

Insolvency Law

1. Introduction to insolvency

1.1 Schematic representation of the overall Insolvency Law

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
1.1.1 Overview of the law of insolvency				Overview of the law of insolvency

2. Sequestrations

2.1 Compulsory sequestrations

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.1.1 What is compulsory sequestration?				Advantages and disadvantages of compulsory sequestration
2.1.2 When can an individual be sequestrated		Notice of inability to pay debts		Example of a nulla bona return of service
2.1.3 Provisional sequestration, final sequestration and the discretion of the court				Example of a draft order

2.2 Voluntary surrender and friendly sequestrations

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.2.1 When does voluntary surrender apply		Statement of Affairs		
2.2.2 Procedure regarding voluntary surrender		Notice of surrender of a debtor's estate Statement of Affairs	Voluntary surrender checklist	Process for lodging Statement of Affairs
2.2.3 Application for surrender of the debtor's estate and the court's discretion		Notice of surrender of a debtor's estate Statement of Affairs	Voluntary surrender checklist	
2.2.4 Friendly sequestrations				

2. Sequestrations

2.3 The effect of sequestrations

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.3.1 Effect of sequestration on an insolvent		Form 19 – Form of security under rule 45(5) Form 37 – Security under rule 38		
2.3.2 Effect on the property of an insolvent debtor				
2.3.3 Effect of sequestration on contracts and legal proceedings not finalised				
2.3.4 Effect of a sequestration on the solvent spouse		Statement of Affairs		

2.4 Section 9(1) application

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.4.1 Drafting the sequestration application		Notice of motion template for sequestration application Sequestration application		Windeed website Company's Intellectual Property Commission (CIPC) office (web)

2.5 The trustees

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.5.1 Appointment, remuneration and removal of trustees		Requisition form		Certificate of appointment of trustees Persons disqualified from being a trustee Vacation and removal from office of a trustee
2.5.2 Powers of a trustee				

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2. Sequestrations

2.6 The creditors

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.6.1 Meeting of creditors				Table of meeting of creditors
2.6.2 Voting and resolutions				
2.6.3 Proof of creditors' claims				Flow diagram of proof of claims procedure
2.6.4 Ranking of creditor's claims	Singer NO v Master of the Supreme Court, Transvaal Provincial Division and Another			Table of ranking of claims

2.7 Impeachable dispositions

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.7.1 Proceedings to set aside impeachable dispositions		Notice of motion to set aside vote. Founding affidavit to set aside vote		

2.8 After the sequestration

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.8.1 Procedure and special rules for realization				
2.8.2 Realization of solvent spouse's assets				
2.8.3 Estate accounts and distribution		Written objection		Diagram of time frames for submitting estate documents
2.8.4 Alternatives to sequestration		Notice of motion template for application of administration order		Debt Review SA (web)

2.9 Rehabilitation

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
2.9.1 Rehabilitation of the insolvent debtor				
2.9.2 Rehabilitation application to court and documentary requirements		Notice of motion and founding affidavit for application for rehabilitation	Documents to accompany application for rehabilitation	Example of notice for application for rehabilitation

3. Liquidations

3.1 Applicable legislation

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.1.1 Applicable law in relation to the winding-up of a company	Legh v Nungu Trading 353 (Pty) Ltd			

3.2 Voluntary winding-up

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.2.1 Voluntary winding-up of a company by members		Special resolution CM26 Bond of security Statement of Affairs CM100		CIPC website (web) CIPC (web)
3.2.2 Voluntary winding-up of a company by creditors		Special resolution Statement of Affairs CM100		CIPC website (web) CIPC (web)

3.3 Winding-up by court

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.3.1 Application to court				
3.3.2 Procedural requirements to wind-up a company		Template of affidavit to wind-up a company		
3.3.3 Winding-up a solvent company				Table illustrating who can institute a voluntary liquidation order
3.3.4 Winding-up an insolvent company		Section 345 letter of demand		

3.4 Effect of winding-up order

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.4.1 Effect of a winding-up order on the company, its assets and directors	Van Rensburg N.O. and Another v Cardio-Fitness Properties (Pty) Ltd and Others (46194/13) [2014] ZAGPJHC 40 (4 March 2014)			
3.4.2 Effect of liquidation on contracts of employment				

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3. Liquidations

3.4 Effect of winding-up order

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.4.3 Effect of liquidation on civil action against the company and its directors				Summary of the effect a liquidation order has on legal proceedings

3.5 Process after winding-up order is obtained

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.5.1 Provisional vs final order of liquidation		Provisional order of liquidation		
3.5.2 Notice of winding-up				Example of Provisional order
3.5.3 Lodgment of statement of affairs with the Master		Statements of Affairs		Annexure CM100 (web) CIPC website

