



STATUTORY INSTRUMENTS.

S.I. No. 247 of 2013

PERSONAL INSOLVENCY ACT 2012 (ACCOUNTS AND RELATED
MATTERS) REGULATIONS 2013

PERSONAL INSOLVENCY ACT 2012 (ACCOUNTS AND RELATED MATTERS) REGULATIONS 2013

The Insolvency Service of Ireland, in exercise of the powers conferred on it by Section 3 of the Personal Insolvency Act 2012 [No. 44 of 2012] (“the Act”) hereby makes the following regulations:

Citation and Purpose

1. (1) These Regulations may be cited as the Personal Insolvency Act 2012 (Accounts and Related Matters) Regulations 2013.

(2) These Regulations are made for the purposes of Section 173 of the Act.

Scope

2. These Regulations apply to personal insolvency practitioners authorised under Section 164 of the Act.

Safeguarding of Funds

3. (1) A personal insolvency practitioner shall put in place and maintain on a constant basis robust controls and arrangements to safeguard funds received from or on behalf of debtors or held to the credit of debtors and to prevent the use of these funds for the own account of the personal insolvency practitioner or any person other than the creditor or debtor entitled thereto.

(2) A personal insolvency practitioner shall lodge promptly and hold all funds received from or on behalf of or to the credit (in the circumstances referred to in Regulation 3(6)) of each debtor in an account (referable to that debtor only), with a bank authorised to carry on business in the State, solely for the purpose of receiving payments from that debtor and transmitting such payments to creditors after the deduction of any fees, costs and outlays payable to the personal insolvency practitioner under the Act and Regulations made pursuant to the Act and in accordance with the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement.

(3) A personal insolvency practitioner shall disburse funds to creditors according to their respective entitlements under the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement after their receipt from or on behalf of the debtor.

(4) All such accounts referred to in Regulation 3(2) above shall be designated as either a “DSA account” or a “PIA account”, as appropriate, depending on whether the account is to be used to make and receive payments pertaining to a Debt Settlement Arrangement (in these Regulations a “DSA account”) or to a Personal Insolvency Arrangement (in these Regulations a “PIA account”). A

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 12th July, 2013.

DSA account and a PIA account shall also contain a unique identifier that identifies the debtor that is party to the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement.

(5) A personal insolvency practitioner shall ensure that funds received from or on behalf of each debtor and funds received by the personal insolvency practitioner to which creditors are entitled under the relevant Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement are not co-mingled with those of the personal insolvency practitioner or with those of any other person.

(6) The following shall be the only debits and credits that may be made through a designated DSA account or PIA account:

Credits (inward payments)

- (a) funds received from or on behalf of the relevant debtor in respect of payments due under the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement;
- (b) refunds received from a creditor, the personal insolvency practitioner or, as applicable, the bank for the credit of the relevant debtor, in order to correct any error in making the payments referred to at (d), (e) or (f) below and in reversing the payments referred to at (g) below;
- (c) bank interest, where appropriate;

Debits (outward payments)

- (d) disbursements on behalf of the debtor to a creditor according to his or her entitlement under the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement;
- (e) fees, charges and other outlays due to the personal insolvency practitioner under the Act and Regulations made pursuant to the Act and in accordance with the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Arrangement and for which the personal insolvency practitioner has adequate documentary proof that the fees are properly due at the time of withdrawal;
- (f) bank charges, where appropriate;
- (g) moneys that have been transferred into the DSA account or, as applicable, the PIA account in error for which the personal insolvency practitioner has adequate documentary proof demonstrating such error.

4. A DSA account or a PIA account may never be overdrawn.

5. A personal insolvency practitioner shall ensure that funds held in a DSA account or PIA account are insulated against and not subject to claims of creditors of the personal insolvency practitioner.

