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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART I INTRODUCTORY

*Interpretation for [F1Parts 1A to 7]*

**F1** Words in art. 5 cross-heading substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 2](#) (with ss. 2(2), 5(2))

#### Interpretation

5.—(1 <sup>F2</sup> In [F3Parts 1A to 7]—

<sup>F4</sup> .....

<sup>F4</sup> .....

“administrative receiver” means—

- (a) a receiver or manager of the whole (or substantially the whole) of a company's property appointed by or on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or by such a charge and one or more other securities; or
- (b) a person who would be such a receiver (or manager) but for the appointment of some other person as the receiver of part of the company's property;

[F5“agent” does not include a person's counsel acting as such;]

[F6“books and papers” and “books or papers” includes accounts, deeds, writing and documents;]

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in Northern Ireland under the Banking and Financial Dealings Act 1971<sup>F7</sup>;

“chattel leasing agreement” means an agreement for the bailment of goods which is capable of subsisting for more than 3 months;

“debt”, in relation to the winding up of a company [F8or where a company is in administration], means (subject to [F9Article 2(3A)]) any of the following—

- (a) any debt or liability to which the company is subject at the [F10relevant date];]
- (b) any debt or liability to which the company may become subject after [F11the relevant date] by reason of any obligation incurred before that date; and

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(c) any interest on a debt proved in the liquidation [<sup>F12</sup>or in the administration] which bears interest, except in so far as it is payable in respect of any period after the [<sup>F13</sup>relevant date];

“director” includes any person occupying the position of director, by whatever name called;

[<sup>F14</sup>“document” includes summons, notice, order and other legal process, and registers;]

“floating charge” means a charge which, as created, was a floating charge;

<sup>F15</sup> ...

[<sup>F16</sup>“officer”, in relation to a body corporate, includes a director, manager or secretary;]

“the official rate”, in relation to interest, means the rate payable under Article 160(4);

[<sup>F17</sup>“the registrar” means the registrar of companies for Northern Ireland;]

“a resolution for voluntary winding up” means a resolution passed under [<sup>F18</sup>either of the sub-paragraphs] of Article 70(1);

“retention of title agreement” means an agreement for the sale of goods to a company being an agreement—

(a) which does not constitute a charge on the goods, but

(b) under which, if the seller is not paid and the company is wound up, the seller will have priority over all other creditors of the company as respects the goods or any property representing the goods;

“secured creditor”, in relation to a company, means a creditor of the company who holds in respect of his debt a security over property of the company, and “unsecured creditor” is to be read accordingly;

“security” means any mortgage, charge, lien or other security;

“shadow director”, in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act [<sup>F19</sup>, but so that a person is not deemed a shadow director by reason only that the directors act—

(a) on advice given by that person in a professional capacity;

(b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;

(c) in accordance with guidance or advice given by that person in that person's capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)];

“supervisor” means a person acting as defined in Article 20(2);

“voluntary arrangement” means an arrangement as defined in Article 14(1).

[<sup>F20</sup>(1A) For the purposes of the definition of “debt” in paragraph (1), “the relevant date” means—

(a) in the case of a winding up which was not immediately preceded by an administration, the date on which the company went into liquidation;

(b) in the case of a winding up which was immediately preceded by an administration, the date on which the company entered administration;

(c) in the case of an administration which was not immediately preceded by a winding up, the date on which the company entered administration;

(d) in the case of an administration which was immediately preceded by a winding up, the date on which the company went into liquidation.]

(2) <sup>F21</sup> .....

