

## SCHEDULE 1

### PROVISIONS OF THE ACT APPLYING WITH RELEVANT MODIFICATIONS TO THE ADMINISTRATION IN BANKRUPTCY OF INSOLVENT ESTATES OF DECEASED PERSONS DYING BEFORE PRESENTATION OF A BANKRUPTCY PETITION

## PART II

### PROVISIONS OF THE ACT NOT INCLUDED IN PART III OF THIS SCHEDULE

The following provisions of the Act shall apply:—

1. Section 264 with the following modifications:—
  - (a) the words “against an individual” shall be omitted;
  - (b) at the end of paragraph 1(a) there shall be added the words “in Form 1 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986”;
  - (c) paragraph 1(b) shall be omitted;
  - (d) in paragraph 1(c) after the words “Part VIII” there shall be added the words “in Form 2 set out in the said Schedule 3”;
  - (e) at the end of paragraph 1(d) there shall be added the words “in Form 3 set out in the said Schedule 3 in any case where a creditor could present such a petition under paragraph (a) above”; and
  - (f) at the end of subsection (2) there shall be added the words “in Form 4 set out in the said Schedule 3”.
2. Section 266 with the following modifications:—
  - (a) for subsection (1) there shall be substituted the following:—

“(1) An insolvency administration petition shall, unless the court otherwise directs, be served on the personal representative and shall be served on such other persons as the court may direct.”; and
  - (b) in subsection (3) for the words “bankruptcy petition” there shall be substituted the words “petition to the court for an insolvency administration order with or without costs”.
3. Section 267 with the following modifications to subsection (2):—
  - (a) before the words “at the time” there shall be inserted the words “had the debtor been alive”; and
  - (b) for paragraphs (a) to (d) there shall be substituted the following:—
    - “(a) the amount of the debt, or the aggregate amount of the debts, owed by the debtor would have been equal to or exceeded the bankruptcy level, or
    - (b) the debt, or each of the debts, owed by the debtor would have been for a liquidated sum payable to the petitioning creditor, or one or more of the petitioning creditors, either immediately or at some certain future time, and would have been unsecured.”.
4. Section 269 with the modification that in subsection (2) for the words “sections 267 to 270” there shall be substituted the words “section 267 and this section”.
5. Section 271 as if for that section there were substituted the following:—
  - (1) The court may make an insolvency administration order on a petition for such an order under section 264(1) if it is satisfied —

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- (a) that the debt, or one of the debts, in respect of which the petition was presented is a debt which,
  - (i) having been payable at the date of the petition or having since become payable, has neither been paid nor secured or compounded for; or
  - (ii) has no reasonable prospect of being able to be paid when it falls due; and
- (b) that there is a reasonable probability that the estate will be insolvent.

(2) A petition for an insolvency administration order shall not be presented to the court after proceedings have been commenced in any court of justice for the administration of the deceased debtor's estate.

(3) Where proceedings have been commenced in any such court for the administration of the deceased debtor's estate, that court may, if satisfied that the estate is insolvent, transfer the proceedings to the court exercising jurisdiction for the purposes of the Parts in the second Group of Parts.

(4) Where proceedings have been transferred to the court exercising jurisdiction for the purposes of the Parts in the second Group of Parts, that court may make an insolvency administration order in Form 5 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986 as if a petition for such an order had been presented under section 264.

(5) Nothing in sections 264, 266, 267, 269 or 271 to 273 shall invalidate any payment made or any act or thing done in good faith by the personal representative before the date of the insolvency administration order.”.

6. Section 272(1) with the following modifications:—

- (a) after the word “petition” there shall be inserted the words “in Form 6 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986”; and
- (b) for the words “debtor is unable to pay his debts” there shall be substituted the words “estate of a deceased debtor is insolvent”.

7. Section 273 as if for that section there were substituted the following:—

“**273.** The court shall make an insolvency administration order in Form 4 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986 on the hearing of a petition presented under section 272 if it is satisfied that the deceased debtor's estate is insolvent.”.

8. Section 276(2).

9. Section 277.

10. Section 278 except paragraph (b) as if for paragraph (a) there were substituted the following:

“(a) commences with the day on which the insolvency administration order is made;”.