6. A personal insolvency practitioner shall, with respect to his or her practice as a personal insolvency practitioner:

- (a) keep such accounting records as are adequate to enable him or her at any time and without delay to distinguish funds held for one debtor or creditor from funds held for any other debtor or creditor and from the funds of the personal insolvency practitioner or any other person; and
- (b) maintain accounting records in such a way that ensures their accuracy and completeness and their independence from those of other practices or businesses in which the personal insolvency practitioner is engaged in another capacity and the practices or businesses of any person, with whom that personal insolvency practitioner is connected with in any practice or business;
- (c) conduct, on a regular basis, reconciliations between his or her internal accounting records and those of the bank with whom the account(s) is held;
- (d) notify the Insolvency Service of Ireland within one business day, in writing, of differences identified during a reconciliation referred to at (c) above that are material or recurrent in nature;
- (e) ensure that the relevant bank is notified in writing on the establishment of each DSA account or PIA account that funds credited to the account do not form assets of the personal insolvency practitioner and for so long as the DSA account or PIA account remains open, ensure that the designation on all such accounts in the personal insolvency practitioner's accounting records sufficiently distinguishes the funds held in those accounts from funds belonging to the personal insolvency practitioner or other persons other than the relevant debtor.

7. (1) A personal insolvency practitioner shall carry out a reconciliation of his or her internal records of amounts held in each DSA account and PIA account with the most recent statement issued or information provided by the relevant bank relating to the balances on such account at a frequency that ensures that the personal insolvency practitioner is fully aware of any discrepancies between the records of the bank and those of the personal insolvency practitioner. Where differences other than timing differences are identified they shall be corrected as soon as possible.

(2) A personal insolvency practitioner shall keep an accurate record of each reconciliation carried out for the purposes of Regulation 6(c) and Regulation 7(1).

(3) A personal insolvency practitioner shall, for the purposes of Regulation 6(c) and Regulation 7(1), notify the Insolvency Service of Ireland immediately, in writing, where he or she has been unable or has failed to perform a reconciliation with the necessary frequency and shall provide an explanation of the inability or failure to conduct the reconciliation.

Receipts and Statements

8. (1) A personal insolvency practitioner shall issue a receipt to each debtor for all moneys received from or on behalf of the debtor. The receipt shall include at least the following:

- (a) the name of the debtor;
- (b) the name of the personal insolvency practitioner;
- (c) the amount of the payment and the date it was received; and
- (d) the type of the insolvency arrangement (being a Debt Settlement Arrangement or Personal Insolvency Arrangement) to which the payment applies.

(2) At least once every year a personal insolvency practitioner shall issue a written statement to a debtor detailing since the beginning of the relevant insolvency arrangement or, if later, the most recent statement for the purposes of this Regulation sent to the debtor:

- (a) all moneys received from the debtor and the date on which they were received;
- (b) the names of and the amounts paid to each creditor;
- (c) the amount of fees, charges and other outlays deducted by the personal insolvency practitioner;
- (d) confirmation that the payments received and made by the personal insolvency practitioner are in accordance with the terms of the Debt Settlement Arrangement or, as applicable, the Personal Insolvency Agreement and where this is not the case the amount of and reason for any shortfall or overpayment; and
- (e) the name of the personal insolvency practitioner.

Accounting Records

9. (1) A personal insolvency practitioner shall, on a constant basis, maintain proper records and books of account pertaining to his or her role as a personal insolvency practitioner and for each Debt Settlement Arrangement or, as applicable, Personal Insolvency Arrangement under which he or she acts as a personal insolvency practitioner.

(2) The accounting records maintained by a personal insolvency practitioner shall be such as to permit the Insolvency Service of Ireland or any accountant

or other person qualified to read or prepare accounts or financial records to readily understand:

- (a) the receipts, payments and transactions with respect to each Debt Settlement Arrangement or, as applicable, Personal Insolvency Arrangement for which he or she acts as a personal insolvency practitioner, including, without limitation to the generality of the foregoing, the following information:
 - (i) details of all transactions representing all payments received into or disbursed from each DSA account and PIA account;
 - (ii) copies of all payment instructions to the bank where the DSA account(s) or PIA account(s) is or are held;
 - (iii) a record of all income and expenditure of the personal insolvency practitioner in respect of each Debt Settlement Arrangement or, as applicable, each Personal Insolvency Arrangement with an explanation of its nature; and
- (b) all assets, liabilities, income and expenditure of the business of the personal insolvency practitioner.

