

S T A T U T O R Y I N S T R U M E N T S

2018 No. 4.

**THE INSOLVENCY (INVESTIGATION AND PROSECUTION)
REGULATIONS, 2018.**

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S T A T U T O R Y I N S T R U M E N T S

2018 No. 4.

The Insolvency (Investigation and Prosecution) Regulations, 2018.

(Under section 199 and 260 (1) of the Insolvency Act, 2011, Act 14 of 2011)

In exercise of the powers conferred upon the Minister responsible for justice by section 260 of the Insolvency Act, 2011 these Regulations are made this 13th day of February, 2018.

PART I—PRELIMINARY

1. Title

These Regulations may be cited as the Insolvency (Investigation and Prosecution) Regulations, 2018.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Insolvency Act, 2011;

“bankrupt” means an individual in respect of whom a bankruptcy order has been made under section 20 of the Act;

“contributory” means every person liable to contribute to the assets of a company in the event of its being wound up;

“court” means the High Court or a court presided over by a chief magistrate;

“currency point” has the value assigned to it in Schedule 2;

“insolvency practitioner” means a person who is not an Official Receiver who is qualified to act as an insolvency practitioner within the meaning of section 203 of the Act;

“insolvent” includes a bankrupt and a company under insolvency proceedings;

“Official Receiver” means the person appointed under section 198 of the Act.

PART II—INVESTIGATIONS

3. Conduct of the investigation and prosecution

In accordance with section 199 of the Act, the Official Receiver shall have the power to—

- (a) investigate the directors, shareholders, contributories and all present and past officers of an insolvent company or of a company which being wound up or liquidated, for the purpose of establishing any fraud or impropriety;
- (b) investigate the promotion, formation, failure and conduct of business of an insolvent company;
- (c) investigate the conduct of insolvency practitioners under the Act; and
- (d) prosecute any person for offences committed under the Act and these Regulations.

4. Complaint to the Official Receiver

(1) For purposes of investigations under the Act, a person may file a complaint with the Official Receiver.

(2) A complaint filed under sub regulation (1), shall specify the—

- (a) the names and physical address of the person against whom the complaint is made;
- (b) the names and address of the complainant;
- (c) material particulars of the complaint or allegation;
- (d) the capacity in which a person is filing the complaint; and
- (e) the time that the action arose.

(3) A complaint made under this regulation shall be treated as confidential information by the Official Receiver.

(4) A complaint for investigation made under the Act or these Regulations may be—

- (a) made by the complainant or his or her legal representative;
- (b) made in writing and addressed to the Official Receiver except where the complainant cannot write, in which case the Official Receiver shall cause the oral complaint to be written; and
- (c) signed or thumb printed or sealed by the complainant or his or her legal representative.

(5) The Official Receiver shall not receive a complaint, unless it is made within a period of three years from the date on which the facts giving rise to the complaint or allegation arose, except that in exceptional circumstances and in his or her discretion, the Official Receiver may direct that a complaint lodged after the specified period be received.

(6) Subregulation (5), shall not apply to a complaint relating to a criminal offence under the Act.

5. Procedure of conducting investigations

(1) The procedure for conducting an investigation shall be such as the Official Receiver considers appropriate in the circumstances of each case.

(2) Without prejudice to the generality of the foregoing, the Official Receiver may obtain information from such person and in such manner, and make such inquiries as he or she considers necessary.

(3) An official or agent of the Official Receiver shall not communicate or divulge to any person any information which has come to his or her knowledge in the course of his or her duties, otherwise than in the performance of his or her duties under the Act.

(4) A person who is not an official or agent of the Official Receiver shall not, communicate or divulge to any person any information referred to in subregulation (2), except with the approval of the Official Receiver, by order of court or where otherwise required or authorised by law.

(5) A person who contravenes subregulation (3) or (4) of this regulation commits an offence and is liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding one year or both.

6. Powers of the Official Receiver

(1) For purposes of performing his or her functions under section 199 of the Act, the Official Receiver may—

- (a) authorise in writing any person to conduct an inquiry or investigation into an allegation of fraud or impropriety and any other aspect that the officer receiver is empowered to investigate;
- (b) require a director, shareholder, contributory or all present and past officers of an insolvent company, a company which is being wound up, a bankrupt or debtor to answer questions concerning his or her duties;
- (c) require any person in charge of a company or individual subject to insolvency proceedings to produce or furnish within a specified time, any document or certified copy of such document which is in his or her possession or under his or her charge;
- (d) access premises of a company which is subject to insolvency proceedings or any other place where necessary information is believed to be kept;
- (e) confiscate any incriminating document or material;

- (f) summon any person who in the opinion of the Official Receiver is able to give information relating to any matter relevant to the inquiry being conducted, to appear before the Official Receiver and to furnish such information and produce any documents, papers or things that may be in the possession or under the control of that person;
- (g) interview and record a statement from any person in charge of an insolvent company or of a company which is being wound up or liquidated and having knowledge of the subject matter; or
- (h) do any other thing necessary for the performance of the functions of the Official Receiver under the Act.

