.
9. Confirmation that the Registration Fee has been paid.

SCHEDULE 2.

Regulation 5(2)(d)

APPLICATION FOR REGISTRATION OF A DISPOSITION

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APPLICATION FORM FOR REGISTRATION OF A DISPOSITION.

1. Serial Number: (to be completed by the Registrar).

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2. Particulars of Disposition–

Name:

Date of making:

Duration:

3. Country of ordinary residence of Settlor:

4. Particulars of Trustee–

Name:

Address of permanent place of business in Gibraltar:

Telephone Number:

It is hereby certified that:–

- (a) the settlor has satisfactorily completed forms of enquiry;
- (b) all reasonable enquiries to substantiate from public records the information provided by the settlor in the forms of enquiry have been completed;
- (c) the trustee has obtained an affidavit of the settlor of the disposition named in this Application Form to the effect that the settlor is not insolvent;
- (d) the trustee satisfies the requirements of Regulation 4 of the Regulations.

For:(Trustees)

.....(position)

Notes:

- (a) This form must be completed in duplicate and signed on behalf of the Trustee by the Senior Executive Officer of the Trustee or his Deputy.
- (b) This form must be accompanied by the fee prescribed in the Regulations.