

**Status:** Point in time view as at 27/03/2006.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, FUNCTIONS OF ADMINISTRATOR is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE B1 **N.I.**

#### ADMINISTRATION

**F1** Sch. B1 inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005* (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

#### **Modifications etc. (not altering text)**

**C1** Sch. B1 applied (with modifications) (1.10.2011) by *Postal Services Act 2011* (c. 5), ss. 73, 87(1)(2), 93(3), **Sch. 10 Pt. 1, Sch. 10 Pt. 2**

#### FUNCTIONS OF ADMINISTRATOR

##### *General powers*

**60.**—(1) The administrator of a company may do anything necessary or expedient for the management of the affairs, business and property of the company.

(2) A provision of this Schedule which expressly permits the administrator to do a specified thing is without prejudice to the generality of sub-paragraph (1).

(3) A person who deals with the administrator of a company in good faith and for value need not inquire whether the administrator is acting within his powers.

**61.** The administrator of a company has the powers specified in Schedule 1.

**62.** The administrator of a company—

(a) may remove a director of the company, and

(b) may appoint a director of the company (whether or not to fill a vacancy).

**63.** The administrator of a company may call a meeting of members or creditors of the company.

**64.** The administrator of a company may apply to the High Court for directions in connection with his functions.

**65.**—(1) A company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator.

(2) For the purpose of sub-paragraph (1)—

(a) “management power” means a power which could be exercised so as to interfere with the exercise of the administrator's powers,

(b) it is immaterial whether the power is conferred by an enactment or an instrument, and

(c) consent may be general or specific.

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### *Distribution*

- 66.**—(1) The administrator of a company may make a distribution to a creditor of the company.
- (2) Article 149 shall apply in relation to a distribution under this paragraph as it applies in relation to a winding up.
- (3) A payment may not be made by way of distribution under this paragraph to a creditor of the company who is neither secured nor preferential unless the High Court gives permission.

#### **Modifications etc. (not altering text)**

**C1** Sch. B1 para. 66(2) applied by Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979), **reg. 14(5)(a)(i)** (as substituted (1.10.2009) by Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009 (S.I. 2009/1972), **reg. 4(d)(ii)**)

- 67.** The administrator of a company may make a payment otherwise than in accordance with paragraph 66 or paragraph 14 of Schedule 1 if he thinks it likely to assist achievement of the purpose of administration.

### *General duties*

- 68.** The administrator of a company shall on his appointment take custody or control of all the property to which he thinks the company is entitled.
- 69.**—(1) Subject to sub-paragraph (2), the administrator of a company shall manage its affairs, business and property in accordance with—
- (a) any proposals approved under paragraph 54,
  - (b) any revision of those proposals which is made by him and which he does not consider substantial, and
  - (c) any revision of those proposals approved under paragraph 55.
- (2) If the High Court gives directions to the administrator of a company in connection with any aspect of his management of the company's affairs, business or property, the administrator shall comply with the directions.
- (3) The Court may give directions under sub-paragraph (2) only if—
- (a) no proposals have been approved under paragraph 54,
  - (b) the directions are consistent with any proposals or revision approved under paragraph 54 or 55,
  - (c) the Court thinks the directions are required in order to reflect a change in circumstances since the approval of proposals or a revision under paragraph 54 or 55, or
  - (d) the Court thinks the directions are desirable because of a misunderstanding about proposals or a revision approved under paragraph 54 or 55.

### *Administrator as agent of company*

- 70.** In exercising his functions under this Schedule the administrator of a company acts as its agent.

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*Charged property: floating charge*

**71.—**(1) The administrator of a company may dispose of or take action relating to property which is subject to a floating charge as if it were not subject to the charge.

(2) Where property is disposed of in reliance on sub-paragraph (1) the holder of the floating charge shall have the same priority in respect of acquired property as he had in respect of the property disposed of.

(3) In sub-paragraph (2) “acquired property” means property of the company which directly or indirectly represents the property disposed of.

**Modifications etc. (not altering text)**

**C2** Sch. B1 para. 71 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

*Charged property: non-floating charge*

**72.—**(1) The High Court may by order enable the administrator of a company to dispose of property which is subject to a security (other than a floating charge) as if it were not subject to the security.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the property would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums secured by the security—

- (a) the net proceeds of disposal of the property, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the property at market value.

(4) If an order under this paragraph relates to more than one security, application of money under sub-paragraph (3) shall be in the order of the priorities of the securities.

(5) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(6) An administrator commits an offence if he fails to comply with sub-paragraph (5) without reasonable excuse.

**Modifications etc. (not altering text)**

**C3** Sch. B1 para. 72 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

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### *Hire-purchase property*

**73.—**(1) The High Court may by order enable the administrator of a company to dispose of goods which are in the possession of the company under a hire-purchase agreement as if all the rights of the owner under the agreement were vested in the company.

