

(Legislative Supplement No. 2)

LEGAL NOTICE NO. 7

THE INSOLVENCY ACT

(No. 18 of 2015)

IN EXERCISE of the powers conferred by section 730 of the Insolvency Act, 2015, the Attorney General makes the following Regulations—

THE INSOLVENCY (AMENDMENT) REGULATIONS, 2018

- | | |
|---|--|
| 1. These Regulations may be cited as the Insolvency (Amendment) Regulations, 2018. | Citation. |
| 2. Regulation 4 of the Insolvency Regulations, 2016, in these Regulations referred to as “the principal Regulations” is amended in subregulation (2) (b) by deleting the expression “f” and substituting therefor the word “forms”. | Amendment of regulation 4 of L. N. No. 18 of 2015. |
| 3. Regulation 5 of the principal Regulations is amended by deleting subregulation (4). | Amendment of regulation 5 of L.N. No. 18 of 2015. |
| 4. Regulation 11 of the principal Regulations is amended by inserting the following new subregulations immediately after subregulation (2)—
“(3) The Official Receiver may waive the requirements set out under subregulation (1) (a) where the applicant has practised insolvency for at least ten years prior to the commencement of the Insolvency Act, 2015.
(4) The Official Receiver shall, within thirty days of the decision under subregulation (3), communicate such waiver to the applicant, in writing. | Amendment of regulation 11 of L. N. No. 18 of 2015. |
| 5. Regulation 12 of the principal Regulations is amended in subregulation (1) by deleting the word “with” appearing after the words “a duly”. | Amendment of regulation 12 of L. N. No. 18 of 2015. |
| 6. Regulation 15 of the principal Regulations is amended by inserting the following new subregulations immediately after subregulation (3)—
“(4) The statutory demand in subregulation (3) shall be endorsed by the Deputy Registrar of the High Court before it is served on the debtor.
(5) The statutory demand specified in subregulation (3) shall be served on the debtor at least twenty one days before the filing of the petition. | Amendment of regulation 15 of L. N. No. 18 of 2015.
L.N. No. of 2010. |

(6) The service of the statutory demand shall be in accordance with the Civil Procedure Rules, 2010.”

7. Regulation 18 of the principal Regulations is amended in subregulation (3) by deleting paragraph (k).

Amendment of regulation 18 of L. No. No. 18 of 2015.

8. The principal Regulations are amended by inserting the following new regulation immediately after regulation 21—

Insertion of new regulation 21A.

Certificate of appointment to be filed in court.

“21A. The Official Receiver shall file a copy of the Certificate of Appointment issued under regulation 21(2) with the Court.”

9. Regulation 25 of the principal Regulations is amended in subregulation (1) by deleting the expression “28” and substituting therefor the expression “27”.

Amendment of regulation 25 of L. N. No. 18 of 2015.

10. Regulation 29 of the principal Regulations is amended—

Amendment of regulation 29 of L. N. No. 18 of 2015.

(1) by deleting subregulation (4) and substituting therefor the following new subregulation—

“(4) For the purposes of section 75 (4) of the Act, the court shall, on the application of the Bankruptcy Trustee, make an order in Form 22A as set out in the First Schedule, determining the date on which the Bankruptcy Trustee shall be released.”

(2) by inserting the following new subregulation immediately after subregulation (4)—

“(5). The application in subregulation (1) shall be made within fourteen days from the date that the notice under section 75 (4) of the Act was given to the court.”

11. The principal Regulations are amended by inserting the following new regulation immediately after regulation 30—

Insertion of new regulation 30A..

Notice under section 118 of the Act.

“30A. For the purposes of section 118 of the Act, the notice of disclaimer in subsection (3) shall be in Form 22B as set out in the First Schedule.”

12. Regulation 36 of the principal Regulations is amended in paragraph (b) by inserting the word “an” immediately after the word “at”.

Amendment of regulation 36 of L. N. No. 18 of 2015.

13. The principal Regulations are amended by inserting the following new regulation immediately after regulation 44—

Insertion of new regulation 44A.

Voluntary arrangement

“44A. An application for voluntary arrangement shall be in Form 23A as set out in the First Schedule and shall be accompanied by the following documents—

- (a) a statement of affairs in Form 11 as set out in the First Schedule; and
- (b) a verifying affidavit in Form 4 as set out in the First Schedule.

14. Regulation 46 of the principal Regulations is amended in subregulation (1) by deleting paragraph (k).

Amendment of Regulation 46 of L. N. No. 18 of 2015.

15. Regulation 49 of the principal Regulations is amended in subregulation (1) by deleting paragraph (k).

Amendment of Regulation 49 of L. N. No. 18 of 2015.

16. Regulation 50 of the principal Regulations is amended by deleting the words "five hundred thousand shillings" and substituting therefor the words "four million shillings".

Amendment of Regulation 50 of L. N. No. 18 of 2015.

17. Regulation 57 of the principal Regulations is amended in subregulation (2) by inserting the words "in Form 5 as set out in the First Schedule" immediately after the words "a claim form".

Amendment of Regulation 57 of L. N. No. 18 of 2015.

18. Regulation 63 of the principal Regulations is amended by inserting the words "in Form 26A as set out in the First Schedule" immediately after the word "creditor of the default".

Amendment of Regulation 63 of L. N. No. 18 of 2015.

19. The principal Regulations are amended by inserting the following new regulations immediately after regulation 77 —

Insertion of new regulations 77A to 77G.

Voluntary liquidation of a company.

