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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### <sup>F1</sup>PART V

#### WINDING UP OF COMPANIES REGISTERED UNDER [<sup>F1</sup>the Companies Act 2006]

#### CHAPTER VII LIQUIDATORS

#### *Preliminary*

#### **Style and title of liquidators**

**138.** The liquidator of a company shall be described—

- (a) where a person other than the official receiver is liquidator, by the style of “the liquidator” of the particular company, or
- (b) where the official receiver is liquidator, by the style of “the official receiver and liquidator” of the particular company;

and in neither case shall he be described by an individual name.

#### **Corrupt inducement affecting appointment**

**139.** A person who gives, or agrees or offers to give, to any member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator shall be guilty of an offence.

#### *Liquidator's powers and duties*

#### **Voluntary winding up**

**140.**—(1) This Article has effect where a company is being wound up voluntarily, but subject to Article 141 in the case of a creditors' voluntary winding up.

(2) The liquidator may—

- (a) <sup>F1</sup> in the case of a members' voluntary winding up, with the sanction of an [<sup>F2</sup>special resolution] of the company, and
- (b) in the case of a creditor's voluntary winding up, with the sanction of the High Court or the liquidation committee (or, if there is no such committee, a meeting of the company's creditors),

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exercise any of the powers specified in Part I of Schedule 2 (payment of debts, compromise of claims, etc.).

(3) The liquidator may, without sanction, exercise either of the powers specified in Part II of Schedule 2 (institution and defence of proceedings; carrying on the business of the company) and any of the general powers specified in Part III of Schedule 2.

(4) The liquidator may—

- (a) exercise the High Court's power of settling a list of contributories (which list is prima facie evidence of the liability of the persons named in it to be contributories),
- (b) exercise the Court's power of making calls,
- (c) <sup>F1</sup> summon general meetings of the company for the purpose of obtaining its sanction by [<sup>F3</sup>special resolution] or for any other purpose he may think fit.

<sup>F1</sup>(5) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(6) Where the liquidator in exercise of the powers conferred on him by this Order disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

**F1** mod. by SR 2004/307

**F2** Words in art. 140(2)(a) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 60(2) of the amending S.I.) 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. 60(1)(a)** (with art. 12)

**F3** Words in art. 140(4)(c) substituted (1.10.2007 with application as mentioned in Sch. 4 para. 60(2) of the amending S.I.) 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. 60(1)(b)** (with art. 12)

### Creditors' voluntary winding up

**141.**—(1) This Article applies where, in the case of a creditors' voluntary winding up, a liquidator has been nominated by the company.

(2) The powers conferred on the liquidator by Article 140 shall not be exercised, except with the sanction of the High Court, during the period before the holding of the creditors' meeting under Article 84.

(3) Paragraph (2) does not apply in relation to the power of the liquidator—

- (a) to take into his custody or under his control all the property to which the company is or appears to be entitled;
- (b) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of; and
- (c) to do all such other things as may be necessary for the protection of the company's assets.

(4) The liquidator shall attend the creditors' meeting held under Article 84 and shall report to the meeting on any exercise by him of his powers (whether or not under this Article or under Article 98 or 140).

(5) If default is made—

- (a) by the company in complying with paragraph (1) or (2) of Article 84, or

(b<sup>F4</sup> by the directors in complying with paragraph (1) or (2) of Article 85, the liquidator shall, within 7 days from the relevant day, apply to the High Court for directions as to the manner in which that default is to be remedied.

(6) “The relevant day” means the day on which the liquidator was nominated by the company or the day on which he first became aware of the default, whichever is the later.

(7) If the liquidator without reasonable excuse contravenes this Article, he shall be guilty of an offence.

F4 mod. by SR 2004/307

### Winding up by the High Court

142.—(1) Where a company is being wound up by the High Court, the liquidator may—

- (a) with the sanction of the Court or the liquidation committee, exercise any of the powers specified in Parts I and II of Schedule 2 (payment of debts; compromise of claims, etc.; institution and defence of proceedings; carrying on of the business of the company), and
- (b) with or without that sanction, exercise any of the general powers specified in Part III of Schedule 2.

(2) Where the liquidator (not being the official receiver), in exercise of the powers conferred on him by this Order—

- (a) disposes of any property of the company to a person who is connected with the company (within the meaning given by Article 7), or
- (b) employs a solicitor to assist him in the carrying out of his functions,

he shall, if there is for the time being a liquidation committee, give notice to the committee of that exercise of his powers.

