
STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART VIII

INDIVIDUAL VOLUNTARY ARRANGEMENTS

CHAPTER I

DEEDS OF ARRANGEMENT

Deeds of arrangement to which this Chapter applies

209.—(1) A deed of arrangement to which this Chapter applies shall include any of the instruments mentioned in paragraph (2), whether under seal or not,—

- (a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;
- (b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any 3 or more of his creditors;

otherwise than in pursuance of Chapter II or Chapter I of Part IX.

(2) The instruments referred to in paragraph (1) are—

- (a) an assignment of property;
- (b) a deed of or agreement for a composition;

and in cases where creditors of the debtor obtain any control over his property or business—

- (c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;
- (d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and
- (e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

(3) Articles 218, 221, 222(1)(a) and 223 shall not apply to a deed of arrangement made for the benefit of any 3 or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

(4) In determining for the purposes of this Chapter the number of creditors for whose benefit a deed is made, any 2 or more joint creditors shall be treated as a single creditor.

Registration of deeds of arrangement

Registrar and deputy registrar

210.—(1) The Department may for the purposes of the registration of deeds of arrangement under this Chapter appoint an officer of the Department as registrar.

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(2) The Department may, if it thinks expedient to do so, appoint one or more than one officer of the Department to act as deputy to the registrar.

Mode of registration

211.—(1) Subject to paragraph (2), a deed of arrangement under this Chapter shall be registered by presenting to and filing with the registrar within 7 clear days from the execution of the deed—

- (a) such number of copies as the registrar may determine of the deed, and of every schedule or inventory annexed to the deed or referred to in the deed; and
- (b) an affidavit verifying the time of execution, and containing—
 - (i) the name, residential address and occupation of, the debtor; and
 - (ii) the address of the place or places where his business is carried on; and
- (c) an affidavit by the debtor stating—
 - (i) the total estimated amount of property and liabilities included under the deed; and
 - (ii) the total amount of the composition (if any) payable under the deed; and
 - (iii) the names and addresses of his creditors.

(2) A deed of arrangement shall not be registered unless the original of the deed, duly stamped with the proper revenue duty, is produced to the registrar at the time of the registration.

Form of register

212. The registrar shall keep a register in which he shall record in respect of each deed of arrangement presented for registration—

- (a) the date of the deed;
- (b) the name, residential address and occupation of the debtor;
- (c) the address of the place or places where his business was carried on at the date of the execution of the deed;
- (d) the title of the firm or firms under which the debtor carried on business;
- (e) the name and address of the trustee (if any) under the deed;
- (f) the date of registration;
- (g) the amount of property and liabilities included under the deed, as estimated by the debtor;
- (h) such other particulars as may be prescribed.

Rectification of register

213. Where, on the application of any party interested, the High Court is satisfied that—

- (a) the omission to register a deed of arrangement within the time required by this Chapter, or
- (b) the omission or misstatement of the name, residential address, place of business or occupation of any person,

was accidental, or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, the Court may, on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residential address and place of business or occupation.

Avoidance of deeds of arrangement

Avoidance of unregistered deeds of arrangement

214. A deed of arrangement shall be void unless—

- (a) it is registered—
 - (i) within 7 clear days from the first execution of the deed by the debtor or any creditor;
or
 - (ii) if it is executed in any place out of Northern Ireland, within 7 clear days from the time at which it would, in the ordinary course of post, arrive in Northern Ireland, if posted within one week after the execution of the deed; and
- (b) it bears such stamp as is mentioned in Article 211(2).

Avoidance of deeds of arrangement unless assented to by a majority of the creditors

215.—(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before the expiration of 21 days from the registration of the deed, or within such extended time as the High Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of paragraph (1) shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within 28 days from registration or within such extended time as the High Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the fact declared.

(5) 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.

Deeds otherwise void or voidable

216. Nothing in this Chapter shall give validity to any deed or instrument which is by law void or voidable.

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

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(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.

Miscellaneous

Applications to the High Court

224. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the High Court.

Inspection of register, etc., certified copies and evidence

225.—(1) Any person may, on payment of the specified fee, at all reasonable times,—

- (a) search the register, and
- (b) inspect any registered deed of arrangement;

and copies certified by the registrar of, or extracts from, any deed registered under this Chapter shall on payment of the specified fee, be furnished to any person.

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(2) The accounts transmitted to the Department under Article 222(2) may be inspected by the debtor or any creditor or other person interested on payment of the specified fee, and copies of the accounts shall, on payment of the specified fee, be furnished to the debtor, the creditors, or any other persons interested.

(3) Any copy or extract purporting to be a certified copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

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