77A. (1) When making an application for voluntary liquidation of a company, the Liquidator shall also lodge the following documents with the Registrar of companies —

- (a) a special resolution of the shareholders regarding the application for liquidation as set out in Form 32A;
- (b) a statutory declaration in Form 32B as set out in the First Schedule;
- (c) a statement of financial position in Form 32 as set out in the First Schedule;
- (d) audited accounts from an auditor approved by the Official Receiver; and
- (e) proof of payment of the requisite fee for voluntary liquidation as specified in the Second Schedule.

(2) Upon lodging the documents under subregulation (1) the liquidator shall publish, within thirty days of appointment as a liquidator, a notice of intention to liquidate

(3) The publication under subregulation (2) shall be in—

- (a) a newspaper circulating in the area in which the company has its principal place of business in Kenya; and
- (b) the *Gazette*.

(4) The liquidator shall hold the first meeting of creditors within thirty days of the notice of intention to liquidate.

Liquidation by court. 77B. (1) For the purposes of section 425 of the Act An application for liquidation shall be—

- (a) by way of a petition in Form 32C as set out in the First Schedule; and
- (b) accompanied by a verifying affidavit in Form 32D as set out in the First Schedule.

(2) The petition for liquidation shall be accompanied by the following documents—

- (a) a statutory demand in Form 32E set out in the First Schedule if the reason for petition is indebtedness; and
- (b) a statement of financial position in Form 32 as set out in the First Schedule where necessary.

Notice of appointment of a liquidator. 77C. Upon appointment as a liquidator, the liquidator shall—

- (a) within thirty days of appointment, issue the Official Receiver with a notice of appointment in Form 32F as set out in the First Schedule; and
- (b) pay the requisite fee specified in the Second Schedule.

Liquidation order. 77D. For the purpose of section 425 of the Act the Liquidation Order shall be in Form 32G as set out in the First Schedule.

Release of liquidation obligation 77E. For the purpose of section 469 (2) (c) of the Act, the period within which a liquidator is released from the liquidator's obligations with respect to the company shall be within seven days of lodging the resignation notice in Form 32H as set out in the First Schedule, with the Registrar.

Notice for lack of quorum. 77F. For the purpose of section 402 (6) of the Act, if a quorum is not present at the meeting, the liquidator shall make a return that the meeting was duly convened and that no quorum was present, in form of a notice to the Registrar in Form 32I set out in the First Schedule.

Notice of liquidator's statement of accounts. 77G. (1) For the purpose of section 402 (1) (a) of the Act, the statement of accounts shall be in Form 32J as set of the First Schedule.

(2) For the purpose of section 402 (2) of the Act, the notice of liquidator's statement of accounts shall be in Form 32K as set of the First Schedule.

20. The principal Regulations are amended by inserting the following new regulation immediately after regulation 78 —

Insertion of new regulation 78A.

Particulars of the company's statement of affairs. 78A. (1) For the purpose of section 433 (2) (a) of the Act, the prescribed particulars shall include —

- (a) a list of the company's assets, divided into such categories as may be appropriate for easy identification, with estimated values assigned to each category; and
- (b) particulars of any debts owed by or to the company to or by persons connected with it.

21. The principal Regulations are amended by inserting the following new regulation immediately after regulation 79 —

Insertion of new regulation 79A.

Delegated functions of the Liquidator 79A. For the purpose of section 459 (1) of the Act, a liquidator may exercise the functions imposed on the Court with regards to the matters specified under section 459 (2) of the Act.

22. Regulation 81 of the principal Regulations is amended in subregulation (2) by deleting the expression "Forms 16" and substituting therefor the expression "Form 32L"

Amendment of regulation 81 of L. N. No. 18 of 2015.

23. Regulation 84 of the principal Regulations is amended by inserting the words "in Form 34 as set out in the First Schedule" immediately after the word "appointment".

Amendment of regulation 84 of L. N. No. 18 of 2015.

24. Regulation 86 of the principal Regulations is amended in subregulation (5) by inserting the words "be" immediately after the word "shall not" in paragraph (c).

Amendment of regulation 86 of L. N. No. 18 of 2015.

25. Regulation 89 of the principal Regulations is amended by deleting the word "of" immediately after the word "presiding" and substituting therefor the word "at".

Amendment of regulation 89 of L. N. No. 18 of 2015.

26. Regulation 93 of the principal Regulations is amended —

Amendment of regulation 93 of L. N. No. 18 of 2015.

(a) in subregulation (3) by deleting the words "Cabinet Secretary" and substituting therefor the words "Attorney-General";

(b) in subregulation (4) by deleting the words "Cabinet Secretary" and substituting therefor the words "Attorney-General";

- (c) in subregulation (5) by deleting the words "Cabinet Secretary" and substituting therefor the words "Attorney-General".

27. The principal Regulations are amended by inserting the following new regulation immediately after regulation 98—

Insertion of new regulation 98A.

Notice of disclaimer of onerous property. 98A. For the purpose of section 476 (1) of the Act, the notice of disclaimer of onerous property shall be in Form 34A as set out in the First Schedule.

28. The principal Regulations are amended by inserting the following new regulations immediately after regulation 101—

Insertion of new regulation 101A

Class of persons who may apply for an administration order 101A. (1) For the purpose of section 532 (1) (e) of the Act, the persons who may apply to court for an administration order shall include—

- (a). the official receiver;
- (b). the Registrar of Companies; and
- (c). the employees of the companies.

(1) An application for an administration order under subregulation (1) shall be in Form 36 as set out in the First Schedule.

(2) The administration order shall be in Form 37 as set out in the First Schedule.

