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Insolvency Act 1986

1986 CHAPTER 45

PART XIII

INSOLVENCY PRACTITIONERS AND THEIR QUALIFICATION

Restrictions on unqualified persons acting as liquidator, trustee in bankruptcy, etc.

388 Meaning of “act as insolvency practitioner”

- (1) A person acts as an insolvency practitioner in relation to a company by acting—
 - (a) as its liquidator, provisional liquidator, administrator or administrative receiver, or
 - (b) as supervisor of a voluntary arrangement approved by it under Part I.
 - (2) A person acts as an insolvency practitioner in relation to an individual by acting—
 - (a) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate; or
 - (b) as trustee under a deed which is a deed of arrangement made for the benefit of his creditors or, in Scotland, a trust deed for his creditor; or
 - (c) as supervisor of a voluntary arrangement proposed by him and approved under Part VIII; or
 - (d) in the case of a deceased individual to the administration of whose estate this section applies by virtue of an order under section 421 (application of provisions of this Act to insolvent estates of deceased persons), as administrator of that estate.
- [^{F1}(2A) A person acts as an insolvency practitioner in relation to an insolvent partnership by acting—
 - (a) as its liquidator, provisional liquidator or administrator, or
 - (b) as trustee of the partnership under article 11 of the Insolvent Partnerships Order 1994, or
 - (c) as supervisor of a voluntary arrangement approved in relation to it under Part I of this Act.]

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(3) References in this section to an individual include, except in so far as the context otherwise requires, references ^{F2}. . . to any debtor within the meaning of the ^{M1}Bankruptcy (Scotland) Act 1985.

(4) In this section—

“administrative receiver” has the meaning given by section 251 in Part VII;
^{F3} “company” means a company within the meaning given by section 735(1) of the 1985 Act, a company which may be wound up under Part XXI of that Act or a building society within the meaning of the Building Societies Act 1986.]

“interim trustee” and “permanent trustee” mean the same as in the Bankruptcy (Scotland) Act 1985.

^{F4}(5) Nothing in this section applies to anything done by—

- (a) the official receiver; or
- (b) the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985).]

Textual Amendments

- F1** S. 388(2A) inserted (1.12.1994) by S.I. 1994/2421, **arts. 1(2)**, 15(1)
- F2** Words in s. 388(3) omitted (1.12.1994) by virtue of S.I. 1994/2421, **art. 15(2)**
- F3** Definition of “Company” substituted by virtue of Interpretation Act 1978 (c. 30, SIF 115:1), **s. 17(2)(a)** and Building Societies Act 1986 (c. 53, SIF 16), **ss. 54(3)(a)(5)(a)**, 120, Sch. 18 para. 17(2) in s. 388(4) (the reference to the 1985 Act in the new definition being a reference to the Companies Act 1985)
- F4** S. 388(5) substituted (1.4.1993) by 1993 c. 6, **s. 11(1)** (with s. 12(6)); S.I. 1993/438, **art. 3** (with arts. 4, 5)

Modifications etc. (not altering text)

- C1** S. 388 applied with modifications by S.I. 1986/1999, **art. 3**, **Sch. 1 Pt. II**
 S. 388 applied (7.2.1994) by 1993 c. 48, **s. 119(8)** (with s. 6(8)); S.I. 1994/86, **art. 2**
- C2** S. 388 applied (with modifications) (*temp.* for a period of 12 months beginning with 22.3.1990: S.I. 1990/675; and for a further period of 12 months beginning with 22.3.1991: S.I. 1991/549, 779) by Prevention of Terrorism (Temporary Provisions) Act 1989 (c. 4, SIF 39:2), s. 13(8), **Sch. 4 para. 33(4)(a)**
- C3** S. 388 applied (31.10.1994) by 1994 c. 21, **s. 36(7)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
 S. 388 applied (with modifications) (3.2.1995) by 1994 c. 37, **ss. 35(4)**, 69(2) (with s. 66(2))
 S. 388 applied (with modifications) (1.4.1996) by 1995 c. 43, **ss. 44**, 50(2), **Sch. 2 para. 5(3)**
 S. 388 applied (with modifications) (S.) (17.12.2001) by 2001 asp 13, s. 20, **Sch. 6 para. 11(6)** (with s. 29); S.S.I. 2001/456, **art. 2**
 S. 388 applied (with modifications) (E.W.) (13.6.2001 in accordance with art. 3 of the commencing S.I. and 1.9.2001 otherwise) by 2001 c. 17, s. 38, **Sch. 6 para. 13(6)** (with ss. 27(3), 39, 78); S.I. 2001/2161, **arts. 2, 3** (as amended by S.I. 2001/2304, **art. 2**)

Marginal Citations

- M1** 1985 c. 66.