(3) The exercise by the liquidator in a winding up by the High Court of the powers conferred by this Article is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

### Supplementary powers

143.—(1) This Article applies in the case of a company which is being wound up by the High Court.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes; and it is his duty to summon meetings at such times as the creditors or contributories by resolution (either at the meeting appointing the liquidator or otherwise) may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories (as the case may be).

(3) The liquidator may apply to the High Court (in the prescribed manner) for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provisions of this Order, the liquidator shall use his own discretion in the management of the assets and their distribution among the creditors.

(5) If any person is aggrieved by any act or decision of the liquidator, that person may apply to the High Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just.

[<sup>F5</sup>(5A) Where at any time after a winding-up petition has been presented to the High Court against any person (including an insolvent partnership or other body which may be wound up under

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Part VI of the Order as an unregistered company), whether by virtue of the provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 or not, the attention of the Court is drawn to the fact that the person in question is a member of an insolvent partnership, the Court may make an order as to the future conduct of the insolvency proceedings and any such order may apply any provisions of that Order with any necessary modifications.

(5B) Any order or directions under paragraph (5A) may be made or given on the application of the official receiver, any responsible insolvency practitioner, the trustee of the partnership or any other interested person and may include provisions as to the administration of the joint estate of the partnership, and in particular how it and the separate estate of any member are to be administered.

(5C) Where the High Court makes an order<sup>F6</sup> under section 367(3)(a) of the Financial Services and Markets Act 2000] for the winding up of an insolvent partnership, the Court may make an order as to the future conduct of the winding#up proceedings, and any such order may apply any provisions of the Insolvent Partnerships Order (Northern Ireland) 1995 with any necessary modifications.]

<b>F5</b>	SR 1995/225
<b>F6</b>	SI 2002/1555

#### **Enforcement of liquidator's duty to make returns, etc.**

**144.**—(1) If a liquidator who has made any default—

- (a) in filing, delivering or making any return, account or other document, or
- (b) in giving any notice which he is by law required to file, deliver, make or give,

fails to make good the default within 14 days from the service on him of a notice requiring him to do so, the High Court has the following powers.

(2) On an application made by any creditor or contributory of the company, or by the registrar, the High Court may make an order directing the liquidator to make good the default within such time as may be specified in the order.

(3) The High Court's order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(4) Nothing in this Article prejudices the operation of any statutory provision imposing penalties on a liquidator in respect of any such default as is mentioned in paragraph (1).

*Removal: vacation of office*

#### **Removal, etc. (voluntary winding up)**

**145.**—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up voluntarily.

(2) Subject to paragraph (3), the liquidator may be removed from office only by an order of the High Court or—

- (a) <sup>F7</sup> in the case of a members' voluntary winding up, by a general meeting of the company summoned specially for that purpose, or
- (b) in the case of a creditors' voluntary winding up, by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules.

(3) Where the liquidator was appointed by the High Court under Article 94, a meeting such as is mentioned in paragraph (2) shall be summoned for the purpose of replacing him only if he thinks fit or the Court so directs or the meeting is requested, in accordance with the rules—

- (a) in the case of a members' voluntary winding up, by members representing not less than one-half of the total voting rights of all the members having at the date of the request a right to vote at the meeting, or
  - (b) in the case of a creditors' voluntary winding up, by not less than one-half, in value, of the company's creditors.
- (4) A liquidator shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.
- (5) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the registrar.
- (6) Where—
- (a) <sup>F7</sup> in the case of a members' voluntary winding up, a final meeting of the company has been held under Article 80, or
  - (b) <sup>F7</sup> in the case of a creditors' voluntary winding up, final meetings of the company and of the creditors have been held under Article 92,
- the liquidator whose report was considered at the meeting or meetings shall vacate office as soon as he has complied with paragraph (3) of that Article and has given notice to the registrar that the meeting or meetings have been held and of the decisions (if any) of the meeting or meetings.<sup>F7</sup>

F7 mod. by SR 2004/307

#### **Removal, etc. (winding up by the High Court)**

**146.**—(1) This Article applies with respect to the removal from office and vacation of office of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Subject to paragraphs (3) and (4), the liquidator may be removed from office only by an order of the High Court or by a general meeting of the company's creditors summoned specially for that purpose in accordance with the rules; and a provisional liquidator may be removed from office only by an order of the Court.

