

Rwanda

## Instructions of the Registrar General relating to Commercial Recovery and Settling of Issues Arising from Insolvency

Instructions of the Registrar General 1 of 2012

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Instructions of the Registrar General relating to Commercial Recovery and Settling of Issues Arising from Insolvency  
Contents

Chapter One – General provisions .....	1
Article One – Purpose .....	1
Chapter II – Licensing an insolvency administrator .....	1
Article 2 – Registration of insolvency administrator .....	1
Article 3 – Eligibility for registration .....	1
Article 4 – Application for registration as an Insolvency administrator .....	2
Article 5 – Registration of insolvency administrators .....	2
Article 6 – Rejection of application for registration .....	2
Article 7 – Certificate of insolvency administrator .....	3
Article 8 – Changes in registration details .....	3
Article 9 – Annual renewal of registration .....	3
Article 10 – Cancellation of registration .....	3
Article 11 – Operation of and access to register of insolvency administrators .....	4
Article 12 – Purpose of register .....	4
Article 13 – Content of the register .....	4
Chapter III – Insolvency administrators body .....	4
Article 14 – Body of insolvency administrators .....	4
Article 15 – Responsibilities of the body .....	4
Article 16 – Responsibilities of the Executive Committee of the body .....	5
Article 17 – Meetings of the body .....	5
Article 18 – Quorum of the meeting .....	5
Chapter IV – Supervision of insolvency proceedings .....	5
Article 19 – Notification to the Registrar General of duties granted by the court .....	5
Article 20 – Submission of reports .....	5
Chapter V – Criteria to determine remuneration of an insolvency administrator .....	6
Article 21 – Remuneration of insolvency administrators .....	6
Chapter VI – Determining the assets which can be deducted in insolvency proceedings .....	6
Article 22 – List of assets .....	6
Chapter VII – Final provisions .....	6
Article 23 – Insolvency administrators registered .....	6
Article 24 – Repealing provision .....	6
Article 25 – Commencement .....	6

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# Instructions of the Registrar General relating to Commercial Recovery and Settling of Issues Arising from Insolvency

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**Assented to on 4 April 2012**

**Commenced on 23 April 2012**

*[This is the version of this document from 23 April 2012.]*

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 as revised to date, especially in Article 201;

Pursuant to [Law no 12/2009](#) of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency, especially in Articles 5, 10 and 43;

Reviewing the instructions of the registrar general N° 03/2009/org of 24/06/2009 relating to commercial recovery and settling of issues arising from insolvency;

**The Registrar General hereby instruct:**

### Chapter One General provisions

#### Article One – Purpose

These instructions shall govern matters relating to licensing insolvency administrators, supervision of insolvency proceedings, and remuneration of insolvency administrators and inventory of assets not subject to insolvency proceedings.

### Chapter II Licensing an insolvency administrator

#### Article 2 – Registration of insolvency administrator

A person shall not act as an insolvency administrator unless the person is registered as an insolvency administrator with the office of the Registrar General.

#### Article 3 – Eligibility for registration

A person is eligible to be registered as insolvency administrator if:

- is a natural person of at least 21 years of age and complies with the following requirements:
  1. reside in Rwanda;
  2. hold at least a bachelor's degree in either law, accounting, management, economics or any other related fields;
- Further, unless the court orders otherwise, a person is not eligible to be an insolvency administrator, if:
- He or she is prohibited from acting as an administrator, a liquidator or a receiver,

- Has had his or her registration as an insolvency administrator cancelled;
- He or she is a lawyer whose membership of the bar association is revoked or suspended;
- He or she is an accountant whose membership of the institute of certified Public Accountants of Rwanda is revoked or suspended,
- He or she is a member of a prescribed professional body whose membership of that body is revoked or suspended,
- He or she has been disqualified from being appointed or holding office as a director of a company,
- He or she is personally insolvent;
- He or she has been convicted of the crime of genocide or the crime of genocide ideology,
- He or she has been convicted of a crime involving fraud and/or dishonesty
- He or she has been convicted of a sentence of imprisonment of six (6) months or above without reprieve,
- He or she is, or is deemed to be, subject to a treatment order of mental health.