(2) The summons issued by the Official Receiver under subregulation (1) (f), shall be in Form 1, specified in Schedule 1.

(3) Summons issued under subregulation (1) (f), shall be served on the person to whom it is directed, by an officer from the office of the Official Receiver or by a police officer, in a manner prescribed for the service of a summons in civil proceedings before a court of law.

(4) In exercising his or her powers, the Official Receiver shall have regard to public interest, interest of the administration of justice and the need to prevent abuse of legal process.

7. Request for information.

The Official Receiver or person authorized by the Official Receiver may, for the purposes of investigations under section 199 of the Act, require the following persons to provide to the Official Receiver information concerning the state of affairs of the company, bankrupt or debtor—

- (a) a director, secretary, shareholder of the company;
- (b) a person who was previously a director, secretary or shareholder of the company;

- (c) an insolvency practitioner of a company or individual subject to insolvency proceedings;
- (d) a person who is or has been an employee of the company; or
- (e) any other person with knowledge of the state of affairs of the company or individual subject to insolvency proceedings.

8. Power of arrest

(1) The Official Receiver or any officer authorised by the Official Receiver may with or without a warrant of arrest, arrest—

- (a) a person suspected to have committed an offence under the Act; or
- (b) a person who obstructs the Official Receiver while in the execution of his or her duties.

(2) Subject to subregulation (1), in effecting an arrest, the Official Receiver or any officer authorised by the Official Receiver shall actually touch or confine the body of the person to be arrested unless the person submits to the custody by word or action.

(3) The Official Receiver or an officer appointed by the Official Receiver executing an arrest may use all reasonable means necessary to effect the arrest, where the person being arrested resists arrest or attempts to evade the arrest.

(4) The Official Receiver or an officer appointed by the Official Receiver, who has effected the arrest, shall handover the suspect to the nearest police station for lawful custody.

(5) For avoidance of doubt, this regulation shall not be considered to justify the use of greater force than is reasonable in the particular circumstances in which it is employed, or is necessary for the apprehension of the suspect.

9. Power of search

(1) The Official Receiver or a person authorised by the Official Receiver who has reasonable cause to suspect that a person has contravened any provision of the Act may—

- (a) enter upon any land, and search any premises, vehicle, wagon or box in possession or under the control of the person and seize any documents or any other object that may be relevant for the investigation;
- (b) require the person to produce for the Official Receiver's inspection, any documents or any other object in his or her possession or any record or document issued or required to be kept by the person under the Act; or
- (c) demand the person's name, address or any other relevant particulars.

(2) The Official Receiver, may exercise the powers conferred under subregulation (1) with a search warrant issued by court except—

- (a) where the court is situated more than twenty kilometres by convenient route, from the nearest court;
- (b) where the search is carried out in the presence of police officer and a member of the executive committee of the village or parish;
- (c) where it is a body search of a suspect who is suspected to have committed an offence; or
- (d) where the search is effected within the premises of a company or individual subject to insolvency proceedings.

(3) A search warrant may also be issued and executed on a Sunday, and shall be executed between the hours of 6:30 am and 6:30 pm on any day of the week.

(4) Subject to subregulation (3), court may, by warrant, in its discretion, authorise a police officer or any other person to whom it is addressed to execute the search warrant at any hour of the day.

10. Power of seizure

(1) The Official Receiver may seize a document or any other item which he or she has reason to believe that it is relevant for the conduct of an investigation under the Act or these Regulations.

(2) Where a document or any other item used in the commission of a crime is seized under subregulation (1)—

- (a) it shall be kept in safe custody of the Official Receiver; and
- (b) if criminal proceedings arising out of or related to the circumstances in which the document or any other item was seized are not commenced within six months after the seizure, it shall be returned to the person from whom it was seized and where it is not claimed within that period, it shall be returned to the person or address from which it was seized; or
- (c) if criminal proceedings have commenced and are concluded, the exhibit shall be dealt with in accordance with the law or as court may order.

