

SCHEDULES

[^{F1}SCHEDULE 1A

EXCEPTIONS TO PROHIBITION ON APPOINTMENT OF ADMINISTRATIVE RECEIVER: SUPPLEMENTARY PROVISIONS

F1 Sch. 1A inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 5(2), Sch. 3 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7)

Capital market arrangement

- 1.—(1) For the purposes of Article 59B an arrangement is a capital market arrangement if—
- (a) it involves a grant of security to a person holding it as trustee for a person who holds a capital market investment issued by a party to the arrangement, or
 - (b) it involves a grant of security to—
 - (i) a party to the arrangement who issues a capital market investment, or
 - (ii) a person who holds the security as trustee for a party to the arrangement in connection with the issue of a capital market investment, or
 - (c) it involves a grant of security to a person who holds the security as trustee for a party to the arrangement who agrees to provide finance to another party, or
 - (d) at least one party guarantees the performance of obligations of another party, or
 - (e) at least one party provides security in respect of the performance of obligations of another party, or
 - (f) the arrangement involves an investment of a kind described in articles 83 to 85 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (options, futures and contracts for differences).
- (2) For the purposes of sub-paragraph (1)—
- (a) a reference to holding as trustee includes a reference to holding as nominee or agent,
 - (b) a reference to holding for a person who holds a capital market investment includes a reference to holding for a number of persons at least one of whom holds a capital market investment, and
 - (c) a person holds a capital market investment if he has a legal or beneficial interest in it; and
 - (d) the reference to the provision of finance includes the provision of an indemnity.
- (3) In Article 59B(1) and this paragraph “party” to an arrangement includes a party to an agreement which—
- (a) forms part of the arrangement,
 - (b) provides for the raising of finance as part of the arrangement, or
 - (c) is necessary for the purposes of implementing the arrangement.

Status: Point in time view as at 27/03/2006.

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Capital market investment

- 2.—**(1) For the purposes of Article 59B an investment is a capital market investment if it—
- (a) is within article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) (debt instruments), and
 - (b) is rated, listed or traded or designed to be rated, listed or traded.
- (2) In sub-paragraph (1)—
- “rated” means rated for the purposes of investment by an internationally recognised rating agency,
- “listed” means admitted to the official list within the meaning given by section 103(1) of the Financial Services and Markets Act 2000 (c. 8) (interpretation), and
- “traded” means admitted to trading on a market established under the rules of a recognised investment exchange or on a foreign market.
- (3) In sub-paragraph (2)—
- “recognised investment exchange” has the meaning given by section 285 of the Financial Services and Markets Act 2000 (recognised investment exchange), and
- “foreign market” has the same meaning as “relevant market” in article 67(2) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (S.I. 2001/1335) (foreign markets).
- 3.—**(1) An investment is also a capital market investment for the purposes of Article 59B if it consists of a bond or commercial paper issued to one or more of the following—
- (a) an investment professional within the meaning of article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001,
 - (b) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified high net worth individual in relation to a communication within the meaning of article 48(2) of that order,
 - (c) a person to whom article 49(2) of that order applies (high net worth company, &c.),
 - (d) a person who is, when the agreement mentioned in Article 59B(1) is entered into, a certified sophisticated investor in relation to a communication within the meaning of article 50(1) of that order, and
 - (e) a person in a State other than the United Kingdom who under the law of that State is not prohibited from investing in bonds or commercial paper.
- (2) In sub-paragraph (1)—
- “bond” shall be construed in accordance with article 77 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544), and
- “commercial paper” has the meaning given by article 9(3) of that order.
- (3) For the purposes of sub-paragraph (1)—
- (a) in applying article 19(5) of the Financial Promotion Order for the purposes of sub-paragraph (1)(a)—
 - (i) in article 19(5)(b), ignore the words after “exempt person”,
 - (ii) in article 19(5)(c)(i), for the words from “the controlled activity” to the end substitute a controlled activity, and
 - (iii) in article 19(5)(e) ignore the words from “where the communication” to the end, and

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- (b) in applying article 49(2) of that order for the purposes of sub-paragraph (1)(c), ignore Article 49(2)(e).

“Agreement”

4. or the purposes of Articles 59B and 59F and this Schedule “agreement” includes an agreement or undertaking effected by—

- (a) contract,
- (b) deed, or
- (c) any other instrument intended to have effect in accordance with the law of Northern Ireland or another jurisdiction.