Class of persons who the applicant of an administration order may notify. 101B. For the purpose of section 532 (2) (b) of the Act, the persons who the applicant of an administration order may notify shall include—

- (a). the official receiver;
- (b). the Registrar of Companies;
- (c). the Company;
- (d). the directors of the companies; and
- (e). the creditors.

29. Regulation 102 of the principal Regulations is amended in subregulation (2) by deleting the expression "Forms 36" and substituting therefor the expression "Form 35".

Amendment of regulation 102 of L. N. No. 18 of 2015.

30. Regulation 104 of the principal Regulations is amended—

Amendment of regulation 104 of L. N. No. 18 of 2015.

(1) in paragraph (d) of subregulation (1) by inserting the word "the" immediately after the word "of".

(2) by deleting subregulation (2) and substituting therefor the following new subregulation—

"(2) The notice of intention referred to in section 545 (2) of the Act shall be in Form 35 as set out in the First Schedule and state—

- (a) the identification details for the company immediately below the heading;
- (b) the name and address of the appointer;
- (c) a statement that the appointer intends to appoint an administrator of the company;
- (d) the name and address of the proposed administrator;
- (e) a statement that the appointer is the holder of the qualifying floating charge in question and that it is now enforceable;
- (f) the details of the charge, the date on which it was registered and the maximum amount if any secured by the charge;
- (g) a statement that the notice is being given to the holder of each relevant prior floating charge;
- (h) the names and addresses of the holders of such prior floating charges and details of the charges; and
- (i) a statement whether the company is or is not subject to insolvency proceedings at the date of the notice, and details of the proceedings if it is."

(3) by inserting the following new subregulation immediately after subregulation (3)—

"(4) The notice of intention shall be served upon—

- (a). the official receiver;
- (b). the Registrar of Companies;
- (c). the Company;
- (d). the directors of the companies; and
- (e). the creditors "

31. The principal Regulations are amended by inserting the following new regulation immediately after regulation 108—

Insertion of new regulation 108A.

Class of persons who may be notified of the administrator's appointment notice. 108A. For the purpose of section 563(5) of the Act, the class of persons who the administrator may notify of his appointment shall include—

- (a). the official receiver;
- (b). the Registrar of Companies;
- (c). the Company;
- (d). the directors of the companies; or
- (e). the creditors.

32. Regulation 111 of the principal Regulations is amended in subregulation (1) by deleting the expression "111 (6) (b)" and substituting therefor the expression "110 (6) (b)".

Amendment of regulation 111 of L. N. No 18 of 2015.

33. Regulation 114 of the principal Regulations is amended in subregulation (1) by deleting the expression "114" and substituting therefor the expression "113".
34. Regulation 115 of the principal Regulations is amended in subregulation (1) by deleting the expression "568 (2)" and substituting therefor the expression "568 (1) (b)".
35. Regulation 117 of the principal Regulations is amended in subregulation (1)(b)(ii) by deleting the word "he" and substituting therefor the word "the".
36. Regulation 120 of the principal Regulations is amended in subregulation (1) by deleting the expression "regulation 120" and substituting therefor the expression "regulation 119".
37. Regulation 121 of the principal Regulations is amended in subregulation (1) by deleting the expression "121 (2)" and substituting therefor the expression "120 (2)".
38. Regulation 122 of the principal Regulations is amended in sub-regulation (1) by deleting the expression "121 (2)" and substituting therefor the expression "120 (2)".
39. Regulation 123 of the principal Regulations is amended in subregulation (2) by deleting the expression "122 (4)" and substituting therefor the expression "120 (4)".
40. Regulation 125 of the principal Regulations is amended in subregulation (4) by deleting the expression "568 (2) (b)" and substituting therefor the expression "569 (2) (b)".
41. Regulation 132 of the principal Regulations is amended by deleting the marginal note and substituting therefor the following new marginal note—
 "Interpretation: Division 1 of Part XII of the Act".
42. Regulation 133 of the principal Regulations is amended in subregulation (7) by deleting the expression "Form 33" and substituting therefor the expression "Form 32".
43. Regulation 138 of the principal Regulations is amended by deleting the expression "section 47, 336 or 350" and substituting therefor the expression "section 47, 337 or 350".
44. Regulation 139 of the principal Regulations is amended by deleting the expression "section 47, 336 or 349" and substituting therefor the expression "section 47, 337 or 350".
45. The First Schedule to the principal Regulations is amended by—
 (a) deleting form 6 and substituting therefor the following new form—

Amendment of regulation 114 of L. N. No. 18 of 2015.

Amendment of regulation 115 of L. N. No. 18 of 2015.

Amendment of regulation 117 of L. N. No. 18 of 2015.

Amendment of regulation 120 of L. N. No. 18 of 2015.

Amendment of regulation 121 of L. N. No. 18 of 2015.

Amendment of Regulation 122 of L. N. No. 18 of 2015.

Amendment of Regulation 123 of L. N. No. 18 of 2015.

Amendment of Regulation 125 of L. N. No. 18 of 2015.

Amendment of Regulation 132 of L. N. No. 18 of 2015.

Amendment of Regulation 133 of L. N. No. 18 of 2015.

Amendment of Regulation 138 of L. N. No. 18 of 2015.

Amendment of Regulation 139 of L. N. No. 18 of 2015.

Amendment of the First Schedule of L. N. No. 18 of 2015.

Form No. 6

r. 15 (3)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on

.....20.....OF.....