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389 Acting without qualification an offence.

- (1) A person who acts as an insolvency practitioner in relation to a company or an individual at a time when he is not qualified to do so is liable to imprisonment or a fine, or to both.
- (2) This section does not apply to the official receiver [^{F5}or the Accountant in Bankruptcy (within the meaning of the Bankruptcy (Scotland) Act 1985)].

Textual Amendments

F5 Words in s. 389(2) inserted (1.4.1993) by 1993 c. 6, s. 11(2) (with s. 12(6)); S.I. 1993/438, art.3 (with arts. 4, 5)

Modifications etc. (not altering text)

C4 S. 389 applied with modifications by S.I. 1986/1999, art. 3, Sch. 1 Pt. II

VALID FROM 01/01/2003

[^{F6}389A Authorisation of nominees and supervisors.

- (1) Section 389 does not apply to a person acting, in relation to a voluntary arrangement proposed or approved under Part I or Part VIII, as nominee or supervisor if he is authorised so to act.
- (2) For the purposes of subsection (1) and those Parts, an individual to whom subsection (3) does not apply is authorised to act as nominee or supervisor in relation to such an arrangement if—
 - (a) he is a member of a body recognised for the purpose by the Secretary of State, and
 - (b) there is in force security (in Scotland, caution) for the proper performance of his functions and that security or caution meets the prescribed requirements with respect to his so acting in relation to the arrangement.
- (3) This subsection applies to a person if—
 - (a) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - (b) he is subject to a disqualification order made or a disqualification undertaking accepted under the ^{M2}Company Directors Disqualification Act 1986 or to a disqualification order made under Part II of the ^{M3}Companies (Northern Ireland) Order 1989, or
 - (c) he is a patient within the meaning of Part VII of the ^{M4}Mental Health Act 1983 or section 125(1) of the ^{M5}Mental Health (Scotland) Act 1984.
- (4) The Secretary of State may by order declare a body which appears to him to fall within subsection (5) to be a recognised body for the purposes of subsection (2)(a).
- (5) A body may be recognised if it maintains and enforces rules for securing that its members—
 - (a) are fit and proper persons to act as nominees or supervisors, and

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- (b) meet acceptable requirements as to education and practical training and experience.
- (6) For the purposes of this section, a person is a member of a body only if he is subject to its rules when acting as nominee or supervisor (whether or not he is in fact a member of the body).
- (7) An order made under subsection (4) in relation to a body may be revoked by a further order if it appears to the Secretary of State that the body no longer falls within subsection (5).
- (8) An order of the Secretary of State under this section has effect from such date as is specified in the order; and any such order revoking a previous order may make provision for members of the body in question to continue to be treated as members of a recognised body for a specified period after the revocation takes effect.]

Textual Amendments

- F6** S. 389A inserted (1.1.2003) by 2000 c. 39, s. 4(4); S.I. 2002/2711, art. 2 (subject to transitional provisions in arts. 3-5)

Marginal Citations

- M2** 1986 c. 46.
M3 S.I. 1989/2404 (N.I. 18).
M4 1983 c. 20.
M5 1984 c. 36.

VALID FROM 01/04/2004

[^{F7}389B Official receiver as nominee or supervisor

- (1) The official receiver is authorised to act as nominee or supervisor in relation to a voluntary arrangement approved under Part VIII provided that the debtor is an undischarged bankrupt when the arrangement is proposed.
- (2) The Secretary of State may by order repeal the proviso in subsection (1).
- (3) An order under subsection (2)—
- (a) must be made by statutory instrument, and
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F7** S. 389B inserted (1.4.2004) by 2002 c. 40, ss. 264(1), 279, Sch. 22 para. 3 (with s. 249(6)); S.I. 2003/2093, art. 2(2), Sch. 2 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

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