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STATUTORY INSTRUMENTS

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**2015 No. 989**

**The Insolvency (Protection of Essential Supplies) Order 2015**

**Corporate Insolvency: Insolvency-related terms of a contract**

**4. After section 233 of the Insolvency Act 1986 insert—**

**“233A Further protection of essential supplies**

(1) An insolvency-related term of a contract for the supply of essential goods or services to a company ceases to have effect if—

- (a) the company enters administration, or
- (b) a voluntary arrangement approved under Part 1 takes effect in relation to the company.

(2) An insolvency-related term of a contract does not cease to have effect by virtue of subsection (1) to the extent that—

- (a) it provides for the contract or the supply to terminate, or any other thing to take place, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement;
- (b) it entitles a supplier to terminate the contract or the supply, or do any other thing, because the company becomes subject to an insolvency procedure other than administration or a voluntary arrangement; or
- (c) it entitles a supplier to terminate the contract or the supply because of an event that occurs, or may occur, after the company enters administration or the voluntary arrangement takes effect.

(3) Where an insolvency-related term of a contract ceases to have effect under this section the supplier may—

- (a) terminate the contract, if the condition in subsection (4) is met;
- (b) terminate the supply, if the condition in subsection (5) is met.

(4) The condition in this subsection is that—

- (a) the insolvency office-holder consents to the termination of the contract,
- (b) the court grants permission for the termination of the contract, or
- (c) any charges in respect of the supply that are incurred after the company entered administration or the voluntary arrangement took effect are not paid within the period of 28 days beginning with the day on which payment is due.

The court may grant permission under paragraph (b) only if satisfied that the continuation of the contract would cause the supplier hardship.

(5) The condition in this subsection is that—

- (a) the supplier gives written notice to the insolvency office-holder that the supply will be terminated unless the office-holder personally guarantees the payment of any charges in respect of the continuation of the supply after the company entered administration or the voluntary arrangement took effect, and

- (b) the insolvency office-holder does not give that guarantee within the period of 14 days beginning with the day the notice is received.
- (6) For the purposes of securing that the interests of suppliers are protected, where—
  - (a) an insolvency-related term of a contract (the “original term”) ceases to have effect by virtue of subsection (1), and
  - (b) the company subsequently enters administration, or a voluntary arrangement subsequently has effect in relation to it,the contract is treated for the purposes of subsections (1) to (5) as if, immediately before the subsequent administration is entered into or the subsequent voluntary arrangement takes effect, it included an insolvency-related term identical to the original term.
- (7) A contract for the supply of essential goods or services is a contract for a supply mentioned in section 233(3).
- (8) An insolvency-related term of a contract for the supply of essential goods or services to a company is a provision of the contract under which—
  - (a) the contract or the supply would terminate, or any other thing would take place, because the company enters administration or the voluntary arrangement takes effect,
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company enters administration or the voluntary arrangement takes effect, or
  - (c) the supplier would be entitled to terminate the contract or the supply because of an event that occurred before the company enters administration or the voluntary arrangement takes effect.
- (9) In this section “insolvency office-holder” means—
  - (a) in a case where a company enters administration, the administrator;
  - (b) in a case where a voluntary arrangement under Part 1 takes effect in relation to a company, the supervisor of the voluntary arrangement.
- (10) Subsection (1) does not have effect in relation to a contract entered into before 1st October 2015.”