



***THE
INSOLVENCY RULES, 2005***

The Insolvency Rules, 2005

Components of the Insolvency Regime

- Insolvency Act, 2003
- Insolvency (Amendment and Consequential Provisions) Act, 2004
- Insolvency (Transitional Provisions) Regulations, 2004
- Insolvency Practitioners Regulations, 2004
- Insolvency Code of Practice
- Insolvency Rules, 2005

The Insolvency Rules, 2005

- Gazetted 30 June, 2005
 - Most rules come into force on that date
 - Rule 3 (definition of a “regulated person”) and Rule 324 (the definition of a “financial contract”) have retrospective effect to the date the Insolvency Act came into force (16 August 2004)
- The Rules provide numerous detailed provisions supporting the higher level requirements set out in the Act.

The Insolvency Rules, 2005

Detailed Procedures Regarding;

- Holding creditors meeting
- Form and content of Court applications
- Service of documents
- Statement of Affairs
- Creditors committees
-and many more subjects

The Insolvency Rules, 2005

Some Specifics;

- Netting and Financial contracts
- Statutory demands
- Preferential creditors
- Insolvency surplus account
- Prescribed forms

The Insolvency Rules, 2005

Netting and Financial Contracts

- Insolvency Act allows for set-off and netting of financial contents (S. 435, Part XVII)
- Rule 324 provides the definition of a “financial contract”
- A wide definition, including swaps, futures, options and derivatives of many kinds
- Tracks ISDA model wording

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Statutory Demands

- The minimum sum for which a statutory demand may be issued is \$2,000 (Rule 149)

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Preferential Creditors - Schedule 2

Nature of Claim	Period	\$
Wages and salaries	6 months	10,000 (per person)
Due to BVI Social Security Board		
— employees' contributions	Any	Unlimited
— employers' contributions	6 months	Unlimited
Pension and medical insurance contributions	12 months	5,000 (per person)
Tax, duties, fees due to BVI government	Any	50,000
Fees or penalties due to the Commission	Any	20,000

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Insolvency Surplus Account

(Rules 327-329)

- Unclaimed assets may be paid over to the ISA to be maintained by the Commission
- Enables insolvency cases to be closed more quickly
- Liquidation/bankruptcy – automatic right
- CCA/ICA/administration/liquidation – with Court order
- Any subsequent claims then made to the Commission

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Prescribed Forms – Schedule 3

- Contains all forms prescribed in the Act and Rules
- Available on Commission's website
- Includes
 - Statement of Affairs
 - Creditors claim form
 - Report on directors' conduct