
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

^{F1F1}PART III

ADMINISTRATION ORDERS

Administrators

Appointment of administrator

26.—(1) The administrator of a company shall be appointed either by the administration order or by an order under paragraph (2).

(2) If a vacancy occurs by death, resignation or otherwise in the office of the administrator, the High Court may by order fill the vacancy.

(3) An application for an order under paragraph (2) may be made—

(a) by any continuing administrator of the company; or

(b) where there is no such administrator, by a creditors' committee established under Article 38; or

(c^{F1}) where there is no such administrator and no such committee, by the company or the directors or by any creditor or creditors of the company.

F1 mod. by SR 2004/307

General powers

27.—(1) The administrator of a company—

(a) may do all such things as may be necessary for the management of the affairs, business and property of the company, and

(b) without prejudice to the generality of sub#paragraph (a), has the powers specified in Schedule 1;

and in the application of that Schedule to the administrator of a company the words “he” and “him” refer to the administrator.

(2^{F2}) The administrator also has power—

(a^{F2}) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and

(b) to call any meeting of the members or creditors of the company.

(3) The administrator may apply to the High Court for directions in relation to any particular matter arising in connection with the carrying out of his functions.

Status: Point in time view as at 01/01/2006.

Changes to legislation: The Insolvency (Northern Ireland) Order 1989, Cross Heading: Administrators is up to date with all changes known to be in force on or before 06 June 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)

(4) Any power conferred on the company or its officers, whether by this Order or the Companies Order or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) In exercising his powers the administrator is deemed to act as the company's agent.

(6) A person dealing with the administrator in good faith and for value is not concerned to inquire whether the administrator is acting within his powers.

F2 mod. by SR 2004/307

Power to deal with charged property, etc.

28.—(1 ^{F3} The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this paragraph applies as if the property were not subject to the security.

(2) Where, on an application by the administrator, the High Court is satisfied that the disposal (with or without other assets) of—

- (a) any property of the company subject to a security to which this paragraph applies, or
- (b) any goods in the possession of the company under a hire#purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the administration order, the Court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire#purchase agreement were vested in the company.

(3 ^{F4} Paragraph (1) applies to any security which, as created, was a floating charge; and paragraph (2) applies to any other security.

(4) Where property is disposed of under paragraph (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order under paragraph (2) that—

- (a) the net proceeds of the disposal, and
- (b) where those proceeds are less than such amount as may be determined by the High Court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire#purchase agreement.

(6) Where a condition imposed in pursuance of paragraph (5) relates to 2 or more securities, that condition requires the net proceeds of the disposal and, where sub#paragraph (b) of that paragraph applies, the sums mentioned in that sub#paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) An office copy of an order under paragraph (2) shall, within 14 days from the making of the order, be sent by the administrator to the registrar.

(8) If the administrator without reasonable excuse contravenes paragraph (7), he shall be guilty of an offence and for continued contravention, he shall be guilty of a continuing offence.

(9) References in this Article to hire#purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

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F3 mod.by 1997 c. 32

F4 mod.by 1997 c. 32

General duties

29.—(1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

- (2) The administrator shall manage the affairs, business and property of the company—
- (a) at any time before proposals have been approved (with or without modifications) under Article 36, in accordance with any directions given by the High Court, and
 - (b) at any time after proposals have been so approved, in accordance with those proposals as revised, whether by him or a predecessor of his.
- (3) The administrator shall summon a meeting of the company's creditors if—
- (a) he is requested, in accordance with the rules, to do so by one#tenth, in value, of the company's creditors, or
 - (b) he is directed to do so by the High Court.

Discharge or variation of administration order

30.—(1) The administrator of a company may at any time apply to the High Court for the administration order to be discharged, or to be varied so as to specify an additional purpose.

- (2) The administrator shall make an application under this Article if—
- (a) it appears to him that the purpose or each of the purposes specified in the order either has been achieved or is incapable of achievement, or
 - (b) he is required to do so by a meeting of the company's creditors summoned for the purpose in accordance with the rules.

(3) On the hearing of an application under this Article, the High Court may by order discharge or vary the administration order and make such consequential provision as it thinks fit, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order it thinks fit.

(4) Where the administration order is discharged or varied the administrator shall, within 14 days from the making of the order effecting the discharge or variation, send an office copy of that order to the registrar.

(5) If the administrator without reasonable excuse contravenes paragraph (4), he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

Vacation of office

31.—(1) The administrator of a company may at any time be removed from office by order of the High Court and may, in the prescribed circumstances, resign his office by giving notice of his resignation to the Court.

- (2) The administrator shall vacate office if—
- (a) he ceases to be qualified to act as an insolvency practitioner in relation to the company, or
 - (b) the administration order is discharged.
- (3) Where at any time a person ceases to be administrator,[^{F5} the following paragraphs] apply.

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(4)^{F6} His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which Article 28(1) then applies.

(5) Any sums payable in respect of debts or liabilities incurred, while he was administrator, under contracts entered into^{F7} . . . by him or a predecessor of his in the carrying out of his or the predecessor's functions shall be charged on and paid out of any such property as is mentioned in paragraph (4) in priority to any charge arising under that paragraph;^{F7} . . .

[^{F8}(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in paragraph (4) and enjoy the same priority as any sums to which paragraph (5) applies; and for the purpose of this paragraph the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.

(7) For the purposes of paragraph (6), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and
- (b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(8) There shall be disregarded for the purposes of paragraph (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

(9) For the purposes of paragraphs (7) and (8)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(10) In paragraph (9)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.]

F5 1994 c.7

F6 mod.by 1997 c. 32

F7 1994 c.7

F8 1994 c.7

Release of administrator

32.—(1) A person who has ceased to be the administrator of a company has his release with effect from the following time, that is to say—

- (a) in the case of a person who has died, the time at which notice is given to the High Court in accordance with the rules that he has ceased to hold office;
- (b) in any other case, such time as the High Court may determine.

(2) Where a person has his release under this Article, he is, with effect from the time specified in paragraph (1), discharged from all liability both in respect of acts or omissions of his in the administration and otherwise in relation to his conduct as administrator.

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(3) However, nothing in this Article prevents the exercise, in relation to a person who has had his release under this Article, of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

Status:

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