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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART IV

#### RECEIVERSHIP

#### RECEIVERS AND MANAGERS

*[<sup>F1</sup>Prohibition of appointment of administrative receiver*

**F1** Arts. 59A - 59J and preceding cross - heading inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), **5(1)** (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

#### **Floating charge holder not to appoint administrative receiver**

**59A.**—(1) The holder of a qualifying floating charge in respect of a company's property may not appoint an administrative receiver of the company.

(2) In paragraph (1) “holder of a qualifying floating charge in respect of a company's property” has the same meaning as in paragraph 15 of Schedule B1.

(3) This Article applies—

- (a) to a floating charge created on or after a date appointed by the Department by order, and
- (b) in spite of any provision of an agreement or instrument which purports to empower a person to appoint an administrative receiver (by whatever name).

(4) An order under paragraph (3)(a) may—

- (a) make provision which applies generally or only for a specified purpose;
- (b) make different provision for different purposes;
- (c) make transitional provision.

(5) This Article is subject to the exceptions specified in Articles 59B to 59I.

#### **First exception: capital market**

**59B.**—(1) Article 59A does not prevent the appointment of an administrative receiver in pursuance of an agreement which is or forms part of a capital market arrangement if—

- (a) a party incurs or, when the agreement was entered into was expected to incur, a debt of at least £50 million under the arrangement, and
- (b) the arrangement involves the issue of a capital market investment.

(2) In paragraph (1)—

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“capital market arrangement” means an arrangement of a kind described in paragraph 1 of Schedule 1A, and

“capital market investment” means an investment of a kind described in paragraph 2 or 3 of that Schedule.

### **Second exception: public-private partnership**

**59C.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a public-private partnership project, and
- (b) includes step-in rights.

(2) In this Article “public-private partnership project” means a project—

- (a) the resources for which are provided partly by one or more public bodies and partly by one or more private persons, or
- (b) which is designed wholly or mainly for the purpose of assisting a public body to discharge a function.

(3) In this Article—

“step-in rights” has the meaning given by paragraph 6 of Schedule 1A, and

“project company” has the meaning given by paragraph 7 of that Schedule.

### **Third exception: utilities**

**59D.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a utility project, and
- (b) includes step-in rights.

(2) In this Article—

- (a) “utility project” means a project designed wholly or mainly for the purpose of a regulated business,
- (b) “regulated business” means a business of a kind listed in paragraph 10 of Schedule 1A,
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule, and
- (d) “project company” has the meaning given by paragraph 7 of that Schedule.

### **Fourth exception: urban regeneration projects**

**59E.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is designed wholly or mainly to develop land which at the commencement of the project is wholly or partly in a designated disadvantaged area in Northern Ireland, and
- (b) includes step-in rights.

(2) In paragraph (1) “develop” means to carry out—

- (a) building operations,
- (b) any operation for the removal of substances or waste from land and the levelling of the surface of the land, or
- (c) engineering operations in connection with the activities mentioned in sub-paragraph (a) or (b).

(3) In this Article—

“building” includes any structure or erection, and any part of a building as so defined, but does not include plant and machinery comprised in a building,

“building operations” includes—

- (a) demolition of buildings,
- (b) filling in of trenches,
- (c) rebuilding,
- (d) structural alterations of, or additions to, buildings and
- (e) other operations normally undertaken by a person carrying on business as a builder,

“designated disadvantaged area” means an area designated as a disadvantaged area under section 92 of the Finance Act 2001 (c. 9),

“engineering operations” includes the formation and laying out of means of access to highways,

“project company” has the meaning given by paragraph 7 of Schedule 1A,

“step-in rights” has the meaning given by paragraph 6 of that Schedule,

“substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour, and

“waste” includes any waste materials, spoil, refuse or other matter deposited on land.

**Fifth exception: project finance**

**59F.**—(1) Article 59A does not prevent the appointment of an administrative receiver of a project company of a project which—

- (a) is a financed project, and
- (b) includes step-in rights.

(2) In this Article—

- (a) a project is “financed” if under an agreement relating to the project a project company incurs, or when the agreement is entered into is expected to incur, a debt of at least £50 million for the purposes of carrying out the project,
- (b) “project company” has the meaning given by paragraph 7 of Schedule 1A, and
- (c) “step-in rights” has the meaning given by paragraph 6 of that Schedule.

**Sixth exception: financial market**

**59G.** Article 59A does not prevent the appointment of an administrative receiver of a company by virtue of—

- (a) a market charge within the meaning of Article 95 of the Companies (No. 2) (Northern Ireland) Order 1990 (NI 10),
- (b) a system-charge within the meaning of the Financial Markets and Insolvency Regulations (Northern Ireland) 1996 (SR 1996 No. 252).

**Seventh exception: registered housing association**

**59H.** Article 59A does not prevent the appointment of an administrative receiver of a housing association which is registered as such under Chapter II of Part II of the Housing (Northern Ireland) Order 1992 (NI 15).

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### **Eighth exception: licence companies**

**59I.** Article 59A does not prevent the appointment of an administrative receiver of a licence company within the meaning of section 26 of the Transport Act 2000 (c. 38).

### **Articles 59A to 59I: supplementary**

**59J.**—(1) Schedule 1A (which supplements Articles 59A to 59I) shall have effect.

(2) The Department may by order—

- (a) insert into this Order provision creating an additional exception to Article 59A(1);
- (b) provide for a provision of this Order which creates an exception to Article 59A(1) to cease to have effect;
- (c) amend Article 59A in consequence of provision made under sub-paragraph (a) or (b);
- (d) amend any of Articles 59B to 59I;
- (e) amend Schedule 1A.

(3) An order under paragraph (2) may make—

- (a) provision which applies generally or only for a specified purpose;
- (b) different provision for different purposes;
- (c) consequential or supplementary provision;
- (d) transitional provision.

(4) An order under paragraph (2)—

- (a) in the case of an order under paragraph (2)(e), shall be subject to negative resolution,
- (b) in the case of an order under paragraph (2)(d) varying the sum specified in Article 59B(1)(a) or 59F(2)(a) (whether or not the order also makes consequential or transitional provision), shall be subject to negative resolution, and
- (c) in the case of any other order under paragraph (2)(a) to (d), shall be subject to affirmative resolution.]

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