

Cases in which unregistered company shall be deemed to be unable to pay its debts

1329. (1) In any of the following 4 cases, that is to say, those to which subsections (2) to (5) relate, an unregistered company shall be deemed to be unable to pay its debts for the purposes of this Chapter.

(2) This subsection relates to a case in which—

(a) a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding €10,000 then due, has served on the company—

(i) by leaving at its principal place of business in the State,

(ii) by delivering to the secretary or some director or principal officer of the company, or

(iii) by serving otherwise in such manner as the court may approve or direct,

a demand in writing requiring the company to pay the sum so due, and

(b) the company has, for 21 days after the date of the service of the demand, neglected to pay the amount or to secure or compound for it to the satisfaction of the creditor.

(3) This subsection relates to a case in which—

(a) any action or other proceeding has been instituted against any person who is a member of the company for any debt or demand due, or claimed to be due, from the company or from the person in his or her character as member of it,

(b) notice in writing that that action or proceeding has been instituted has been served, by the means referred to in subsection (2)(a)(i), (ii) or (iii), on the company, and

(c) the company has not, within 10 days after the date of service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his or her reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by the defendant by reason of the action or proceeding.

(4) This subsection relates to a case in which, in the State or in any state recognised by the Minister for the purposes of section 1417 there has been returned unsatisfied execution or other process issued on a judgement, decree or order obtained in any court in favour of a creditor against—

(a) the company,

(b) any person, being a member of the company, in his or her character as such member, or

(c) any person authorised to be sued as nominal defendant on behalf of the company.

(5) This subsection relates to a case in which it is otherwise proved to the satisfaction of the court that the company is unable to pay its debts.