
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS II TO VI COMPANY INSOLVENCY; COMPANIES WINDING UP

PART VII

**MISCELLANEOUS PROVISIONS APPLYING TO
COMPANIES WHICH ARE INSOLVENT OR IN LIQUIDATION**

Adjustment of prior transactions (administration and liquidation)

Avoidance of certain floating charges

207.—(1) This Article applies as does Article 202.

(2) Subject to the following provisions of this Article, a floating charge on the company's undertaking or property created at a relevant time is invalid except to the extent of the aggregate of—

- (a) the value of so much of the consideration for the creation of the charge as consists of money paid, or goods or services supplied, to the company at the same time as, or after, the creation of the charge,
- (b) the value of so much of that consideration as consists of the discharge or reduction, at the same time as, or after, the creation of the charge, of any debt of the company, and
- (c) the amount of such interest (if any) as is payable on the amount falling within subparagraph (a) or (b) in pursuance of any agreement under which the money was so paid, the goods or services were so supplied or the debt was so discharged or reduced.

(3) Subject to paragraph (4), the time at which a floating charge is created by a company is a relevant time for the purposes of this Article if the charge is created—

- (a) in the case of a charge which is created in favour of a person who is connected with the company, at a time in the period of 2 years ending with the onset of insolvency,
- (b) in the case of a charge which is created in favour of any other person, at a time in the period of 12 months ending with the onset of insolvency, or
- (c) in either case, at a time between the presentation of a petition for the making of an administration order in relation to the company and the making of such an order on that petition.

(4) Where a company creates a floating charge at a time mentioned in paragraph (3)(b) and the person in favour of whom the charge is created is not connected with the company, that time is not a relevant time for the purposes of this Article unless the company—

- (a) is at that time unable to pay its debts within the meaning of Article 103, or
- (b) becomes unable to pay its debts within the meaning of Article 103 in consequence of the transaction under which the charge is created.

(5) For the purposes of paragraph (3), the onset of insolvency is—

- (a) in a case where this Article applies by reason of the making of an administration order, the date of the presentation of the petition on which the order was made, and
 - (b) in a case where this Article applies by reason of a company going into liquidation, the date of the commencement of the winding up.
- (6) For the purposes of paragraph (2)(a) the value of any goods or services supplied by way of consideration for a floating charge is the amount in money which at the time they were supplied could reasonably have been expected to be obtained for supplying the goods or services in the ordinary course of business and on the same terms (apart from the consideration) as those on which they were supplied to the company.