STATUTORY DEMAND

To A.B. [or A.B. & Co.] of

TAKE NOTICE that within [twenty-one] days after service of this notice on you, excluding the day of such service, you must pay to C. D. of [or to of his [or their] agent duly authorized] (a) the sum of Kshs. claimed by (b) as being the amount due* to (c) dated, or you must secure or compound for the said sum to (d) satisfaction [or the satisfaction of his [or their] said agent] (a) or to the satisfaction of the Court; or you must satisfy the Court that you have a counter-claim, set-off or cross-demand against (c) which equals or exceeds the sum claimed by (c) and which you could not set up in the action or other proceedings in which the Judgment or Order was obtained.

FURTHER TAKE NOTICE THAT failure to pay the afore-stated amount shall result in C.D. filing for a bankruptcy order against your estate.

Dated this day of, 20.....

By the Court,

Registrar.

* amount due can be as a result of the following:-

- Judgment
- Contract
- Rent accruing etc.

(b) deleting Form 35 and substituting therefor the following new form —

Form No. 35

r 103(2) & 105 (3)

Part IV Insolvency Act,
REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on

20.....OF.....

NOTICE OF APPOINTMENT OF ADMINISTRATOR

I, *C.D.*, of [insert description of *C.D.*]..... give notice that *G.H.*, of [insert description of *G.H.*]..... has been appointed as Administrator(s) of the property of *A.B.*, the Company with effect from the Day of 20..... and/or in accordance with the provisions of the Part VII of the Insolvency Act.

Dated this day of, 20.....

(Signed) *C.D.*

Official Receiver*/Creditors/holder of qualifying floating charge/administrator.

(c) inserting the following new forms in proper numerical sequence—

Form No. 22A

r. 29(4)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on 20..... OF.....

COURT ORDER GRANTING TRUSTEE LEAVE TO RESIGN

(Section 75(4) of the Insolvency Act)

Upon the application of [insert name of Trustee], Trustee of the Estate of [insert name of Bankrupt], dated [Insert date], filed on the [insert date] day of 20.....

Having heard and having read; and having seen the exhibits;

And it appearing to the court that the reasons for resignation are sufficient [Set out the reasons for resignation for which leave is sought]:

1. The Court hereby orders that [Insert name, address and description of Trustee] be granted leave to resign by virtue of an order hereby made on this date.
2. The Court further orders that the Trustee be released from.....[Insert the date]
3. The Court further orders that[insert other provisions as the court considers appropriate with respect to matters arising in connection with the resignation]

Dated at, this day of 20

Judge or Registrar

Form No. 22B

r. 30A

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on20.....OF.....

NOTICE OF DISCLAIMER OF ONEROUS PROPERTY (NATURAL PERSONS)

(Section 118 of the Insolvency Act)

To

of [address]

TAKE NOTICE THAT, as Official Receiver/Bankruptcy Trustee of the above estate, the following property,.....(description of the debtor's property)..... being property of the debtor herein, will be disclaimed as onerous, after twenty-one (21) days from the date of this notice, on the following grounds: -

1.
2.
3.

AND FURTHER TAKE NOTICE that if you are dissatisfied with my decision to disclaim the abovementioned property as onerous, you may apply to the Court to reverse or vary the same, but, subject to the power of the Court to extend the time, no application to reverse or vary my decision in disclaiming the property as onerous will be entertained after the expiration ofdays from this date.

Dated this day of, 20.....

Official Receiver or Trustee.

To be served upon:

1. The Official Receiver
2. Creditors
3. Debtor
4. Others

Form No. 23A

r. 44A

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

APPLICATION FOR VOLUNTARY ARRANGEMENT (NATURAL PERSON)

(Section 304 of the Insolvency Act)

1. PERSONAL INFORMATION OF APPLICANT DEBTOR

- | | |
|---|---------------------|
| A. Full Names (as they appear on your National ID): | Nationality: |
| B. Preferred Title (Mr./Mrs./Miss/Ms./Other): | I. D. Number: |
| C. Gender: | K. R. A PIN Number: |
| D. Date of Birth: | Postcode: |
| E. Address: | Country: |
| County: | Tel: |
| Email: | |
| F. (i) Occupation (bankrupt/debtor): | |
| (ii) If employed, Name and address of present employer: | |
| Address: | Postcode: |
| County: | Country: |
| Email: | Tel: |

2. PROPOSAL DETAILS

- A. I propose to repay the full amount of my debts OR I propose to repay (state the amount you propose if different from the full amount) in the shilling as full and final payment of my debts in installments.
- B. Please enter the proposed amount of money you wish to repay in each instalment.
Kshs.
- C. Please select the proposed frequency of each instalment: Weekly/Monthly/ Quarterly
- D. Do you propose to sell any assets as part of your Voluntary Arrangement? If yes, Please describe any assets that you would propose to sell as part of your Voluntary Arrangement:

Asset description	Estimated resale value	Amount owed on asset

(Use separate sheet)

- E. Have any of your debts been guaranteed by any person? If yes, please list the debts and the name and address of the guarantor in the box below:

Asset	Guarantor name and address:	

(Use separate sheet)

3. ADDITIONAL COMMENTS

Please provide any other information that you believe is relevant to your proposal. Voluntary Arrangements last for 12 months. If you propose to repay your debts in less than 12 months, please specify here.

If you wish the Official Assignee to consider an extension of the period to up to an additional 12 months, please specify here and state your reasons:

4. VOLUNTARY SUPERVISOR SELECTION

- A. Name of Proposed Supervisor:
- B. *IPL number:
*Insolvency Practitioner License Number

C. Address: Postcode:
County: Country:
Email: Tel:

D. If for any reason you do not intend to nominate a supervisor, please provide your reasons below:

5. DECLARATION

- a. The information provided by me in this application is true, and I have disclosed here all and every facts and circumstances which are material to consideration of my application. I understand that any false, inaccurate or misleading information

provided by me may lead to a refusal of my application, or disciplinary action in relation to, and withdrawal of my application for a Voluntary Arrangement.