#### **Article 4 – Application for registration as an Insolvency administrator**

Any person who wishes to be a registered insolvency administrator shall apply to the Registrar General in writing.

The application shall include the following:

- The applicant's full name;
- The applicant business address;
- The name and contact details of any relevant professional body of which the applicant is a member.

The application shall be accompanied by the following:

- Curriculum vitae
- Notarized copies of academic qualifications,
- Valid criminal record,
- Any other information or document deemed to be relevant by the application for this purpose.

#### **Article 5 – Registration of insolvency administrators**

If it is determined that an applicant is eligible to be registered as an insolvency administrator under article 3 and has applied in accordance with article 4; the Registrar General may, within 30 days from the date of application:

- Register the applicant as an insolvency administrator by recording the person's details on the appropriate register and include him or her on the list of approved insolvency administrators,
- Deliver to the applicant the certificate of an insolvency administrator.

#### **Article 6 – Rejection of application for registration**

The Registrar General may reject an application for registration if:

- The person is not eligible under article 3 of these instructions
- The person has not applied in accordance with Article 4 of these instructions.

Within 30 days after rejecting an application, the Registrar General shall give the person written notice of the following matters:

- That the person's application has been rejected,
- The reasons for rejection the application.

### **Article 7 – Certificate of insolvency administrator**

The certificate of an insolvency administrator shall contain at least the following information:

- Names and address of the insolvency administrator;
- Number of the certificate;
- Duration of validity of the certificate;
- Date of issue;
- Stamp and signature of the Registrar General.

### **Article 8 – Changes in registration details**

A registered insolvency administrator shall, within 15 days after a change in any of the details recorded on the register in relation to that administrator, notify the Registrar of the change.

### **Article 9 – Annual renewal of registration**

A registered insolvency administrator must file with the Registrar General an annual registration renewal request containing relevant details relating to that insolvency administrator.

The renewal request must:

- be filed each year not later than the end of the month in which it is due;
- confirm that the person is still eligible under the article 3 to be registered insolvency administrator;
- confirm that the person's registration details are correct; and
- be accompanied by a recommendation from the chairman of the body of insolvency administrator.

### **Article 10 – Cancellation of registration**

The Registrar General shall cancel a person's registration as an insolvency administrator, if the Registrar General is satisfied that the person:

- is unfit to act as an insolvency administrator by reason of failure to perform the responsibilities of an insolvency administrator,
- was registered as an insolvency administrator as a result of false or misleading representation or omission;
- is no longer eligible to be a registered insolvency administrator,
- Fails to file an annual renewal request during the prescribed time.

Within 15 days after cancelling a person's registration, the Registrar General shall:

- remove the person's details from the Register, and
- deliver a written notice to the person whose the registration has been cancelled stating the reasons for cancellation.

## **Article 11 – Operation of and access to register of insolvency administrators**

The register may be kept as an electronic register or in any manner that the Registrar General thinks fit.

The register must be available for access and search by the public at all times. However, the registrar general may refuse access to the register or suspend its operation, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

## **Article 12 – Purpose of register**

The purpose of the register is to enable the public to:

- determine whether a person is a registered insolvency administrator, and
- choose an insolvency administrator from a list of registered insolvency administrators and
- Know how to contact an insolvency administrator.

## **Article 13 – Content of the register**

The register shall have the following details:

- The insolvency administrator's full name,
- The insolvency administrator's address
- The name and contact details of any relevant professional body of which the person is a member,
- Any other information deemed necessary by the Registrar General.

## **Chapter III Insolvency administrators body**

### **Article 14 – Body of insolvency administrators**

A body of insolvency administrators composed by all registered insolvency administrators is hereby established.

The body shall elect its executive committee composed of the chairman, Vice Chairman, Secretary and 2 advisors for a period of two years renewable.

