

Subsidiary Legislation made under s.499.

## **Insolvency (Transitional Provisions) Regulations 2014**

**LN.2014/201**

*Commencement*

**1.11.2014**

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*In exercise of the powers conferred on him by section 499 of the Insolvency Act 2011, the Minister has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Insolvency (Transitional Provisions) 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;

“commencement date” in respect of a Part, section or other provision of the Act, means the date when the Part, section or provision comes into operation in accordance with section 1 of the Act;

“Companies Act” means the Companies Act, 2014;

“former Companies Act” means the Companies Act, 1930-07, as amended;

“former law” means—

- (a) the Acts, regulations and rules of law repealed, amended or modified by the Act and the Insolvency (Consequential Provisions) Act 2014; and
- (b) Parts VI and VII of the former Companies Act;

“Part” means a Part of the Act;

“section” means a section of the Act.

**Meaning of “in liquidation”.**

3. Unless these Regulations expressly provide otherwise, the term “in liquidation” when used in the Act does not include a company being wound up under the Companies Act or the former Companies Act.

*Company Voluntary Arrangements*

**Application of Part 2 to companies being wound up under the Companies Act or the former Companies Act.**

4.(1) Part 2 applies to and in relation to a company being wound up under the Companies Act or the former Companies Act and, subject to this regulation, in Part 2,—

“in liquidation” includes a company being wound up under either Act; and

“liquidator” includes a liquidator appointed under or in accordance with either Act.

(2) In section 13 of the Act, where an arrangement is approved in relation to a company being wound up under the Companies Act or the former Companies Act, “preferential creditor” means a creditor who would have been a preferential creditor under the former law and the preferential claim of the preferential creditor shall be quantified in accordance with the former law.

(3) Section 18(1)(a) does not apply to the liquidator of a company being wound up under the former Companies Act unless the liquidator is an eligible insolvency practitioner.

(4) In section 30(3)(a), the commencement of the liquidation of a company being wound up under the former Companies Act shall be determined in accordance with that Act, notwithstanding its repeal.

(5) In section 37(2)(b), “liquidation” means a liquidation under the Act.

#### *Administration*

#### **Restrictions on power to appoint administrator.**

5.(1) For the purposes of sections 49(2), 56(2)(b) and 56(2)(b) of the Act, a receiver who, if he had been appointed after the commencement date, would have been an administrative receiver, is deemed to be an administrative receiver.

(2) For the purposes of sections 49(2) of the Act,—

“provisional liquidator” includes a provisional liquidator appointed under the former Companies Act; and

“company in liquidation” includes a company being wound up under the Companies Act and the former Companies Act.

#### **Appointment of administrator, company being wound up under the Companies Act or the former Companies Act.**

6.(1) The liquidator of a company being wound up under the Companies Act or the former Companies Act may apply to the Court for the appointment of an administrator under section 56(1)(f) of the Act.

(2) The Court may not make an administration order in respect of a company being wound up under the Companies Act or the former Companies Act except on the application of the liquidator.

#### *Receivership*

#### **Receivers or managers appointed before commencement date.**

7. Subject to sub-regulation (2), Part 4 of the Act does not apply to a receiver or manager of a company's property appointed prior to the commencement date (for Part 4) and the former law applicable to receivers and managers continues to apply.

#### *Liquidation*

#### **Company being wound up under Companies Act.**

8.(1) Part 6 of the Act does not apply in relation to the winding up of a company under the former Companies Act, where the winding up commenced prior to the commencement date and the former law continues to apply in relation to any such liquidation or winding up.

(2) Where a petition presented to the Court for the winding up of a company under the former Companies Act has not been determined at the commencement date, the petition shall be treated as if it was an application for the appointment of a liquidator under the Act.

#### *Voidable transactions and fraudulent conduct*

#### **Voidable transactions.**

9. The Court may make an order under section 253 in respect of a transaction entered into or a floating charge created prior to the commencement date only to the extent that it could have made such an order under the former law.

#### **Limitation on offences.**

10. A person does not commit an offence under section 263, 263A, 263B, 263C, 263D or 263E in respect of any act or omission prior to the commencement date.

#### *Individual voluntary arrangements and bankruptcy*

**Meaning of “undischarged bankrupt”.**

11. In section 282, “undischarged bankrupt” includes an individual who is an undischarged bankrupt under the Bankruptcy Act.

**Bankruptcy.**

12.(1) The Act does not apply to any case in respect of which a receiving order or an adjudication in bankruptcy was made under the Bankruptcy Act prior to the commencement date and the former law continues to apply in relation to any such case.

(2) Where a bankruptcy petition is presented to the Court under the Bankruptcy Act prior to the commencement date but has not been determined at the commencement date, the petition shall be treated as if it was an application for a bankruptcy order under the Act.

*Bankruptcy offences and individual voluntary arrangements***Bankruptcy offences.**

13. A person does not commit an offence under Part 14 in respect of any conduct committed prior to the commencement date.

**Voidable transactions.**

14. The Court may make an order under section 438 in respect of a transaction entered into or a general assignment of book debts made prior to the commencement date only to the extent that it could have made such an order under the former law.

*Insolvency practitioners***Insolvency practitioners appointed prior to commencement date.**

15. Section 476(2) does not apply to a person who acts as an insolvency practitioner by virtue of an appointment made prior to the commencement date.

*Offences***Offences relating to insolvency.**

16. Offences committed before the commencement date under any provision of the former law may, notwithstanding any repeal, amendment or modification by the Insolvency (Consequential Provisions) Act 2014 or, in the case of the former Companies Act, by the

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Companies Act, be prosecuted and punished after the commencement date as if this Act had not come into operation.