

The Board of Directors of the DIFCA, in the exercise of the powers conferred on them by Articles 67(2) and 93 of the Law hereby makes these Regulations.

1. INTRODUCTION

1.1 Application and Interpretation

1.1.1 These Regulations apply to any person to whom the Law applies.

1.1.2 These Regulations come into force on the date on which they are made. For the avoidance of doubt, these Regulations apply to all existing insolvency and similar proceedings which are subject to the Law whether or not the relevant date for the purposes of these Regulations in relation to such proceedings occurs before or after the implementation date of these Regulations.

1.1.3 The following defined terms have the meaning given below:

Debtor	means the Company concerned.
Employment Law	means the Employment Law No. 4 2005.
Law	means the Insolvency Law No. 7 2004.
Preferential debts	means debts of a Company which are listed in Section 3. References to preferential creditors are to be read accordingly.
Relevant date	has the meaning given to it by Regulation 4.5.

1.1.4 All other defined terms have the same meaning they have under the Law and the Companies Law except where the context otherwise requires.

1.2 General interpretative provisions

1.2.1 Where the reference is made in the Regulations to a statutory provision, it is a reference to the provision as amended, and includes a reference to that provision as extended or applied by or under any other provision, unless the contrary intention applies.

1.2.2 Unless the contrary intention appears:

- (a) words in the Regulations importing the masculine gender include the feminine and words importing the feminine gender include the masculine;
- (b) words in the Regulations in the singular include the plural and words in the plural include the singular;
- (c) references to Sections and Regulations are to Sections and Regulations of the Regulations; and

- (d) headings used in the Regulations are for convenience only and are not intended to affect the meaning of the provisions of the Regulations.

2. PREFERENTIAL DEBTS

2.1 General provisions

2.1.1 In a winding up the Company's Preferential debts shall be paid in priority to all debts which are:

- (a) unsecured; or
- (b) secured by a security interest over all or substantially all of the undertakings or assets of the Company.

2.1.2 Preferential debts:

- (a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and
- (b) so far as the assets of the Company available for payment of general creditors are insufficient to meet them, have priority over the claims secured by a security interest over all or substantially all of the undertakings or assets of the Company, and shall be paid accordingly out of any property comprised in or subject to that security interest.

3. PAYMENT OF DEBTS OUT OF ASSETS SUBJECT TO A SECURITY INTEREST OVER ALL OR SUBSTANTIALLY ALL OF THE UNDERTAKINGS OR ASSETS OF THE COMPANY

3.1 Application

3.1.1 This Section 3 applies, in the case of a Company, where an administrative receiver is appointed on behalf of the secured parties of the Company secured by a security interest over all or substantially all of the undertakings or assets of the Company.

3.2 Priority of payment

3.2.1 If the Company is not at the time in the course of being wound up, its Preferential debts shall be paid out of the assets coming to the hands of the administrative receiver in priority to any claims for principal or interest in respect of the obligations of the Company secured by a security interest over all or substantially all of the undertakings or assets of the Company.

3.2.2 Payments made under this Section 3 shall be recouped, as far as may be, out of the assets of the Company available for payment of general creditors.

3.3 Payment to Directors and Officers of a Company

3.3.1 Notwithstanding anything in these Regulations, no Director or Officer of a Debtor shall be entitled to receive any sum accrued to him under these Regulations if the Court so orders. The Court may make an order in accordance with this Regulation on application by the liquidator, provisional liquidator, receiver or administrative receiver (as the case may be) or on its own initiative if there is an outstanding claim against the relevant Director or Officer of the Debtor in relation to the insolvency of the Debtor.

3.3.2 For the purposes of these Regulations Preferential debts shall not include any sum accrued to a Director or Officer of a Debtor if and to the extent that the Court determines that such a Director or Officer is fully or partially responsible for the Debtor's insolvency.

4. CATEGORIES OF REFERENTIAL DEBTS

4.1 Category 1: Contributions to pension schemes, end of service gratuity payment, etc.

4.1.1 Any sum which is owed by the Debtor which is a contribution to a pension scheme on behalf of the Debtor's employees (if any) or end of service gratuity payments.

4.2 Category 2: Remuneration, payment in lieu of notice, etc., of employees

4.2.1 Any sum:

- (a) which is owed by the Debtor to a person who is or has been an employee of the Debtor;
- (b) which is payable by way of remuneration in respect of the whole or any part of the period of 4 months next before the relevant date; and
- (c) which does not exceed such sum as may be prescribed by order made from time to time by the Board of Directors of the DIFCA.

4.2.2 Any sum owed by way of payment in lieu of notice which is owed by the Debtor to a person whose employment by the Debtor has been terminated, whether before, on or after that date.

4.2.3 Any sum owed by way of accrued compensation in lieu of vacation leave, in respect of any period of employment before the relevant date, to a person whose employment by the Debtor has been terminated, whether before, on or after that date.

4.2.4 Any sum owed in respect of money advanced for the purpose of the payment of a debt which, if it had not been paid, would have been a debt falling within Regulations 4.2.1 to 4.2.3.

4.2.5 Any sum:

- (a) which is ordered (whether before or after the relevant date) to be paid by the Debtor under the Employment Law;
- (b) which is so ordered in respect of a default made by the Debtor before that date in the discharge of his obligations under the Employment Law; and
- (c) which does not exceed such sum which may be prescribed by order made from time to time by the Board of Directors of the DIFCA.

4.3 Interpretation for Category 2

4.3.1 For the purposes of Section 4.2 a sum is payable by the Debtor to a person by way of remuneration in respect of any period if:

- (a) it is paid as wages or salary (whether payable for time or for piece work or earned wholly or partly by way of commission) in respect of services rendered to the Debtor in that period; or

- (b) it is a sum required to be paid by the Debtor under the Employment Law and it is payable by the Debtor in respect of that period.

4.3.2 Regulation 4.3.3 relates to a case in which a person's employment has been terminated by or in consequence of his employer going into liquidation or (his employer being a Debtor not in liquidation) by or in consequence of a receiver being appointed as mentioned in Part 3, Section 14 of the Law.

4.3.3 For the purposes of Section 4.2 compensation in lieu of vacation leave is deemed to have accrued to that person in respect of any period of employment if, by virtue of his contract of employment or of any enactment that compensation would have accrued in respect of that period if his employment had continued until he became entitled to be allowed the vacation.

4.3.4 The reference in Regulation 4.3.3 to any enactment includes an order or direction made under an enactment.

4.3.5 Without prejudice to Regulations 4.3.1 and 4.3.2:

- (a) any compensation payable by the Debtor to a person in respect of a period of vacation or of absence from work through sickness or other good cause is deemed to be wages or (as the case may be) salary in respect of services rendered to the Debtor in that period; and
- (b) references here and in those paragraphs to compensation in respect of a period of vacation include any sums which, if they had been paid, would have been treated for the purposes of any enactments relating to social security as earnings in respect of that period.

4.4 **Orders**

4.4.1 An order under Regulations 4.2.1 or 4.2.4 may contain such transitional provisions as may appear to the Board of Directors of DIFCA necessary or expedient.

4.5 **Relevant date**

4.5.1 For the purposes of these Regulations in relation to a Debtor which is being wound up, the following applies:

- (a) if the Debtor:
 - (i) is being wound up by the court, and
 - (ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;

- (c) in any other case, the relevant date is the date of the passing of the resolution for the winding up of the Debtor.

4.5.2 For the purposes of these Regulations in relation to a Debtor in receivership the relevant date is the date of the appointment of the receiver.