



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Administration orders*

#### **[<sup>F1</sup>359 Administration order**

- (1) The Authority may make an administration application under Schedule B1 to the 1986 Act [<sup>F2</sup>or Schedule B1 to the 1989 Order] in relation to a company or insolvent partnership which—
  - (a) is or has been an authorised person,
  - (b) is or has been an appointed representative, or
  - (c) is carrying on or has carried on a regulated activity in contravention of the general prohibition.
- (2) Subsection (3) applies in relation to an administration application made (or a petition presented) by the Authority by virtue of this section.
- (3) Any of the following shall be treated for the purpose of paragraph 11(a) of Schedule B1 to the 1986 Act [<sup>F3</sup>or paragraph 12(a) of Schedule B1 to the 1989 Order] as unable to pay its debts—
  - (a) a company or partnership in default on an obligation to pay a sum due and payable under an agreement, and
  - (b) an authorised deposit taker in default on an obligation to pay a sum due and payable in respect of a relevant deposit.
- (4) In this section—

“agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the company or partnership,

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“authorised deposit taker” means a person with a Part IV permission to accept deposits (but not a person who has a Part IV permission to accept deposits only for the purpose of carrying on another regulated activity in accordance with that permission),

“company” means a company—

- (a) in respect of which an administrator may be appointed under Schedule B1 to the 1986 Act, or
- (b) [<sup>F4</sup>in respect of which an administrator may be appointed under Schedule B1 to the 1989 Order.]

“relevant deposit” shall, ignoring any restriction on the meaning of deposit arising from the identity of the person making the deposit, be construed in accordance with—

- (a) section 22,
- (b) any relevant order under that section, and
- (c) Schedule 2.

(5) The definition of “authorised deposit taker” in subsection (4) shall be construed in accordance with—

- (a) section 22,
- (b) any relevant order under that section, and
- (c) Schedule 2.]

#### Textual Amendments

- F1** S. 359 substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\), ss. 248\(3\), 279, Sch. 17 para. 55](#) (with s. 249(1)–(3)); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)–(5), 3–8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F2** Words in s. 359(1) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 58\(2\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2–7)
- F3** Words in s. 359(3) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 58\(3\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2–7)
- F4** S. 359(4): in the definition of “company”, paragraph (b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 58\(4\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, arts. 2–7)

#### Modifications etc. (not altering text)

- C1** S. 359(1)–(4) applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

### 360 Insurers.

- (1) The Treasury may by order provide that such provisions of Part II of the 1986 Act (or Part III of the 1989 Order) as may be specified are to apply in relation to insurers with such modifications as may be specified.
- (2) An order under this section—

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- (a) may provide that such provisions of this Part as may be specified are to apply in relation to the administration of insurers in accordance with the order with such modifications as may be specified; and
  - (b) requires the consent of the Secretary of State.
- (3) “Specified” means specified in the order.

**Modifications etc. (not altering text)**

- C2** S. 360 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) \(Lloyd's\) Regulations 2005 \(S.I. 2005/1998\)](#), [reg. 2\(4\)](#)

**[<sup>F5</sup>361 Administrator’s duty to report to Authority**

- (1) This section applies where a company or partnership is—
  - (a) in administration within the meaning of Schedule B1 to the 1986 Act, or
  - [<sup>F6</sup>(b) in administration within the meaning of Schedule B1 to the 1989 Order.]
- (2) If the administrator thinks that the company or partnership is carrying on or has carried on a regulated activity in contravention of the general prohibition, he must report to the Authority without delay.
- (3) Subsection (2) does not apply where the administration arises out of an administration order made on an application made or petition presented by the Authority.]

**Textual Amendments**

- F5** S. 361 substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 56](#) (with s. 249(1)-(3)); [S.I. 2003/2093](#), [art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by [S.I. 2003/2332](#), [art. 2](#)))
- F6** S. 361(1)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 59](#); [S.R. 2006/21](#), [art. 2](#) (subject to [S.R. 2006/22](#), arts. 2-7)

**Modifications etc. (not altering text)**

- C3** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)
- C4** S. 361 modified (21.2.2009) by [The Banking Act 2009 \(Parts 2 and 3 Consequential Amendments\) Order 2009 \(S.I. 2009/317\)](#), [art. 5\(1\)\(4\)](#)

**362 Authority’s powers to participate in proceedings.**

- (1) This section applies if a person other than the Authority [<sup>F7</sup>makes an administration application under Schedule B1 to the 1986 Act [<sup>F8</sup>or Schedule B1 to the 1989 Order]] in relation to a company or partnership which—
  - (a) is, or has been, an authorised person;
  - (b) is, or has been, an appointed representative; or
  - (c) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.