3.6 Provisional and final liquidators

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.6.1 Appointment of provisional and final liquidators		Requisition form	Process of appointing liquidators	Master's Circulars
3.6.2 Powers of provisional and final liquidators	Van Rensburg N.O. and Another v Cardio-Fitness Properties (Pty) Ltd and Others (46194/13) [2014] ZAGPJHC 40 (4 March 2014)	Application to Master to extend provisional liquidator's powers	Requirements for different modes of sale	Certificate of appointment
3.6.3 How to disqualify or remove a liquidator		Founding affidavit for removal of liquidator		

3.7 Proof of claims

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.7.1 Proof of claims and ranking of claims		Claim affidavit		
3.7.2 Ranking of claims	Redpath Mining South Africa (Pty) Ltd v Marsden NO and Others (18486/2013) [2013] ZAGPJHC 148 (14 June 2013)			

3. Liquidations

3.7 Proof of claims

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.7.3 Meeting of creditors and members		Statement of Affairs Motivation to Master to subpoena witnesses Form 2 - Meeting of creditors in sequestrated estates Report by the liquidator Witness summons		Companies and Intellectual Property Commission (CIPC) (web) Advertisement in Gazette to convene first meeting of creditors
3.7.4 Voting and resolutions		Resolution Proxy form to vote at a meeting of creditors Template of proxy form to vote at a meeting of creditors		

3.8 Enquiries

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.8.1 Section 415 enquiry		Section 415 subpoena		
3.8.2 Section 417 enquiry		Template application to Master for commission of enquiry		

3.10 Liquidation and distribution account

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.10.1 Liquidation and distribution accounts				Example of an application to the Master requesting an extension Example of a L & D Account
3.10.2 Submission of accounts				
3.10.3 Process regarding the lodging of accounts				

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3. Liquidations

3.1 Reckless trading

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.1.1 Reckless trading and liability of a director				

3.12 Voidable dispositions

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
3.12.1 Voidable dispositions that may be set aside				List of dispositions which may be set aside
3.12.2 Proceedings to set aside voidable dispositions		Notice of motion to set aside a voidable disposition Founding affidavit to set aside a voidable disposition		List of dispositions which may be set aside

4. Business rescue

4.1 What is business rescue

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.1.1 Overview of business rescue and how it fits into the law of insolvency				Schematic diagram of the entire business rescue process

4.2 How to enter into business rescue

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.2.1 When can a board place the company under business rescue		Form CoR123.1 Sworn statement Resolution to begin business rescue		Annexure 3 Table CR 3 – Methods and times for delivery of documents Practice Note 3 of 2014 – Business rescue filing procedure Annexure 3 Table CR 3 – Methods and times for delivery of documents Diagram illustrating process to be followed when entering into business rescue by means of a resolution

4. Business rescue

4.2 How to enter into business rescue

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.2.2 Setting aside the voluntary resolution				
4.2.3 Compulsory application to court				Annexure 3 Table CR 3 – Methods and times for delivery of documents

4.3 The Business Rescue Practitioner

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.3.1 Appointment of a Business Rescue Practitioner				Business rescue plan
4.3.2 Powers of the Practitioner		COR125.2 - Notice of termination of business rescue proceedings		Annexure 3 Table CR 3 – Methods and times for delivery of documents Diagram of the process when entering into business rescue by means of a resolution

4.4 Effect of business rescue

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.4.1 Legal moratorium				
4.4.2 Protection of property interest				
4.4.3 Effect on contracts, shareholders and directors				
4.4.4 Effect on sureties and guarantees		Survival of compromise clause		

4.5 Role players

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.5.1 Rights of employees				
4.5.2 Rights of creditors				

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4. Business rescue

4.6 The business rescue plan

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.6.1 Formulation of the business rescue plan				Business rescue plan
4.6.2 Voting on a plan	Commissioner of South African Revenue Services v Beginsel NO and Others			How to calculate the voting interest - table
4.6.3 Purchasing a creditor's vote				
4.6.4 Setting aside a vote as inappropriate				
4.6.5 Failure to adopt business rescue plan				Steps to take when the business rescue plan is not approved

4.7 Post-commencement financing and ranking of claims

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.7.1 Post-commencement financing and its provision				Example of creditor's consent Business rescue plan
4.7.2 Ranking of creditor's claims in business rescue				

4.8 Termination of business rescue

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
4.8.1 Termination of business rescue and the effect		Notice of motion to set aside vote on business rescue plan Form CoR 125.2 – Notice of termination of business rescue proceedings	Application to set aside resolution checklist	

5. Criminal offences

5.1 Criminal offences applicable to insolvency law

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
5.1.1 List of criminal offences				

6. Cross border insolvency

6.1 Overview of cross border insolvency law

Guidance Note	Case Law	Forms & Precedents	Checklists	Other Resources
6.1.1 Cross border insolvency under the common law				
6.1.2 Cross border insolvency under the Act				