

VIRGIN ISLANDS
INSOLVENCY (TRANSITIONAL PROVISIONS) REGULATIONS, 2004
ARRANGEMENT OF REGULATIONS

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2004 NO. 58

**INSOLVENCY ACT, 2003
(No. 5 of 2003)**

Insolvency (Transitional Provisions) Regulations, 2004

[Gazetted 2nd September, 2004]

The Executive Council, in exercise of the powers conferred by section 504 of the Insolvency Act, 2003 (No. 5 of 2003), makes the following Regulations:

Citation and commencement.

1. These Regulations may be cited as the Insolvency (Transitional Provisions) Regulations, 2004 and shall be deemed to have come into force on the 16th day of August, 2004.

Interpretation.

2. (1) In these Regulations,

No. 5 of 2003

“Act” means the Insolvency Act, 2003 and includes the Insolvency Rules, 2004 and any regulations made under the Insolvency Act, 2003;

“commencement date”, in respect of a Part, Division, section or other provision of the Act, means the date when that Part, Division, section or other provision comes into operation in accordance with section 1(2) of the Act;

“Part”, “Division” and “section” means a Part, Division or section of the Act.

(2) In these regulations, “former law” means the enactments and rules of law repealed, amended or modified by the Act.

(3) Unless otherwise provided, the words and expressions defined in the Act have the same meaning in these regulations.

Creditors' arrangements.

3. (1) Subject to this regulation, for the purposes of Divisions 1 and 2 of Part II,

“liquidation” includes a liquidation commenced prior to the commencement date; and

“liquidator” includes a liquidator appointed in a liquidation commenced prior to the commencement date.

(2) In Part II, “preferential creditor” means

- (a) where the company is in liquidation at the time of the approval of the arrangement and the liquidation commenced prior to the commencement date, a creditor who would have been a preferential creditor under the former law; and
- (b) in any other case, a creditor who is a preferential creditor under the Act; and

the preferential claim of a preferential creditor shall be quantified in accordance with the Act or the former law, as applicable.

(3) Section 23 does not apply in respect of a liquidator appointed in a liquidation commenced prior to the commencement date unless the liquidator is a licensed insolvency practitioner.

(4) Section 35(2)(a)(i) applies to a liquidator appointed in a liquidation commenced prior to the commencement date with the omission of the words “under the Act or the Rules”.

(5) References in Part II to the termination of a liquidation mean a liquidation under the Act.

4. (1) In this regulation, “pre-Act receiver” means the receiver of the property of a company appointed prior to the commencement date. Receivers.

(2) Subject to subregulation (3), Part IV of the Act does not apply to a pre-Act receiver and the former law applicable to receivers continues to apply to such a receiver.

(3) Sections 134(3) and 432 apply in respect of a pre-Act receiver.

(4) In Part XI, a pre-Act receiver to whom subregulation (6)(b) applies

- (a) is an office holder for the purposes of Division 1; but
- (b) is not an office holder for the purposes of Division 2.

(5) A pre-Act receiver is an insolvency officer for the purposes of Part XIX.

(6) For the avoidance of doubt,

- (a) a pre-Act receiver is an interested person within the meaning of sections 46 and 75;
- (b) a pre-Act receiver who, if he had been appointed after the commencement date, would have been an administrative receiver, is deemed to be an administrative receiver for the purposes of sections 254 and 259(2);
- (c) for the purposes of sections 176(4(c), 191(2) and (3), Part X and section 351(5)(b) “receiver” includes a pre-Act receiver;
- (d) a pre-Act receiver is not an office holder within the meaning of section 420(1).

Liquidation commenced prior to the commencement date.

5. The Act does not apply in relation to any liquidation or winding up of a company which commenced prior to the commencement date and the former law continues to apply in relation to any such liquidation or winding up.

Petition for winding up order.

6. Where a petition presented to the Court for the winding up of a company 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.

7. The Court may make an order under section 249 in respect of a transaction, including a floating charge, entered into or created prior to the commencement date only to the extent that it could have made such an order under the former law.

Fraudulent conduct.

8. A person does not commit an offence under section 289 in respect of any act or omission prior to the commencement date.

Existing bankruptcy case.

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

Bankruptcy offences.

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

Voidable transactions.

11. The Court may make an order under section 405 in respect of a transaction, including a general assignment of book debts, entered into or given prior to the commencement date only to the extent that it could have made such an order under the former law.

12. Section 474(2) does not apply to a person who acts as an insolvency practitioner by virtue of an appointment made prior to the commencement date. Insolvency practitioners.

13. Offences committed before the commencement date under any provision of the former law may, notwithstanding any repeal, amendment or modification by this Act, be prosecuted and punished after the commencement date as if this Act had not come into operation. Offences.

Made by the Executive Council this 25th day of August, 2004.

H. M. PERCIVAL,
Clerk of the Executive Council.