Debt

5. the debt of at least £50 million referred to in Article 59B(1)(a) or 59F(2)(a)—

- (a) may be incurred at any time during the life of the capital market arrangement or financed project, and
- (b) may be expressed wholly or partly in foreign currency (in which case the sterling equivalent shall be calculated as at the time when the arrangement is entered into or the project begins).

Step-in rights

6.—(1) For the purposes of Articles 59C to 59F a project has “step-in rights” if a person who provides finance in connection with the project has a conditional entitlement under an agreement to—

- (a) assume sole or principal responsibility under an agreement for carrying out all or part of the project, or
- (b) make arrangements for carrying out all or part of the project.

(2) In sub-paragraph (1) a reference to the provision of finance includes a reference to the provision of an indemnity.

Project company

7.—(1) For the purposes of Articles 59C to 59F a company is a “project company” of a project if—

- (a) it holds property for the purpose of the project,
- (b) it has sole or principal responsibility under an agreement for carrying out all or part of the project,
- (c) it is one of a number of companies which together carry out the project,
- (d) it has the purpose of supplying finance to enable the project to be carried out, or
- (e) it is the holding company of a company within any of paragraphs (a) to (d).

(2) But a company is not a “project company” of a project if—

- (a) it performs a function within sub-paragraph (1)(a) to (d) or is within sub-paragraph (1)(e), but
- (b) it also performs a function which is not—
 - (i) within sub-paragraph (1)(a) to (d),
 - (ii) related to a function within sub-paragraph (1)(a) to (d), or
 - (iii) related to the project.

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(3) For the purposes of this paragraph a company carries out all or part of a project whether or not it acts wholly or partly through agents.

“Resources”

8. In Article 59C “resources” includes—

- (a) funds (including payment for the provision of services or facilities),
- (b) assets,
- (c) professional skill,
- (d) the grant of a concession or franchise, and
- (e) any other commercial resource.

“Public body”

9.—(1) In Article 59C “public body” means—

- (a) a body which exercises public functions,
 - (b) a body specified for the purposes of this paragraph by the Department, and
 - (c) a body within a class specified for the purposes of this paragraph by the Department.
- (2) A specification under sub-paragraph (1) may be—
- (a) general, or
 - (b) for the purpose of the application of Article 59C to a specified case.

Regulated business

10.—(1) For the purposes of Article 59D a business is regulated if it is carried on—

- (a) in reliance on a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (NI 2) (licences authorising the supply of gas, etc.),
- (b) in reliance on a licence granted by virtue of Article 40 of the Energy (Northern Ireland) Order 2003 (NI 6) (power to prescribe additional licensable activity),
- (c) in reliance on a licence under Article 10 of the Electricity (Northern Ireland) Order 1992 (NI 1) (supply of electricity),
- (d) by a universal service provider within the meaning given by section 4(3) and (4) of the Postal Services Act 2000 (c. 26),
- (e) by the Post Office company within the meaning given by section 62 of that Act (transfer of property),^{F2} . . .
- (f) by a relevant subsidiary of the Post Office Company within the meaning given by section 63 of that Act (government holding);^{F3} or
- (g) in reliance of a European licence granted pursuant to a provision contained in any instrument made for the purpose of implementing Council Directive 1995/18/EC dated 19th June 1995 on the licensing of railway undertakings, as amended by Directive 2001/13/EC dated 26th February 2001 and Directive 2004/49/EC dated 29th April 2004, both of the European Parliament and of the Council, or pursuant to any action taken by an EEA State for that purpose.]

(2) For the purposes of Article 59D a business is also regulated to the extent that it consists in the provision of a public electronic communications network or a public electronic communications service.

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[^{F4}(3) In sub-paragraph (1)(g), an “EEA State” means a member State, Norway, Iceland or Liechtenstein.]

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| F2 | Word in Sch. 1A para. 10(1)(e) omitted (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, Sch. 5 para. 3(a) |
| F3 | Sch. 1A para. 10(1)(g) and preceding word added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, Sch. 5 para. 3(b) |
| F4 | Sch. 1A para. 10(3) added (3.1.2006) by virtue of Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005 (S.R. 2005/537), regs. 1(1), 45, Sch. 5 para. 3(c) |

“Person”

11. A reference to a person in this Schedule includes a reference to a partnership or another unincorporated group of persons.]

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