(3) Where—

- (a) the official receiver is liquidator otherwise than in succession under Article 116(3) to a person who held office as a result of a nomination by a meeting of the company's creditors or contributories, or
- (b) the liquidator was appointed by the High Court otherwise than under Article 118(4)(a) or 119(1), or was appointed by the Department,

a general meeting of the company's creditors shall be summoned for the purpose of replacing him only if he thinks fit, or the Court so directs, or the meeting is requested, in accordance with the rules, by not less than one-quarter, in value, of the creditors.

(4) If appointed by the Department, the liquidator may be removed from office by a direction of the Department.

(5) A liquidator or provisional liquidator, not being the official receiver, shall vacate office if he ceases to be a person who is qualified to act as an insolvency practitioner in relation to the company.

(6) A liquidator may, in the prescribed circumstances, resign his office by giving notice of his resignation to the High Court.

(7) Where a final meeting has been held under Article 124 (liquidator's report on completion of winding up), the liquidator whose report was considered at the meeting shall vacate office as soon as he has given notice to the High Court and the registrar that the meeting has been held and of the decisions (if any) of the meeting.

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### *Release of liquidator*

#### **Release (voluntary winding up)**

**147.**—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up voluntarily.

(2) A person who has ceased to be a liquidator shall have his release with effect from the following time, that is to say—

- (a) <sup>F8</sup> in the case of a person who has been removed from office by a general meeting of the company or by a general meeting of the company's creditors that has not resolved against his release or who has died, the time at which notice is given to the registrar in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of the company's creditors that has resolved against his release, or by the High Court, or who has vacated office under Article 145(4), such time as the Department may, on the application of that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 145(6)(a), the time at which he vacated office;
- (e) in the case of a person who has vacated office under sub#paragraph (b) of Article 145(6)—
  - (i) if the final meeting of the creditors referred to in that sub#paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and
  - (ii) if that meeting has not resolved against that person's release, the time at which he vacated office.

(3) Where a liquidator has his release under paragraph (2), he is, with effect from the time specified in that paragraph, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator.

(4) Nothing in this Article prevents the exercise, in relation to a person who has had his release under paragraph (2), of the High Court's powers under Article 176 (summary remedy against delinquent directors, liquidators, etc.).

<b>F8</b> mod. by SR 2004/307
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#### **Release (winding up by the High Court)**

**148.**—(1) This Article applies with respect to the release of the liquidator of a company which is being wound up by the High Court, or of a provisional liquidator.

(2) Where the official receiver has ceased to be liquidator and a person becomes liquidator in his stead, the official receiver has his release with effect from the following time, that is to say—

- (a) in a case where that person was nominated by a general meeting of creditors or contributories, or was appointed by the Department, the time at which the official receiver gives notice to the High Court that he has been replaced;
- (b) in a case where that person is appointed by the Court, such time as the Court may determine.

(3) If the official receiver while he is a liquidator gives notice to the Department that the winding up is for practical purposes complete, he has his release with effect from such time as the Department may determine.

(4) A person other than the official receiver who has ceased to be a liquidator has his release with effect from the following time, that is to say—

- (a) in the case of a person who has been removed from office by a general meeting of creditors that has not resolved against his release or who has died, the time at which notice is given to the High Court in accordance with the rules that that person has ceased to hold office;
- (b) in the case of a person who has been removed from office by a general meeting of creditors that has resolved against his release, or by the High Court or the Department, or who has vacated office under Article 146(5), such time as the Department may, on an application by that person, determine;
- (c) in the case of a person who has resigned, such time as may be prescribed;
- (d) in the case of a person who has vacated office under Article 146(7)—
  - (i) if the final meeting referred to in that paragraph has resolved against that person's release, such time as the Department may, on an application by that person, determine, and
  - (ii) if that meeting has not so resolved, the time at which that person vacated office.

(5) A person who has ceased to hold office as a provisional liquidator has his release with effect from such time as the High Court may, on an application by him, determine.

(6) Where the official receiver or a liquidator or provisional liquidator has his release under this Article, he is, with effect from the time specified in the preceding provisions of this Article, discharged from all liability both in respect of acts or omissions of his in the winding up and otherwise in relation to his conduct as liquidator or provisional liquidator.

(7) 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.).

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