



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XXIV

#### INSOLVENCY

##### *Bankruptcy*

#### 372 Petitions

- (1) The Authority may present a petition to the court—
  - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual; or
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual.
- (2) But such a petition may be presented only on the ground that—
  - (a) the individual appears to be unable to pay a regulated activity debt; or
  - (b) the individual appears to have no reasonable prospect of being able to pay a regulated activity debt.
- (3) An individual appears to be unable to pay a regulated activity debt if he is in default on an obligation to pay a sum due and payable under an agreement.
- (4) An individual appears to have no reasonable prospect of being able to pay a regulated activity debt if—
  - (a) the Authority has served on him a demand requiring him to establish to the satisfaction of the Authority that there is a reasonable prospect that he will be able to pay a sum payable under an agreement when it falls due;
  - (b) at least three weeks have elapsed since the demand was served; and
  - (c) the demand has been neither complied with nor set aside in accordance with rules.

- (5) A demand made under subsection (4)(a) is to be treated for the purposes of the 1986 Act (or the 1989 Order) as if it were a statutory demand under section 268 of that Act (or Article 242 of that Order).
- (6) For the purposes of a petition presented in accordance with subsection (1)(b)—
  - (a) the Authority is to be treated as a qualified creditor; and
  - (b) a ground mentioned in subsection (2) constitutes apparent insolvency.
- (7) “Individual” means an individual—
  - (a) who is, or has been, an authorised person; or
  - (b) who is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (8) “Agreement” means an agreement the making or performance of which constitutes or is part of a regulated activity carried on by the individual concerned.
- (9) “Rules” means—
  - (a) in England and Wales, rules made under section 412 of the 1986 Act;
  - (b) in Scotland, rules made by order by the Treasury, after consultation with the Scottish Ministers, for the purposes of this section; and
  - (c) in Northern Ireland, rules made under Article 359 of the 1989 Order.

### **373 Insolvency practitioner’s duty to report to Authority**

- (1) If—
  - (a) a bankruptcy order or sequestration award is in force in relation to an individual by virtue of a petition presented by a person other than the Authority, and
  - (b) it appears to the insolvency practitioner that the individual is carrying on, or has carried on, a regulated activity in contravention of the general prohibition, the insolvency practitioner must report the matter to the Authority without delay.
- (2) “Bankruptcy order” means a bankruptcy order under Part IX of the 1986 Act (or Part IX of the 1989 Order).
- (3) “Sequestration award” means an award of sequestration under section 12 of the 1985 Act.
- (4) “Individual” includes an entity mentioned in section 374(1)(c).

### **374 Authority’s powers to participate in proceedings**

- (1) This section applies if a person other than the Authority presents a petition to the court—
  - (a) under section 264 of the 1986 Act (or Article 238 of the 1989 Order) for a bankruptcy order to be made against an individual;
  - (b) under section 5 of the 1985 Act for the sequestration of the estate of an individual; or
  - (c) under section 6 of the 1985 Act for the sequestration of the estate belonging to or held for or jointly by the members of an entity mentioned in subsection (1) of that section.

- (2) The Authority is entitled to be heard—
  - (a) at the hearing of the petition; and
  - (b) at any other hearing in relation to the individual or entity under—
    - (i) Part IX of the 1986 Act;
    - (ii) Part IX of the 1989 Order; or
    - (iii) the 1985 Act.
- (3) A copy of the report prepared under section 274 of the 1986 Act (or Article 248 of the 1989 Order) must also be sent to the Authority.
- (4) A person appointed for the purpose by the Authority is entitled—
  - (a) to attend any meeting of creditors of the individual or entity;
  - (b) to attend any meeting of a committee established under section 301 of the 1986 Act (or Article 274 of the 1989 Order);
  - (c) to attend any meeting of commissioners held under paragraph 17 or 18 of Schedule 6 to the 1985 Act; and
  - (d) to make representations as to any matter for decision at such a meeting.
- (5) “Individual” means an individual who—
  - (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.
- (6) “Entity” means an entity which—
  - (a) is, or has been, an authorised person; or
  - (b) is carrying on, or has carried on, a regulated activity in contravention of the general prohibition.