
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PARTS VIII TO XINSOLVENCY OF INDIVIDUALS; BANKRUPTCY

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

CHAPTER I

DEEDS OF ARRANGEMENT

Provisions as to trustees

Notice to creditors of avoidance of deed

217.—(1) When a deed of arrangement is void by virtue of this Chapter for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by Article 214, the trustee shall—

- (a) as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows; and
 - (b) file a copy of the notice with the registrar.
- (2) If paragraph (1) is contravened the trustee shall be guilty of an offence.

Trustee acting when deed of arrangement void

218.—(1) If a trustee acts under a deed of arrangement—

- (a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Chapter or any statutory provision repealed by this Order, or
- (b) after he has failed to give security within the time provided for by Article 221,

he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

(2) It is a defence for a person charged under this Article to prove that the contravention was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Protection of trustees under void deeds

219. Where a deed of arrangement is void by reason—

- (a) that the requisite majority of creditors have not assented to the deed, or
- (b) in the case of a deed for the benefit of 3 or more creditors,—
 - (i) that the debtor was insolvent at the time of the execution of the deed, and
 - (ii) the deed was not registered as required by this Chapter,

but is not void for any other reason, and a bankruptcy order is made against the debtor upon a petition presented after the expiration of 3 months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

Payment of expenses incurred by trustees

220. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Chapter shall be allowed or paid to him by the trustee in the bankruptcy as a first charge on the estate.

Security by trustee

221.—(1) The trustee under a deed of arrangement shall, within 7 days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security with respect to the proper administration of the deed and to account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security.

(2) When a dispensation such as is mentioned in paragraph (1) has been so given, the trustee shall forthwith make and file with the registrar a certificate to that effect, which certificate shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts certified.

(3) If a trustee under a deed of arrangement contravenes this Article, on the application of any creditor the High Court may, after hearing such persons as it may think fit, declare the deed of arrangement to be void or make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(4) In calculating a majority of creditors for the purposes of this Article, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £100 shall be reckoned in the majority in value but not in the majority in number.

Transmission of accounts

222.—(1) Every trustee under a deed of arrangement shall—

- (a) at the expiration of 6 months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of 6 months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement; and
- (b) when verifying his accounts transmitted to the Department under paragraph (2), state whether or not he has duly sent such statements, and the dates on which the statements were sent.

(2) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Department, or as it directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(3) If a trustee contravenes this Article he shall be guilty of an offence and, for continued contravention, shall be guilty of a continuing offence.

Preferential payment to creditor

223. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful under Chapter II and Parts IX and X, he shall be guilty of an offence.