- b. I will immediately notify the office of the Official Receiver and my Supervisor of any material change in the information provided by me here, whether it arises before or after my admission for a Voluntary Arrangement.
- c. I attach a copy of my statement of affairs, written consent of the proposed Supervisor and any other relevant documents prescribed by the Official Receiver, the Insolvency Act and Regulations together with this application.
- d. I request that a Voluntary Arrangement be made on the above terms.

Dated this _____ day of _____ 20 _____

.....

Applicant Debtor

NOTE:

A Voluntary Arrangement is a legally binding arrangement made by an order of the Court that governs how and to what extent you will repay your debts over a period of up to 12 months. The information provided in this section will form the basis of any Order that is made by the Court. You need to specify in this section of your application the amount and frequency of the repayments you are proposing, and details of any of your assets that you are proposing be sold towards meeting your debts. If you intend to repay your debts in less than 12 months, please specify this in the Comments box, or alternatively if you wish to apply for a longer period (24 months) then you must give reasons for this proposed extension.

N.B./ To be accompanied with Form 10, Form 11 and Form 4

Form No. 26A

r.63

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

v/a:

B.O. /S. I. O. / L. O. made on20.....OF.....

NOTICE OF DEFAULT UNDER SUMMARY INSTALMENT ORDER

(Under Section 341(4) of the Insolvency Act)

TAKE NOTICE THAT C. D., [insert name of Debtor], [insert SIO Application Number], a debtor under Summary Instalment Order, has defaulted from his payment obligations under the Summary Instalment Order.

FURTHER TAKE NOTICE THAT consequent to the default, proceedings that have been stayed under section 335 may continue, and any other legal proceedings may be instituted.

Dated at, this, of 20.....

Supervisor

Served on:

- 1. Official Receiver
- 2. Creditors

Form No. 32A

r.77A(1)(a)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:.....

L. O. made on20.....OF.....

SPECIAL RESOLUTION FOR MEMBERS VOLUNTARY LIQUIDATION

Under Section 395

TAKE NOTICE that on a general meeting of the members of A.B.,[insert name and description of the company] held onday ofthe members resolved to:

- 1. Voluntarily liquidate the company on this..... day of[insert the date, place and address where the meeting took place]
- 2. Appoint B.F.....[insert name and description of the liquidator] as liquidator of the company.

Dated this day of 20.....

(Signed) C.D.

Director(s) of the Company

To be served upon:

- 1. The Official Receiver

- 2. Registrar of Companies
- 3. Creditors
- 4. Contributories/Members

Form No. 32B

r.77A(1)(b)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

L. O. made on20..... OF.....

STATUTORY DECLARATION OF SOLVENCY

(Pursuant to section 398(1)(b) of the Insolvency Act)

I/We, MR. and MR., being the sole director/majority of directors of LIMITED, do solemnly and sincerely declare that I have made a full inquiry into the affairs of this Company, and that, having so done, We have formed the opinion that this Company will be able to pay its debts in full within a period of TWELVE* months from the commencement of the winding up, and We append a statement of the Company's assets and liabilities as at 2016, being the latest practicable date before the making of this declaration. And we make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Oaths and Statutory Declarations Act.

Declared before me at this..... day of.....201_ by:

DIRECTOR

Signature

DIRECTOR

Signature

BEFORE ME

COMMISSIONER FOR OATHS

*Insert a period of months not exceeding twelve.

*Attach statement of the Company's Financial Position, Form 32, as required by section 398(2)(b) of the Act

Form 1 No. 32C

r. 77B(1)(a)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

L. O. made on20.....OF.....

LIQUIDATION PETITION

(Section 425 of the Insolvency Act)

The humble petition of _____ (*insert full name, title, etc. of petitioner and capacity e.g. as director/creditor/contributory*) states as follows—

1. The _____ Co. Ltd. (hereafter called "the company") was on theday of _____ incorporated.
2. The registered office of the company is at _____ (*state the situation and full postal address of the registered office*).
3. The nominal capital of the company is _____ shillings divided into shares of _____ shillings each. The amount of the capital paid up or credited as paid up is _____ shillings.
4. The objects for which the company was established are as follows—

To _____ and other objects set forth in the memorandum of association of the company.

(*Here set out in paragraphs the facts on which the petitioner relies, including a statement of assets where necessary and conclude as follows—*)

5. The company is (*state the reason for application for liquidation e.g. indebtedness,.... etc*).

(6. Your petitioner has been served with/has served a statutory demand on the company for payment of the debt on the _____ day of _____, 20____; but the company has failed to pay the debt or any part of the debt or comply with the statutory demand and to the best of my knowledge and belief there is no application to set aside the statutory demand pending before this Honourable court or any other court;)

7. The company is (insolvent and) unable to pay its debts.

8. (*Statement of Financial Position where necessary*).

Your petitioner therefore humbly prays that the court makes an order for the liquidation of the company AND makes such orders as may be necessary and just in the premises.

Form No. 32D

r. 77B(1)(b)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

L. O. made on20.....OF.....

VERIFYING AFFIDAVIT

I, the petitioner named in the petition hereunto annexed, make oath [if the petition declare or affirm, alter the form accordingly] and say: -

1. That the several statements in the said petition are within my own knowledge true.

Sworn at, & c.