11. Section 282(1) and (4).

12. Sections 283 to 285 with the modification that they shall have effect as if the petition had been presented and the insolvency administration order had been made on the date of death of the deceased debtor, and with the following modifications to section 283:—

- (a) in subsection (2)(b), for the words “bankrupt and his family” there shall be substituted the words “family of the deceased debtor”; and
- (b) after subsection (4) there shall be added the following subsection:—

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“(4A) References in any of this Group of Parts to property, in relation to a deceased debtor, include the capacity to exercise and take proceedings for exercising all such powers over or in respect of property as might have been exercised by his personal representative for the benefit of the estate on the date of the insolvency administration order and as are specified in subsection (4) above.”.

13. Section 286(1) and (3) to (8).

14. Section 287.

15. Section 288 with the modification that for subsections (1) and (2) there shall be substituted the following:—

“(1) Where an insolvency administration order has been made, the personal representative, or if there is no personal representative such person as the court may on the application of the official receiver direct, shall submit to the official receiver a statement of the deceased debtor's affairs containing particulars of the assets and liabilities of the estate as at the date of the insolvency administration order together with other particulars of the affairs of the deceased debtor in Form 7 set out in Schedule 3 to the Administration of Insolvent Estates of Deceased Persons Order 1986 or as the official receiver may require.

(2) The statement shall be submitted before the end of the period of fifty-six days beginning with the date of a request by the official receiver for the statement or such longer period as he or the court may allow.”.

16. Section 289 as if for that section there were substituted the following:—

“**289.** The official receiver is not under any duty to investigate the conduct and affairs of the deceased debtor unless he thinks fit but may make such report (if any) to the court as he thinks fit.”.

17. Section 291.

18. Sections 292 to 302, except section 297(4), with the modification that, where a meeting of creditors is summoned for the purposes of any provision in those sections, the rules regarding the trustee in bankruptcy and the creditors' committee shall apply accordingly.

19. Sections 303 and 304.

20. Section 305 with the modification that after subsection (4) there shall be added the following subsection:—

“(5) In the exercise of his functions under this section where an insolvency administration order has been made, the trustee shall have regard to any claim by the personal representative to payment of reasonable funeral, testamentary and administration expenses incurred by him in respect of the deceased debtor's estate or, if there is no such personal representative, to any claim by any other person to payment of any such expenses incurred by him in respect of the estate provided that the trustee has sufficient funds in hand for the purpose, and such claims shall have priority over the preferential debts listed in Schedule 6 to this Act.”.

21. Section 306.

22. Section 307 with the modification that in subsection (1) for the words “commencement of the bankruptcy” there shall be substituted the words “date of death of the deceased debtor”.

23. Sections 308 to 327.

24. Sections 328 and 329 with the modification that for the words “commencement of the bankruptcy”, wherever they occur, there shall be substituted the words “date of death of the deceased debtor”.

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**25.** Section 330 with the modification that in subsection (5) for the words “the bankrupt is entitled to the surplus” there shall be substituted the words “the surplus shall be paid to the personal representative unless the court otherwise orders”.

**26.** Sections 331 to 340.

**27.** Section 341 with the modification that in subsection (1)(a) for the words “day of the presentation of the bankruptcy petition” onwards there shall be substituted the words “date of death of the deceased debtor”.

**28.** Sections 342 to 349, 350(1), (2), (4) to (6) and 351 except paragraphs (a) and (b).

**29.** Section 359 with the following modifications:—

- (a) subsection (1), and the reference to that subsection in subsection (3), shall be omitted; and
- (b) in subsection (2), for the words “petition or in the initial period” there shall be substituted the words “the date of death of the deceased debtor”.

**30.** Sections 363 and 365 to 381.

**31.** Section 382 with the modification that in the definition of “bankruptcy debt” for the words “commencement of the bankruptcy”, wherever they occur, there shall be substituted the words “date of death of the deceased debtor”.

**32.** Sections 383 and 384.

**33.** Section 385 with the modification that at the end of the definition of “the court” there shall be added the words “and subject thereto “the court” means the court within the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his death”.

**34.** Section 386.

**35.** Section 387(1), (5) and (6) with the modification that in subsection (6)(a) and (b) for the reference to the making of the bankruptcy order there shall be substituted a reference to the date of death of the deceased debtor.

**36.** Sections 388 to 410, 412, 413, 415, 418 to 420, 423 to 426, 428, 430 to 436 and 437 so far as it relates to Parts II, except paragraph 13, IV and V of Schedule 11 to the Act.