

INSOLVENCY (NORTHERN IRELAND) ORDER 2002

S.I. 2002 No. 3152 (N.I. 6)

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

Article 6: Qualification or authorisation of nominees and supervisors

This Article amends Article 3 of the Insolvency (Northern Ireland) Order 1989, which deals with acting as an insolvency practitioner² and inserts a new Article 348A dealing with arrangements for authorisation of nominees and supervisors.

Paragraph (1) extends the meaning of “to act as an insolvency practitioner” to include a person who acts as a nominee in relation to a company or individual voluntary arrangement.

Paragraph (2) inserts a new paragraph (1A) in Article 348 of the Insolvency (Northern Ireland) Order 1989. The amendment means that it will not be an offence to act as a nominee or supervisor whilst unauthorised to act as an insolvency practitioner provided that the individual is authorised to act as a nominee or a supervisor under paragraph (1) of Article 348(A).

Article 8: Investigation and prosecution of malpractice

This Article amends Articles 182 of the Insolvency (Northern Ireland) Order 1989. The Article provides that, in a winding up by the High Court, the Court may direct the liquidator to report apparent criminal misconduct by past or present company officers or members of the company to the Department rather than to the Director of Public Prosecutions. The Article also requires a liquidator in a voluntary winding up to report suspicions of criminal misconduct by past or present company officers or members to the Department rather than to the Director of Public Prosecutions.

1. The UNCITRAL model law seeks to facilitate the process of obtaining recognition of foreign insolvency proceedings; to introduce a greater degree of certainty as to the assistance the courts can give a foreign officeholder and the stage of the proceedings at which the assistance is given; and to require courts with insolvency jurisdiction to co-operate with each other.
2. *Insolvency practitioner* is a person who has the conduct of an insolvency procedure, e.g. liquidator in the winding up of a company.

Article 10: Insolvent estates of deceased persons

This Article inserts a new Article 365A into the Insolvency (Northern Ireland) Order 1989 by addressing the effects of the Court of Appeal decision in the case of *In re Palmer Deceased* (A Debtor) 1994 Ch. 316. In March 1994 the Court of Appeal attributed the ordinary, rather than the technical, meaning to “the estate of a deceased person” used in the context of an order-making power in Section 421 (In Northern Ireland, Article 365). This meant that the debtor’s interest, on the day of his death, in property held on a joint tenancy (usually the matrimonial home) was no longer available to the trustee¹ to distribute among the deceased’s creditors. The Article allows the trustee of a deceased insolvent, if certain conditions are met, to apply to the High Court to recover from the survivor for the benefit of the estate the value of any interest the deceased had in a jointly-owned property.

Schedule 1: Moratorium where directors propose voluntary arrangement
Paragraph 23 Schedule A1:

Sub-paragraph 2

Where a petition (other than an excepted petition²) for the winding up of the company has been presented before the beginning of the moratorium, Article 1073 of the Insolvency (Northern Ireland) Order 1989 will not apply during the moratorium or in the 28 day period referred to in paragraph 36(5)(a) of Schedule A1.

Sub-paragraph 3

Where an excepted petition for the winding up of the company has been presented to the High Court before the beginning of a moratorium it can continue unaffected by the coming into force of the moratorium.

Paragraph 13 Schedule A1: The moratorium, whilst in force, prevents a floating charge from crystallising, or restrictions being imposed on the disposal of any of the company's property.

1. *The trustee* is the person appointed to realise the assets of a deceased individual and distribute the proceeds to the creditors.
2. An *excepted petition* is a petition presented by the Department pursuant to Article 104A of the Insolvency (Northern Ireland) Order 1989 on the grounds that it is in the public interest to wind up a company or pursuant to Section 367 of the Financial Services and Markets Act 2000 on the grounds that it is just and equitable that the company be wound up.
3. **Article 107** Insolvency (Northern Ireland) Order 1989 provides that any disposal of a company's property, and transfer of any shares, or alteration in the status of the company's members made after the presentation to the High Court of a winding-up petition is invalid unless the Court orders otherwise. Because of the disapplication of Article 107, disposals will be governed by the moratorium provisions instead of by that Article.

Schedule 2: Company voluntary arrangements

Part I – Amendments of the Insolvency (Northern Ireland) Order 1989

This Schedule makes amendments to the provisions of the Insolvency (Northern Ireland) Order 1989 relating to company voluntary arrangements where there is no moratorium.

Part II: Amendments of the Building Societies Act 1986

Paragraphs 13 and 14 of Schedule 2: Part II of the schedule deal with the interaction of the company voluntary arrangement procedure with the Building Societies Act 1986. Principally it prevents a building society from using the company voluntary arrangement moratorium procedure.

Schedule 3: Individual voluntary arrangements

This Schedule makes amendments to the provisions of the Insolvency (Northern Ireland) Order 1989 relating to individual voluntary arrangements.