NOTE. - If the petitioner cannot depose that the truth of all the several statements in the petition is within his knowledge, he must set out the statements the truth of which he can depose to, and file a further affidavit by some person or persons who can depose to the truth of the remaining statements.

Form No. 32E

r. 77B(2)(a)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:.....

B.O./S. I. O. / L. O. made on20.....OF.....

STATUTORY DEMAND

To A.B. [or A.B. & Co.], of

TAKE NOTICE that within [twenty one] days after service of this notice on the company, excluding the day of such service, the company must pay to C. D.

..... of [or to
 of his [or
 their] agent duly authorized] (a) the sum of Kshs. claimed by (b) as
 being the amount due* to (c) , dated
, , or the company must secure or compound for the
 said sum to (d) satisfaction [or the satisfaction of
 his [or their] said agent] (a) or to the satisfaction of the Court; or the company must
 satisfy the Court that the company has a counter-claim, set-off or cross-demand against
 (c) which equals or exceeds the sum
 claimed by (c) and which the company could not set up in the
 action or other proceedings in which the Judgment or Order was obtained.

FURTHER TAKE NOTICE THAT failure to pay the afore-stated amount shall result in
 C.D. filing for a liquidation order against the company.

Dated this day of, 20.....

By the Court,
 Registrar.

* amount due can be as a result of the following:-

- Judgment
- Contract
- Rent accruing etc

Form No. 32F

r.77C(a)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:.....

L. O. made on20.....OF.....

NOTICE OF APPOINTMENT OF LIQUIDATOR

(Section 399 of the Insolvency Act)

I, C.D., of give notice that *I was / we were appointed as Liquidator(s) of the
 property of the said A.B.,..... [insert name and description of the company] the
 Company pursuant to the Liquidation Order issued on Day of
 20..... and/or in accordance with the provisions of the Insolvency Act.

Dated this day of, 20.....

(Signed) C.D.

I.P. No.....

To be served upon:

1. The Official Receiver (If the application was made in Court)
2. Creditors
3. Company/Directors
4. Court

Form No. 32G

r. 77D

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

L. O. made on20.....OF.....

LIQUIDATION ORDER

(Section 425 of the Act)

Upon the application of [*insert name and description of company or creditor or contributory or provisional liquidator or administrator of the company or liquidator*], of [*insert address*], dated [*Insert date*], filed on the [*insert date*] day of 20.....

Having heard and having read; and having seen the exhibits;

And it appearing to the court that the grounds for application for liquidation by the court are valid [*Set out the nature and dates of the grounds on which the order is made*]:

1. The Court hereby orders that [*Insert name, address and description of company as set out in the petition or proof to the court*] be liquidated by virtue of a liquidation order hereby made on this date.
2. The Court further orders that [*insert name of liquidator/interim liquidator*], of [*Insert address of liquidator*], be appointed as liquidator of the company.

Dated at, this day of 20

Judge or Deputy Registrar

Form No. 32H

r. 77E

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO..... OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on20.....OF.....

NOTICE OF RESIGNATION OF A LIQUIDATOR

I, C. D. (insert insolvency practitioner's name) of (insert business address) was appointed as Liquidator of (insert Company's name) of (insert Company's address) on(insert date of appointment) by the Official Receiver/Court/Creditors pursuant to a Liquidation Order issued at (insert name of Court) on day of..... 20 (insert date of order).

I wish to resign from office as Liquidator of the above mentioned Company in liquidation on the grounds that I am unable to Act /I should not continue to Act for the following reason(s)

- 1.
2.
3.

Dated at this day of 20

Liquidator

IPL* Number

* Insolvency Practitioner License Number

Form No. 32I

r. 77F

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....
RE:.....
L. O. made on20.....OF.....

NOTICE TO REGISTRAR WHERE QUORUM FOR MEETING IS INSUFFICIENT

(Section 402(6) of the Insolvency Act)

TAKE NOTICE THAT the a meeting of the company was dully convened at _____,(state place) between(specify time) and that there was no quorum.

Dated this _____ day of _____, 20 _____

Liquidator.

Form No. 32J

r. 77G(1)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....
RE:.....
t/a:
L. O. made on20.....OF.....

STATEMENT OF ACCOUNTS OF THE LIQUIDATION

(Section 402(1) of the Insolvency Act)

1. No. of Company _____

2. Name of company _____ Ltd.

(in liquidation)

3. Presented by _____

4. Statement showing how the liquidation has been conducted and how the property of the Company has been disposed of from _____, 20 ____ (*commencement of liquidation*) to _____, 20 ____ (*close of liquidation*)

	<i>Statement of assets and liabilities Shs.</i>	<i>Receipts Shs.</i>		<i>Payments Shs.</i>
Receipts—			Costs of Advocate to Liquidator	
Cash at bank			Other law costs	
Cash in hand			Liquidator's remuneration (where applicable)	
Marketable Securities			_____ percent on _____ shs. Realized	
Sundry debtors			_____ percent on _____ shs. Distributed	
Stock-in-trade			By whom fixed _____	
Work in progress			Auctioneers' and valuers' Charges	
Freehold property			Costs of possession and maintenance of estate	
Leasehold property			Costs of notices in Gazette and newspapers	
Plant and machinery			Incidental outlay	
Furniture, fittings, utensils, etc.				
Patents, trademarks, etc.				
Investments other than marketable securities				
Surplus from securities				
Unpaid calls at commencement of liquidation				
Shs.			Shs.	
Amounts received from calls on contributories made in the liquidation			Total costs and charges— (i) debenture holders—	