(3) A personal insolvency practitioner must maintain the accounting records in such a way that ensures their accuracy, integrity and ready access for his or her accountant, the Insolvency Service of Ireland or any person nominated by the Insolvency Service of Ireland.

(4) The accounting records shall be maintained for a minimum period of six years (in the case of those relating to a Debt Settlement Arrangement or a Personal Insolvency Arrangement commencing after the completion or termination of the relevant insolvency arrangement) in a secure location and made available to the Insolvency Service of Ireland or any person nominated in writing by the Insolvency Service of Ireland in exercise of its functions.

(5) At least once each year, a personal insolvency practitioner shall verify, in writing, to the Insolvency Service of Ireland that he or she holds and maintains accounting records in accordance with the requirements of these Regulations.

Financial Statements and Reports

10. (1) A personal insolvency practitioner shall, on an annual basis and within six months of the financial year end, prepare financial statements or management accounts (if applicable) in respect of his or her practice as a personal insolvency practitioner. The financial statements shall include an income and expenditure statement and a balance sheet or capital account statement.

(2) If requested by the Insolvency Service of Ireland a personal insolvency practitioner shall engage an independent accountant or auditor to prepare a report confirming:

- (a) the accuracy of the financial statements prepared by the personal insolvency practitioner under Regulation 10(1) above; and
- (b) the compliance by the personal insolvency practitioner with the provisions of Regulations 3, 4, 5, 6 and 7 above.

(3) The financial statements and the report of the appointed auditor shall be submitted to the Insolvency Service of Ireland on request from or within a timeframe specified by the Insolvency Service of Ireland.

Enforcement

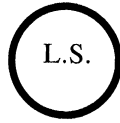
11. (1) The Insolvency Service of Ireland will monitor compliance by personal insolvency practitioners with these Regulations by means of:

- (a) analysis and assessment of returns and information supplied by a personal insolvency practitioner to the Insolvency Service of Ireland;
- (b) review of the controls and arrangements in place by a personal insolvency practitioner to safeguard funds received from or on behalf of debtors or held to the credit of debtors, records held in relation to receipts and statements issued to debtors by a personal insolvency practitioner and accounting records maintained by a personal insolvency practitioner pertaining to his or her role as a personal insolvency practitioner;
- (c) assessment of publicly available information about a personal insolvency practitioner; or
- (d) a combination of the above.

(2) In cases where evidence of non-compliance with these Regulations comes to the attention of the Insolvency Service of Ireland, the Insolvency Service of Ireland may carry out an enquiry or appoint an inspector under the Act to investigate the personal insolvency practitioner or take such other action as the Insolvency Service of Ireland considers necessary as provided for or permitted by the Act.

(3) The Insolvency Service of Ireland may charge a fee to the personal insolvency practitioner in respect of any enquiry or investigation referred to in Regulation 11(2) that does not exceed the cost of conducting that enquiry or, as applicable, investigation.

(4) Where the Insolvency Service of Ireland has reason to believe or suspects that the financial circumstances of a personal insolvency practitioner are such that could affect his or her capacity to carry out the functions of a personal insolvency practitioner the Insolvency Service of Ireland may conduct an examination of the financial circumstances of the personal insolvency practitioner in accordance with the Act.



GIVEN under the seal of the Insolvency Service of Ireland,
8 July 2013.

LORCAN O'CONNOR,
Director of the Insolvency Service of Ireland.

CATHY CLARKE,
A Member of the Staff of the Insolvency Service of Ireland
Authorised by the Director of the Insolvency Service of
Ireland to Authenticate the Seal of the Insolvency
Service of Ireland.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These regulations set out the requirements applying to a personal insolvency practitioner in the keeping and preservation of accounts and records and other related matters.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05



Wt. (B29971). 285. 7/13. Clondalkin. Gr 30-15.