[<sup>F9</sup>(1A) This section also applies in relation to—

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- (a) the appointment under paragraph 14 or 22 of Schedule B1 to the 1986 Act [<sup>F10</sup>or paragraph 15 or 23 of Schedule B1 to the 1989 Order] of an administrator of a company of a kind described in subsection (1)(a) to (c), or
  - (b) the filing with the court of a copy of notice of intention to appoint an administrator under [<sup>F11</sup>any] of those paragraphs.]
- (2) The Authority is entitled to be heard—
- (a) at the hearing of the [<sup>F12</sup>administration application [<sup>F13</sup>or the petition]]; and
  - (b) at any other hearing of the court in relation to the company or partnership under Part II of the 1986 Act (or Part III of the 1989 Order).
- (3) Any notice or other document required to be sent to a creditor of the company or partnership must also be sent to the Authority.
- [<sup>F14</sup>(4) The Authority may apply to the court under paragraph 74 of Schedule B1 to the 1986 Act [<sup>F15</sup>or paragraph 75 of Schedule B1 to the 1989 Order].
- (4A) In respect of an application under subsection (4)—
- (a) paragraph 74(1)(a) and (b) shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words “harm the interests of some or all members or creditors”, and
  - [<sup>F16</sup>(b) paragraph 75(1)(a) and (b) of Schedule B1 to the 1989 Order shall have effect as if for the words “harm the interests of the applicant (whether alone or in common with some or all other members or creditors)” there were substituted the words harm the interests of some or all members or creditors.]]
- (5) A person appointed for the purpose by the Authority is entitled—
- (a) to attend any meeting of creditors of the company or partnership summoned under any enactment;
  - (b) to attend any meeting of a committee established under [<sup>F17</sup>paragraph 57 of Schedule B1 to the 1986 Act](or [<sup>F18</sup>paragraph 58 of Schedule B1 to the 1989 Order]; and
  - (c) to make representations as to any matter for decision at such a meeting.
- (6) If, during the course of the administration of a company, a compromise or arrangement is proposed between the company and its creditors, or any class of them, the Authority may apply to the court under section 425 of the <sup>M1</sup>Companies Act 1985 (or Article 418 of the <sup>M2</sup>Companies (Northern Ireland) Order 1986).

#### Textual Amendments

- F7** Words in s. 362(1) substituted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(a)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2)**)
- F8** Words in s. 362(1) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 60(2)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F9** S. 362(1A) inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 57(b)** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2)**)

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- F10** Words in s. 362(1A)(a) inserted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(3\)\(a\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))
- F11** Word in s. 362(1A)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(3\)\(b\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))
- F12** Words in s. 362(2)(a) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 57\(c\)](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F13** Words in s. 362(2)(a) repealed (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), 31, Sch. 2 para. 60(4), [Sch. 9](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))
- F14** S. 362(4)(4A) substituted (15.9.2003) for s. 362(4) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 57\(d\)](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F15** Words in s. 362(4) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(5\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))
- F16** S. 362(4A)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(6\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))
- F17** Words in s. 362(5)(b) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248(3), 279, [Sch. 17 para. 57\(e\)](#) (with s. 249(1)-(3)); S.I. 2003/2093, [art. 2\(1\)](#), Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, [art. 2](#)))
- F18** Words in s. 362(5)(b) substituted (N.I.) (27.3.2006) by [The Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), [Sch. 2 para. 60\(7\)](#); S.R. 2006/21, [art. 2](#) (subject to S.R. 2006/22, [arts. 2-7](#))

#### Modifications etc. (not altering text)

- C5** S. 362 applied (with modifications) (6.4.2001) by [S.I. 2001/1090](#), [regs. 1, 6](#)
- C6** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R. 2004/307\)](#), [reg. 6](#)

#### Marginal Citations

- M1** 1985 c. 6.
- M2** S.I. 1986/1032 (N.I. 6).

### <sup>F19</sup>[ <sup>F19</sup>362A] **Administrator appointed by company or directors**

- (1) This section applies in relation to a company of a kind described in section 362(1)(a) to (c).
- (2) An administrator of the company may not be appointed under paragraph 22 of Schedule B1 to the 1986 Act <sup>F20</sup>or paragraph 23 of Schedule B1 to the 1989 Order] without the consent of the Authority.
- (3) Consent under subsection (2)—
- must be in writing, and
  - must be filed with the court along with the notice of intention to appoint under paragraph 27 of <sup>F21</sup>Schedule B1 to the 1986 Act or paragraph 28 of Schedule B1 to the 1989 Order].
- (4) In a case where no notice of intention to appoint is required—

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- (a) subsection (3)(b) shall not apply, but
- (b) consent under subsection (2) must accompany the notice of appointment filed under paragraph 29 of [<sup>F22</sup>Schedule B1 to the 1986 Act or paragraph 30 of Schedule B1 to the 1989 Order].]

#### Textual Amendments

- F19** S. 362A inserted (15.9.2003) by Enterprise Act 2002 (c. 40), ss. 248(3), 279, **Sch. 17 para. 58** (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 1(3)-(5), 3-8 (as amended by S.I. 2003/2332, **art. 2**))
- F20** Words in s. 362A(2) inserted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(2)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F21** Words in s. 362A(3)(b) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(3)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)
- F22** Words in s. 362A(4) substituted (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), **Sch. 2 para. 61(4)**; S.R. 2006/21, **art. 2** (subject to S.R. 2006/22, arts. 2-7)

#### Modifications etc. (not altering text)

- C7** Ss. 361-365 applied (with modifications) (N.I.) (13.9.2004) by Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307), **reg. 6**

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