	Statement of assets and liabilities Shs.	Receipts Shs.		Payments Shs.
Receipts per trading account			payment of ___ shs. per ___ shs. Debenture	
Other property, etc. viz—			payment of ___ shs. per ___ shs. Debenture	
			payment of ___ shs. per ___ shs. Debenture	
Shs.			Shs.	
Less—			(ii) creditors— Preferential Unsecured	
Payments to redeem securities				
Costs of execution			Dividend(s) of ___ shs. in the ___ on ___ shs.	
Payments per trading account			(The estimate of amount expected to rank for dividend was ___ shs.)	
Payments per trading account			(The estimate of amount expected to rank for dividend was ___ shs.)	
Net realizations			(iii) Returns to contributories— Shs.	
			shs. ___ per ___ share ²	
			shs. ___ per ___ share ²	
			shs. ___ per ___ share ²	
			Balance	

5. State number. Preferential creditors need not be separately shown if all creditors have been paid in full.

6. State nominal value and class of share.

(i) Assets, including _____ shown in the statement of assets and liabilities and estimated to be of the value of _____ shillings have proved to be unrealizable.

(ii) State amount paid into the Companies Liquidation Account in respect of _____ Shs.

(a) unclaimed dividends payable to creditors in the liquidation _____

(b) other unclaimed distributions in the liquidation _____

(c) Monies held by the company in trust in respect of dividends or other sums due before commencement of the winding up to any person as a member of the company _____

(iii) Add here any special remarks the liquidator thinks desirable—

Dated this _____ day of _____, 20 _____

Liquidator

Form No. 32K

r. 77G(2)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

L. O. made on20.....OF.....

NOTICE OF LIQUIDATOR'S STATEMENT OF ACCOUNTS

(Section 402(2) of the Insolvency Act)

TAKE NOTICE THAT the Statement of Accounts of the liquidation will be presented at a general meeting of the company at (state place) between (specify time) *

Dated this ____ day of _____, 20 ____

Liquidator.

Must be within thirty days as per section 402(2) of the Act..

Form No. 32L

r. 81(2)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on20.....OF.....

NOTICE TO CREDITORS OF MEETING TO CONSIDER THE RESIGNATION OF A LIQUIDATOR

At the request of G.H..., the Liquidator of the company, a general meeting of the creditors is hereby summoned to be held at, on the ... day of, 20..., at ... o'clock in the noon, for the purpose of considering the resignation of G.H..., from

his office as such liquidator, and in the event of his resignation to appoint a person to fill the vacancy.

Dated this day of, 20.....

(Signed) G.H.,

Liquidator of the company

Form No. 34A

r. 98A

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

t/a:

B.O. /S. I. O. / L. O. made on20.....OF.....

NOTICE OF DISCLAIMER OF ONEROUS PROPERTY (COMPANIES)

(Section 476 of the Insolvency Act)

To

of [address]

TAKE NOTICE THAT, I C.B.....of.....[insert name and description of liquidator] as Official Receiver/Liquidator of A.B.....of[insert name and description of the company in liquidation], the following property,.....(description of the company's property)..... being property of the company herein, will be disclaimed as onerous, after twenty-one (21) days from the date of this notice, on the following grounds: -

1.
2.
3.

AND FURTHER TAKE NOTICE that if you are dissatisfied with my decision to disclaim the abovementioned property as onerous, you may apply to the Court to reverse or vary the same, but, subject to the power of the Court to extend the time, no application

to reverse or vary my decision in disclaiming the property as onerous will be entertained after the expiration ofdays from this date.

Dated this day of, 20....

Official Receiver or Liquidator

To be served upon:

- 1. The Official Receiver
- 2. Creditors
- 3. Debtor
- 4. Others

*The Official Receiver (If the application was made in Court)

Form No. 36

R. 101A(2)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

A. O. made on20.....OF.....

APPLICATION FOR AN ADMINISTRATOR

I/WE, C.D.,[insert name and description of the applicant] of [insert address of the applicant] do, on the grounds set out in the annexed affidavit, apply to the Court to appoint some fit and proper person as Administrator of the property of A.B. [insert name and description of the company] of[insert address of the company] in accordance with the provisions of the Insolvency Act and [insert any special directions to the Trustee that may be desired].

Dated this day of, 20.....

(Signed) C.D.

To be served upon:

- 1. The Official Receiver
- 2. The Company/Directors
- 3. The Creditors

Form No. 37

R. 101A(3)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

THE INSOLVENCY ACT

IN INSOLVENCY CAUSE NO.....OF 20.....

RE:.....

A.O. made on20.....OF.....

ADMINISTRATION ORDER

(Section 530 and 531 of the Insolvency Act)

Upon the application of [insert name of and description of company or creditor or contributory or provisional liquidator or liquidator], of [insert address], dated [Insert date], filed on the [insert date] day of 20.....

Having heard and having read; and having seen the exhibits;

And it appearing to the court that the grounds for application for administration by the court are valid [Set out the nature and dates of the grounds on which the order is made]:

1. The Court hereby orders that A.B. [Insert name, address and description of company as set out in the petition or proof to the court] enters into administration.
2. The Court further orders that C.B [insert name and description of administrator], of [Insert address of administrator], be appointed as the administrator of the company.