### **Article 15 – Responsibilities of the body**

The body of insolvency administrators shall perform the following responsibilities:

- Protect the integrity of the insolvency administrator's profession;
- Exercise professional supervision over its members;
- Establish rules for observance in matters pertaining to codes of professional conduct and practice and the award of certificates and qualifications.
- Provide recognized qualifications for persons who are employed or otherwise engaged in insolvency administration;
- Provide a forum for discussion and considering issues affecting the interests of the profession.
- Encourage the study of the theory and practice in subjects allied or related to the work performed by insolvency administrators and to the profession;

- Assist in the organization of or otherwise provide facilities and opportunities for training, instruction, education and development of insolvency administrators;
- Disseminate by other means of information connected with or of interest to the profession.

### **Article 16 – Responsibilities of the Executive Committee of the body**

The executive committee of the body of insolvency administrators shall have the following responsibilities:

- Prepare meetings of the body,
- Maintain good conduct and professionalism among insolvency administrators,
- Resolve conflicts between insolvency administrators if any,
- Analyze and submit queries from insolvency administrators to the Registrar General.

### **Article 17 – Meetings of the body**

The meetings of the body of insolvency administrators shall be convened and chaired by the Registrar General or the chairman of the body in the absence of the Registrar General.

The Meeting may be formally convened at least fourteen (14) days before the date of the meeting.

The resolutions of the meeting shall be adopted by simple majority of all members present in that meeting.

The minutes of the meetings shall be prepared by the secretary and signed by both the Chairman and secretary of the body.

The resolutions of the body of insolvency administrators shall be submitted to the Registrar General, for approval before coming into force.

### **Article 18 – Quorum of the meeting**

The Meeting of the body shall be established on first call with the attendance, in person or by proxy, of at least 50% of registered insolvency administrators. If a sufficient quorum is not achieved, the Meeting shall be held on second call.

On second call the quorum mentioned in the previous paragraph shall be respected.

## **Chapter IV Supervision of insolvency proceedings**

### **Article 19 – Notification to the Registrar General of duties granted by the court**

An insolvency administrator shall, within forty-eight hours (48) after the court has defined his/or her duties, notify to the Registrar General the court letter granting him/or her duties and a guarantee document with regard to the services he or she is going to perform in insolvency proceedings.

The guarantee of administrator is calculated on basis of the active value of debtor's property from the date its functions become effective.

### **Article 20 – Submission of reports**

An insolvency administrator shall report to the Registrar General every three months on the use of his or her powers as insolvency administrator.

## **Chapter V**

### **Criteria to determine remuneration of an insolvency administrator**

#### **Article 21 – Remuneration of insolvency administrators**

Without prejudice to provisions of the law relating to commercial recovery and settling of issues arising from insolvency;

- In case the insolvency administrator recovered the company's activities, he/or she shall receive a remuneration not exceeding ten percent (10%) of the gross benefits of the company's recovered activities.
- The insolvency administrator shall get a remuneration not exceeding five percent (5%) of the sold assets where the company is liquidated.

The insolvency administrator shall prove in writing other expenses incurred relating only to these activities in order to be refunded.

## **Chapter VI**

### **Determining the assets which can be deducted in insolvency proceedings**

#### **Article 22 – List of assets**

The insolvency administrator shall set up a list of necessary domestic assets of the debtor and the family which may be approved by the Registrar General within fifteen (15) open days from the deposit date.

## **Chapter VII**

### **Final provisions**

#### **Article 23 – Insolvency administrators registered**

Insolvency administrators registered in accordance with the Instructions of the Registrar General N° 03/2009/ORG of 24/06/2009 relating to commercial recovery and settling of issues arising from insolvency have six 6 months from the date of publication of these Instructions to file with the Registrar General a registration renewal request as provided for by these Instructions.

#### **Article 24 – Repealing provision**

Instructions of the Registrar General n° 03/2009/ORG of 24/06/2009 relating to commercial recovery and settling of issues arising from insolvency are repealed.

#### **Article 25 – Commencement**

These Instructions shall come into force on the date of their publication in the Official *Gazette* of the Republic of Rwanda.