11. Investigation report

(1) A person authorized by the Official Receiver under these Regulations shall make a report to the Official Receiver detailing the findings of the investigation within sixty days from the date of commencement of an investigation.

(2) Where an investigation report is not ready within sixty days, the authorised person shall make an interim report to the Official Receiver and the Official Receiver may extend the time within which to submit the final report.

(3) An investigation report shall state following—

- (a) particulars of the person investigated;
- (b) brief facts of the alleged offence, fraud or impropriety;
- (c) findings of the investigation and the necessary evidence; and
- (d) recommendations.

(4) Upon receipt of the report under subregulation (1), the Official Receiver may—

- (a) give a copy of the report to the investigated company or person and the complainant if any; and
- (b) subject to the Access to Information Act, 2005 and on payment of the prescribed fee, give a copy of the investigation report to any person who has an interest in the matter.

(5) The Official Receiver may, during the course of his or her duties or as a consequence of his or her findings, make such orders and give such directions as are necessary and appropriate in the circumstances, for purposes of facilitating an investigation.

12. Proceedings on an investigation report

Where from a report made under regulation 11, it appears to the Official Receiver that the person investigated has a case to answer under the Act, the Official Receiver may—

- (a) institute criminal proceedings in a court; or
- (b) forward the report to the Director of Public Prosecution for further action.

13. Limitation on investigations by the Official Receiver

The Official Receiver shall not have power to—

- (a) review the decision of any court of law or of any judicial officer in the exercise of his or her judicial functions;

- (b) review the decision of any tribunal established by law in the exercise of its functions;
- (c) investigate any civil matter which is before court at the commencement of the Official Receiver's investigations except with leave of court; or
- (d) review or investigate a matter which is likely to—
 - (i) be prejudicial to the security, defence or international relations of Uganda; or
 - (ii) involve the disclosure of proceedings and deliberations of Cabinet or a Committee of Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest.

14. Right to be heard

Where the Official Receiver conducts an investigation as a result of a complaint or allegation under the Act, the Official Receiver shall give a person who is the subject of the complaint or allegation, an opportunity to reply to the complaint or allegation made against him or her.

PART III—PROSECUTION.

15. Power of the Official Receiver to prosecute.

(1) In accordance with section 199 (c) and (d) of the Act, the Official Receiver shall have power to prosecute or cause prosecution in respect of offences committed under the Act.

(2) Notwithstanding any other law, the Official Receiver shall not require the consent or approval of any person to prosecute, or discontinue proceedings instituted by the Official Receiver.

(3) In all cases prosecuted by the Official Receiver, he or she shall exercise the same [powers as exercised by the Director of Public Prosecution.

16. Application of Criminal Procedure Code Act and other laws.

Subject to the Act, the Criminal Procedure Code Act and other relevant laws regulating the institution and conduct of criminal proceedings shall apply in relation to prosecution by the Official Receiver under these Regulations.

17. Cooperation with other agencies.

(1) In the performance of his or her powers and functions, the Official Receiver shall cooperate with other ministries, departments or agencies of Government.

(2) For the purposes of conducting an investigation or prosecution under section 199 of the Act, the Official Receiver may enter into an arrangement with a ministry, department or agency of Government relating to—

- (a) the exchange of information between the Official Receiver and the ministry, department or agency of Government;
- (b) co-opting a staff member of the ministry, department or agency of Government for purposes of conducting investigation or prosecution under the Act and these Regulations;
- (c) enforcement of the compliance of the Act and these Regulations; or
- (d) the conduct of investigation or prosecution.

18. Performing the functions of the Official Receiver.

The functions and powers conferred on the Official Receiver under the Act and these Regulations may be exercised by the Official Receiver in person or by officers authorised by the Official Receiver in accordance with general or specified instructions.

SCHEDULE 1 – FORM

Regulation 6(2)

FORM 1.

SUMMONS.

THE REPUBLIC OF UGANDA

THE INSOLVENCY ACT, 2011

Inquiry No. 20.....

To:
(full name).

of
(full address).

You are summoned to appear before the Official Receiver aton
the..... day of, 20.....at hours.

AND also, to bring with you and to produce at that time and place the following
documents:

.....
.....
.....
.....

DATED at..... this day of 20.....

.....
Official Receiver.

SCHEDULE 2

Regulation 2.

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings

MAJ.GEN. (Rtd) KAHINDA OTAFIIRE,
Minister of Justice and Constitutional Affairs.

Cross Reference.

Criminal Procedure Code Act, Cap 116.