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- F3** Words in art. 5(1) substituted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 2** (with ss. 2(2), 5(2))
- F4** Art. 5(1): definitions of "administrator" and "administration order" repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 19, Sch. 9 (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)
- F5** Art. 5(1): definition of "agent" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(a)** (with art. 10)
- F6** Art. 5(1): definition of "books and papers" and "books or papers" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(a)** (with art. 10)
- F7** 1971 c. 80
- F8** Words in art. 5(1) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(a)** (with art. 4)
- F9** Words in art. 5(1) substituted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(3)(a)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2
- F10** Words in art. 5(1) substituted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(3)(b)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2
- F11** Words in art. 5(1) substituted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(3)(c)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2
- F12** Words in art. 5(1)(c) in the definition of "debt" inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (Minor and Consequential Amendments) Order (Northern Ireland) 2006 (S.R. 2006/61), art. 2, **Sch. para. 3(c)** (with art. 4)
- F13** Words in art. 5(1) substituted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(3)(d)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2
- F14** Art. 5(1): definition of "document" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(a)** (with art. 10)
- F15** Words in art. 5(1) repealed (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 28(2), **Sch. 4**; S.R. 2016/203, art. 2
- F16** Art. 5(1): definition of "officer" inserted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(a)** (with art. 10)
- F17** Art. 5(1): definition of "the registrar" substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(b)** (with art. 10)
- F18** Words in art. 5(1) in definition of "a resolution for voluntary winding up" substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 56(2)** (with art. 12)
- F19** Words in art. 5(1) substituted (26.5.2015) by Small Business, Enterprise and Employment Act 2015 (c. 26), **ss. 91(1)**, 164(3)(g)(iii)
- F20** Art. 5(1A) inserted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(4)**, 28(2) (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2
- F21** Art. 5(2) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 106(6)(c)** (with art. 10)

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## “Insolvency” and “go into liquidation”

6.—(1) In [<sup>F22</sup>Parts 1A to 7], “insolvency”, in relation to a company, includes [<sup>F23</sup>the coming into force of a moratorium for the company under Part 1A,] the approval of a voluntary arrangement under Part II, [<sup>F24</sup>or the appointment of an administrator or administrative receiver].

(2) <sup>F25</sup> For the purposes of any provision in [<sup>F22</sup>Parts 1A to 7], a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the High Court at a time when it has not already gone into liquidation by passing such a resolution.

[<sup>F26</sup>(3) The reference to a resolution for voluntary winding up in paragraph (2) includes a reference to a resolution which is deemed to occur by virtue of—

(a) paragraph 84(5)(b) of Schedule B1, <sup>F27</sup>...

<sup>F27</sup>(b) .....]

- F22** Words in art. 6(1)(2) substituted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 2** (with ss. 2(2), 5(2))
- F23** Words in art. 6(1) inserted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 5** (with ss. 2(2), 5(2))
- F24** Words in art. 6(1) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 20(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F25** mod. by SR 2004/307
- F26** Art. 6(3) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 20(3) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F27** Art. 6(3)(b) and word omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 166** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

## “Connected with a company”

<sup>F28</sup>7. For the purposes of any provision in [<sup>F29</sup>Parts 1A to 7], a person is connected with a company if—

- (a) he is a director or shadow director of the company or an associate of such a director or shadow director, or
- (b) he is an associate of the company.

- F28** mod. by SR 2004/307
- F29** Words in art. 7 substituted (26.6.2020) by Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 2** (with ss. 2(2), 5(2))

### Modifications etc. (not altering text)

- C1** Art. 7 applied (6.4.2006) by Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations (Northern Ireland) 2006 (S.R. 2006/148), **reg. 1(1)(4)**
- C2** Art. 7 applied by S.I. 2005/255 (N.I. 1), art. 64A(14)(b) (as inserted (1.9.2021 for specified purposes) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 8(1)**; S.R. 2021/240, art. 2(1)(d))

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### “Member of a company”

**8**<sup>F30</sup>. For the purposes of any provision in [<sup>F31</sup>Parts 1A to 7], a person who is not a member of a company but to whom shares in the company have been transferred, or transmitted by operation of law, is to be regarded as a member of the company, and references to a member or members are to be read accordingly.

**F30** mod. by SR 2004/307

**F31** Words in art. 8 substituted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 2](#) (with ss. 2(2), 5(2))

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