(2) An order under sub-paragraph (1) may be made only—

- (a) on the application of the administrator, and
- (b) where the Court thinks that disposal of the goods would be likely to promote the purpose of administration in respect of the company.

(3) An order under this paragraph is subject to the condition that there be applied towards discharging the sums payable under the hire-purchase agreement—

- (a) the net proceeds of disposal of the goods, and
- (b) any additional money required to be added to the net proceeds so as to produce the amount determined by the Court as the net amount which would be realised on a sale of the goods at market value.

(4) An administrator who makes a successful application for an order under this paragraph shall send a copy of the order to the registrar before the end of the period of 14 days starting with the date of the order.

(5) An administrator commits an offence if he fails without reasonable excuse to comply with sub-paragraph (4).

#### **Modifications etc. (not altering text)**

- C4** Sch. B1 para. 73 excluded by Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)), art.97(1) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 52(2) (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2 - 7))

### *Protection for secured or preferential creditor*

#### **N.I.**

**74.—**(1) An administrator's statement of proposals under paragraph 50 may not include any action which—

- (a) affects the right of a secured creditor of the company to enforce his security,
- (b) would result in a preferential debt of the company being paid otherwise than in priority to its non-preferential debts, or
- (c) would result in one preferential creditor of the company being paid a smaller proportion of his debt than another.

(2) Sub-paragraph (1) does not apply to—

- (a) action to which the relevant creditor consents,
- (b) a proposal for a voluntary arrangement under Part II of this Order (although this sub-paragraph is without prejudice to Article 17(3)), or
- (c) a proposal for a compromise or arrangement to be sanctioned under Article 418 of the Companies Order (compromise with creditors or members).

(3) The reference to a statement of proposals in sub-paragraph (1) includes a reference to a statement as revised or modified.

### Challenge to administrator's conduct of company

#### N.I.

**75.—**(1) A creditor or member of a company in administration may apply to the High Court claiming that—

- (a) the administrator is acting or has acted so as unfairly to harm the interests of the applicant (whether alone or in common with some or all other members or creditors), or
- (b) the administrator proposes to act in a way which would unfairly harm the interests of the applicant (whether alone or in common with some or all other members or creditors).

(2) A creditor or member of a company in administration may apply to the Court claiming that the administrator is not performing his functions as quickly or as efficiently as is reasonably practicable.

(3) The Court may—

- (a) grant relief;
- (b) dismiss the application;
- (c) adjourn the hearing conditionally or unconditionally;
- (d) make an interim order;
- (e) make any other order it thinks appropriate.

(4) In particular, an order under this paragraph may—

- (a) regulate the administrator's exercise of his functions;
- (b) require the administrator to do or not do a specified thing;
- (c) require a creditors' meeting to be held for a specified purpose;
- (d) provide for the appointment of an administrator to cease to have effect;
- (e) make consequential provision.

(5) An order may be made on a claim under sub-paragraph (1) whether or not the action complained of—

- (a) is within the administrator's powers under this Schedule;
- (b) was taken in reliance on an order under paragraph 72 or 73.

(6) An order may not be made under this paragraph if it would impede or prevent the implementation of—

- (a) a voluntary arrangement approved under Part II,
- (b) a compromise or arrangement sanctioned under Article 418 of the Companies Order (compromise with creditors and members), or
- (c) proposals or a revision approved under paragraph 54 or 55 more than 28 days before the day on which the application for the order under this paragraph is made.

#### Modifications etc. (not altering text)

- C5** Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**))
- C6** Sch. B1 para. 75(1)(a)(b) modified by Financial Services and Markets Act 2000 (c. 8), s. 362(4A)(b) (as subst. (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 60(6) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**))

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### *Misfeasance*

- 76.—(1) The High Court may examine the conduct of a person who—
- (a) is or purports to be the administrator of a company, or
  - (b) has been or has purported to be the administrator of a company.
- (2) An examination under this paragraph may be held only on the application of—
- (a) the official receiver,
  - (b) the administrator of the company,
  - (c) the liquidator of the company,
  - (d) a creditor of the company, or
  - (e) a contributory of the company.
- (3) An application under sub-paragraph (2) must allege that the administrator—
- (a) has misapplied or retained money or other property of the company,
  - (b) has become accountable for money or other property of the company,
  - (c) has breached a fiduciary or other duty in relation to the company, or
  - (d) has been guilty of misfeasance.
- (4) On an examination under this paragraph into a person's conduct the Court may order him—
- (a) to repay, restore or account for money or property;
  - (b) to pay interest;
  - (c) to contribute a sum to the company's property by way of compensation for breach of duty or misfeasance.
- (5) In sub-paragraph (3) “administrator” includes a person who purports or has purported to be a company's administrator.
- (6) An application under sub-paragraph (2) may be made in respect of an administrator who has been discharged under paragraph 99 only with the permission of the Court.]

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