Dated at, this day of 20

Judge or Registrar

(d) The principal Regulations are amended in the Second Schedule by inserting the following new fees —

Subject Matter	Proposed Fee
Perusal of file.	Kshs. 200/= per file
Inspection of documents.	Kshs. 200/= per file
Certified copy.	Kshs. 500 per page
Newspaper advertisement.	As per the printers' rate
Kenya Gazette advertisement.	As per the printers' rate
Certified Copy of the public Register of— Bankrupt/ No Asset Procedure /Summary Instalment Order	Kshs. 1,000/=
Filing fee for No Asset Procedure.	Kshs. 15,000/=

<i>Subject Matter</i>	<i>Proposed Fee</i>
Filing fee for Summary Instalment Order.	Kshs. 20,000/=
Application for list of Insolvency practitioners.	Kshs. 500/=
Official Search of a public register.	Kshs. 1,000/=
Filing fees for Voluntary arrangement of natural persons.	Kshs. 30,000/=
Fees for filing notice of appointment of Administrator.	Kshs. 10,000/= per appointment
Fees for notice of appointment of a liquidator.	Kshs. 10,000/= per appointment
Penalty for failure to file notice of appointment of a liquidator or administrator.	Kshs. 30,000/=
fees for filing notice of appointment of supervisor of Company Voluntary Arrangement.	Kshs. 10,000 per appointment
Proposed fee for Members Voluntary Liquidation.	Based on the subject matter. On the first Kshs. 1,000,000/= pay Kshs. 100,000/= 10% on the balance thereafter.
Proposed fee for Creditors Voluntary Liquidation.	Based on the subject matter. On the first Kshs. 1,000,000/=..... pay Kshs. 150,000/= 10% on the balance thereafter.
Appointment of Proxy Rule 26 (8)	Kshs. 500/=

(e) The principal Regulations are amended in the Third Schedule in paragraph 15 by inserting the following new sub-paragraph immediately after sub-paragraph (3)—

(4) If there is no quorum as per section 402 of the Act, the liquidator shall issue a notice in Form 32I set out in the First Schedule, to the Registrar.

Dated the 19th January, 2018.

GITHU MUIGAI,
Attorney- General.

**EXPLANATORY MEMORANDUM TO THE INSOLVENCY (AMENDMENT)
REGULATIONS, 2018**

PART I

Name of the Statutory Instrument: The Insolvency (Amendment) Regulations, 2018.

Name of the Parent Act: The Insolvency Act, 2015

Enacted Pursuant to: Section 730 of LN. NO.18 of 2015

Name of the Ministry/ Department: Office of the Attorney General and the Department Of Justice, Business Registration Service

Gazetted on: 26th January, 2018

Tabled on:

PART II

1. The Purpose of the Insolvency (Amendment) Regulations, 2018

The purpose of these Regulations is to provide for the proper implementation of the Insolvency Act, 2015 by coming up with the missing forms and streamlining some of the regulations to give effect for the Act.

2. Legislative Context

The Insolvency Act, 2015 empowers the Attorney General to make regulations necessary or convenient for carrying out or giving effect to the Act. The Insolvency (Amendment) Regulations, 2018 are therefore issued to give effect to the Act.



3. Policy Background

The regulatory framework on insolvent persons and entities is an initiative of the Office of the Attorney General, Law Society of Kenya, Institute of Certified Public Secretaries of Kenya, Institute of Certified Public Accountants of Kenya, the Capital Market Authority, IBM Research Africa, Insurance Regulatory Authority, Kenya Law Reform Commission, PricewaterhouseCoopers Limited, Deloitte & Touche, Ernst & Young including law firms like Anjarwalla & Khanna Advocates, Coulson Harney Advocates, Raffman, Dhanji Elms & Virdee Advocates, Walker Kontos Advocates, Hamilton Harrison & Matthews Advocates and Kaplan & Stratton Advocates .

Further, these regulations will significantly improve Kenya's ranking on the ease of doing business index under the 'Resolving Insolvency' indicator.

4. Consultations Outcome

The Insolvency (Amendment) Regulations, 2018 have taken into account the views of the key personnel in the Office of the Attorney General and Department of Justice who are versed with the operational aspects of resolving insolvency in Kenya. The Attorney General in coming up with the regulations has sought the extensive input of the Ag- Director General who is the accounting officer and administrator of the Business Registration Service.

The other key stakeholders from Law Society of Kenya, Institute of Certified Public Secretaries of Kenya, Institute of Certified Public Accountants of Kenya, the Capital Market Authority, IBM Research Africa, Insurance Regulatory Authority, Kenya Law Reform Commission, PricewaterhouseCoopers Limited, Deloitte & Touche, Ernst & Young including law firms like Anjarwalla & Khanna Advocates, Coulson Harney Advocates, Raffman, Dhanji Elms & Virdee Advocates, Walker Kontos Advocates, Hamilton Harrison & Matthews Advocates and Kaplan & Stratton Advocates and the Office of the Attorney General.

5. Guidance

The Business Registration Service will sensitize its officers for adherence to the objectives of accountability and efficiency in the management of the Registry. The Service will also engage key stakeholders whose participation and cooperation remains instrumental in the successful implementation of the key aspects of the Insolvency Act and the regulations.

6. Impact Assessment

As impact assessment has not been prepared for this Instrument. The instrument is made pursuant to the objectives as operationalised by the Insolvency Act.

7. Review of the Regulations

The Ag. Director General shall monitor the application of the Insolvency (Amendment) Regulations. This will be done through the reports prepared at regular intervals. In addition, the implementers of the regulations will carry out regular monitoring and evaluation of the specific provisions of these regulations with the aim of initiating any legislative amendments as may be necessary on an annual basis.

8. Contact Person

The contact person at the Office of the Attorney General is Hon. Githu Muigai, EGH, SC Attorney General or Mr. Kenneth Gathuma, Ag- Director General, Business Registration Service.