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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART VIII

#### INDIVIDUAL VOLUNTARY ARRANGEMENTS

##### CHAPTER II

##### VOLUNTARY ARRANGEMENTS

###### *Consideration and implementation of debtor's proposal*

#### **Decisions of creditors' meeting**

**232.**—(1) A creditors' meeting summoned under Article 231 shall decide whether to approve the proposed voluntary arrangement.

(2) The meeting may approve the proposed voluntary arrangement with modifications, but shall not do so unless the debtor consents to each modification.

(3) Subject to paragraph (4), the modifications subject to which the proposed voluntary arrangement may be approved may include one conferring the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner<sup>[F1]</sup> or authorised to act as nominee, in relation to the voluntary arrangement].

(4) The modifications mentioned in paragraph (3) shall not include any modification by virtue of which the proposal ceases to be a proposal<sup>[F1]</sup> under this Part].

(5) The meeting shall not approve any proposal or modification which affects the right of a secured creditor of the debtor to enforce his security, except with the concurrence of the creditor concerned.

(6) Subject to paragraph (7), the meeting shall not approve any proposal or modification under which—

- (a) any preferential debt of the debtor is to be paid otherwise than in priority to such of his debts as are not preferential debts, or
- (b) a preferential creditor of the debtor is to be paid an amount in respect of a preferential debt that bears to that debt a smaller proportion than is borne to another preferential debt by the amount that is to be paid in respect of that other debt.

(7) The meeting may approve a proposal or modification such as is mentioned in paragraph (6) with the concurrence of the preferential creditor concerned.

(8) Subject to paragraphs (2) to (7), the meeting shall be conducted in accordance with the rules.

(9) In this Article “preferential debt” has the meaning given by Article 346; and “preferential creditor” is to be construed accordingly.

*Status: Point in time view as at 30/06/2011.*

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## Report of decisions to High Court

**233.**—(1) After the conclusion in accordance with the rules of the meeting summoned under Article 231, the chairman of the meeting shall report the result of it to the High Court and, immediately after so reporting, shall give notice of the result of the meeting to such persons as may be prescribed.

(2) If the report is that the meeting has declined (with or without modifications) to approve the debtor's proposal, the High Court may discharge any interim order which is in force in relation to the debtor.

## Effect of approval

**234.**—(1) This Article has effect where the meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications).

(2) The approved arrangement—

(a) takes effect as if made by the debtor at the meeting, and

[<sup>F2</sup>(b) binds every person who in accordance with the rules—

(i) was entitled to vote at the meeting (whether or not he was present or represented at it), or

(ii) would have been so entitled if he had had notice of it, as if he were a party to the arrangement.]

[<sup>F2</sup>(2A) If—

(a) when the arrangement ceases to have effect any amount payable under the arrangement to a person bound by virtue of paragraph (2)(b)(ii) has not been paid, and

(b) the arrangement did not come to an end prematurely,

the debtor shall at that time become liable to pay to that person the amount payable under the arrangement.]

(3) Chapter I does not apply to the approved voluntary arrangement.

(4) Any interim order in force in relation to the debtor immediately preceding the expiration of the period of 28 days from the day on which the report with respect to the creditors' meeting was made to the High Court under Article 233 ceases to have effect at the end of that period.

(5) Paragraph (4) applies except to such extent as the High Court may direct for the purposes of any application under Article 236.

(6) Where proceedings on a bankruptcy petition have been stayed by an interim order which ceases to have effect under paragraph (4), that petition is deemed, unless the High Court otherwise orders, to have been dismissed.

**F2** 2002 NI 6

## [<sup>F3</sup>Additional effect on undischarged bankrupt

**235.**—(1) This Article applies where—

(a) the creditors' meeting summoned under Article 231 approves the proposed voluntary arrangement (with or without modifications), and

(b) the debtor is an undischarged bankrupt.

(2) Where this Article applies the High Court shall annul the bankruptcy order on an application made—

- (a) by the bankrupt, or
- (b) where the bankrupt has not made an application within the prescribed period, by the official receiver.
- (3) An application under paragraph (2) may not be made—
  - (a) during the period specified in Article 236(3)(a) during which the decision of the creditors' meeting can be challenged by application under Article 236,
  - (b) while an application under that Article is pending, or
  - (c) while an appeal in respect of an application under that Article is pending or may be brought.
- (4) Where this Article applies the Court may give such directions about the conduct of the bankruptcy and the administration of the bankrupt's estate as it thinks appropriate for facilitating the implementation of the approved voluntary arrangement.]

**F3** Art. 235 substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 21(1), Sch. 7 para. 1 (with art. 4); S.R. 2006/21, [art. 2](#) (with S.R. 2006/22, [arts. 2 - 7](#))

### Challenge of meeting's decision

**236.**—(1) Subject to the following provisions of this Article, an application to the High Court may be made, by any of the persons specified in paragraph (2) on one or both of the following grounds, namely—

- (a) that a voluntary arrangement approved by a creditors' meeting summoned under Article 231 unfairly prejudices the interests of a creditor of the debtor;
- (b) that there has been some material irregularity at or in relation to such a meeting.
- (2) The persons who may apply under this Article are—
  - (a) the debtor;
  - [<sup>F4</sup>(b) a person who—
    - (i) was entitled, in accordance with the rules, to vote at the creditors' meeting, or
    - (ii) would have been so entitled if he had had notice of it,]
  - (c) the nominee (or his replacement under Article [<sup>F4</sup> 230(3), 230A(4)] or 232(3)); and
  - (d) if the debtor is an undischarged bankrupt, the trustee of his estate or the official receiver.

(3) An application under this Article shall not be made

- [<sup>F5</sup>(a)] after the expiration of 28 days from the day on which the report of the creditors' meeting was made to the High Court under Article 233 [<sup>F5</sup> or]
- [<sup>F5</sup>(b) in the case of a person who was not given notice of the creditor's meeting, after the end of the period of 28 days beginning with the day on which he became aware that the meeting had taken place,]

[<sup>F5</sup> but (subject to that) an application made by a person within paragraph (2)(b)(ii) on the ground that the arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it has come to an end prematurely.].

(4) Where on an application under this Article the High Court is satisfied as to either of the grounds mentioned in paragraph (1), it may do one or both of the following, namely—

- (a) revoke or suspend any approval given by the meeting;

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(b) give a direction to any person for the summoning of a further meeting of the debtor's creditors to consider any revised proposal the debtor may make or, in a case falling within paragraph (1)(b), to reconsider his original proposal.

(5) Where at any time after giving a direction under paragraph (4)(b) for the summoning of a meeting to consider a revised proposal the High Court is satisfied that the debtor does not intend to submit such a proposal, the Court shall revoke the direction and revoke or suspend any approval given at the previous meeting.

(6) Where the High Court gives a direction under paragraph (4)(b), it may also give a direction continuing or, as the case may require, renewing, for such period as may be specified in the direction, the effect in relation to the debtor of any interim order.

(7) In any case where the High Court, on an application made under this Article with respect to a creditors' meeting, gives a direction under paragraph (4)(b) or revokes or suspends an approval under paragraph (4)(a) or (5), the Court may give such supplemental directions as it thinks fit and, in particular, directions with respect to—

- (a) things done since the meeting under any voluntary arrangement approved by the meeting, and
- (b) such things done since the meeting as could not have been done if an interim order had been in force in relation to the debtor when they were done.

(8) Except in pursuance of the preceding provisions of this Article, an approval given at a creditors' meeting summoned under Article 231 is not invalidated by any irregularity at or in relation to the meeting.

F4 2002 NI 6

F5 2002 NI 6

#### [<sup>F6</sup>False representations etc.

**236A.**—(1) If for the purpose of obtaining the approval of his creditors to a proposal for a voluntary arrangement, the debtor—

- (a) makes any false representation, or
- (b) fraudulently does, or omits to do, anything,

he shall be guilty of an offence.

(2) Paragraph (1) applies even if the proposal is not approved.]

F6 2002 NI 6

#### Prosecution of delinquent debtors

**236B.**—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) If it appears to the nominee or supervisor that the debtor has been guilty of any offence in connection with the arrangement for which he is criminally liable, he shall forthwith—

- (a) report the matter to the Department, and
- (b) provide the Department with such information and give the Department such access to and facilities for inspecting and taking copies of documents (being information or documents in his possession or under his control and relating to the matter in question) as the Department requires.

(3) Where the Director of Public Prosecutions for Northern Ireland institutes criminal proceedings following any report under paragraph (2), the nominee or, as the case may be, supervisor shall give the Director all assistance in connection with the prosecution which he is reasonably able to give.

(4) The High Court may, on the application of the Director of Public Prosecutions for Northern Ireland, direct a nominee or supervisor to comply with paragraph (3) if he has failed to do so.

### **Arrangements coming to an end prematurely**

**236C.** For the purposes of this Part, a voluntary arrangement approved by a creditors' meeting summoned under Article 231 comes to an end prematurely if, when it ceases to have effect, it has not been fully implemented in respect of all persons bound by the arrangement by virtue of Article 234(2)(b)(i).

### **Implementation and supervision of approved voluntary arrangement**

**237.**—(1) This Article applies where a voluntary arrangement approved by a creditors' meeting summoned under Article 231 has taken effect.

(2) The person who is for the time being carrying out, in relation to the voluntary arrangement, the functions conferred by virtue of the approval on the nominee (or his replacement under Article<sup>F7</sup> 230(3), 230A(4)] or 232(3)) shall be known as the supervisor of the voluntary arrangement.

(3) If the debtor, any of his creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he may apply to the High Court; and on such an application the Court may—

- (a) confirm, reverse or modify any act or decision of the supervisor,
- (b) give him directions, or
- (c) make such other order as it thinks fit.

(4) The supervisor may apply to the High Court for directions in relation to any particular matter arising under the voluntary arrangement.

(5) Without prejudice to section 40(2) of the Trustee Act (Northern Ireland) 1958<sup>F8</sup> (power of court to appoint trustees), the High Court may, whenever—

- (a) it is expedient to appoint a person to carry out the functions of the supervisor, and
- (b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court,

make an order appointing a person who is qualified to act as an insolvency practitioner<sup>F7</sup> or authorised to act as supervisor, in relation to the voluntary arrangement], either in substitution for the existing supervisor or to fill a vacancy.

(6) The power conferred by paragraph (5) is exercisable so as to increase the number of persons exercising the functions of the supervisor or, where there is more than one person exercising those functions, so as to replace one of more of those persons.

**F7** 2002 NI 6  
**F8** 1958 c. 23 (NI)

**Status:**

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**Changes to legislation:**

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