

## SCHEDULES

### SCHEDULE 6

Section 38

#### FREEZING ORDERS IN RESPECT OF PROPERTY LIABLE TO FORFEITURE

##### *Application for freezing order*

- 1 (1) A freezing order may be made by the High Court on an application in pursuance of a direction given by the Secretary of State under section 38.
- (2) Any such application—
  - (a) in England and Wales, may be made without notice and may be granted without a hearing; and
  - (b) in Northern Ireland, may be made on an ex parte application to a judge in chambers.

##### *Grounds for making order*

- 2 The court may make a freezing order if it is satisfied—
  - (a) that a forfeiture order has been made in proceedings before the ICC, or
  - (b) that there are reasonable grounds for believing that a forfeiture order may be made in such proceedings,and that the property to which the order relates consists of or includes property that is or may be affected by such a forfeiture order.

##### *Effect of order*

- 3 (1) A “freezing order” is an order prohibiting any person from dealing with property specified in the order otherwise than in accordance with such conditions and exceptions as may be specified in the order.
- (2) A freezing order shall provide for notice to be given to persons affected by the order.

##### *Variation or discharge of order*

- 4 (1) A freezing order may be varied or discharged in relation to any property on the application of any person affected by the order.
- (2) A freezing order shall be discharged on the conclusion of the ICC proceedings in relation to which the order was made.

##### *Power to appoint receiver*

- 5 (1) The powers conferred by this paragraph may be exercised if a freezing order is in force.
- (2) The High Court may at any time appoint a receiver—

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- (a) to take possession of any property specified in the order, and
  - (b) in accordance with the court's directions, to manage or otherwise deal with the property in respect of which he is appointed,
- subject to such exceptions and conditions as may be specified by the court.
- (3) The High Court may require any person having possession of property in respect of which a receiver is appointed under this paragraph to give possession of it to the receiver.
  - (4) The powers conferred on a receiver by this paragraph shall be exercised with a view to securing that the property specified in the order is available for satisfying the forfeiture order or, as the case may be, any forfeiture order that may be made in the ICC proceedings in relation to which the order was made.
  - (5) A receiver appointed under this paragraph shall not be liable to any person in respect of any loss or damage resulting from any action taken by him which he believed on reasonable grounds that he was entitled to take, except in so far as the loss or damage is caused by his negligence.

*Seizure to prevent removal from jurisdiction*

- 6 (1) Where a freezing order has been made, a constable may, for the purpose of preventing any property specified in the order from being removed from the jurisdiction, seize the property.
- (2) The reference in sub-paragraph (1) to property being removed from the jurisdiction is to its being removed from England and Wales or Northern Ireland, as the case may be.
- (3) Property seized under this paragraph shall be dealt with in accordance with the directions of the High Court.

*Registered land: England and Wales*

- 7 (1) The Land Charges Act 1972 (c. 61) and the Land Registration Act 1925 (c. 21) apply—
  - (a) in relation to freezing orders, as they apply in relation to orders affecting land made by the court for the purpose of enforcing judgments or recognisances; and
  - (b) in relation to applications for freezing orders, as they apply in relation to other pending land actions.
- (2) The ICC shall be treated for the purposes of section 57 of the Land Registration Act 1925 (inhibitions) as a person interested in relation to any registered land to which a freezing order or an application for a freezing order relates.

*Registered land: Northern Ireland*

- 8 (1) The ICC shall be treated for the purposes of section 66 of the Land Registration Act (Northern Ireland) 1970 (c. 18 (N.I.)) (cautions) as a person interested in relation to any registered land to which a freezing order or an application for such an order relates.

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- (2) Upon being served with a copy of a freezing order or an application for such an order, the Registrar shall, in respect of any registered land to which the order or application relates, make an entry inhibiting any dealing with the land without the consent of the High Court.
- (3) Subsections (2) and (4) of section 67 of the Land Registration Act (Northern Ireland) 1970 (inhibitions) apply to an entry made under sub-paragraph (2) as they apply to an entry made on the application of any person interested in the registered land under subsection (1) of that section.
- (4) Where a freezing order has been protected by an entry registered under the Land Registration Act (Northern Ireland) 1970 or the Registration of Deeds Act (Northern Ireland) 1970 (c. 25 (N.I.)), an order under paragraph 4 discharging the freezing order may direct that the entry be vacated.
- (5) In this paragraph—
  - (a) “Registrar” and “entry” have the same meanings as in the Registration Act (Northern Ireland) 1970; and
  - (b) “registered land” has the meaning assigned to it by section 45(1)(a) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

#### *Bankruptcy: England and Wales*

- 9 (1) Where a person is adjudged bankrupt in England and Wales—
  - (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph,is excluded from the bankrupt’s estate for the purposes of Part 9 of the Insolvency Act 1986 (c. 45).
- (2) Where a person has been adjudged bankrupt in England and Wales, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to—
  - (a) property for the time being comprised in the bankrupt’s estate for the purposes of that Part of that Act;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under section 307, 308 or 308A of that Act (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of that Act.
- (3) Nothing in that Act shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of that Act and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the freezing order.
- (5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29th December 1986 (the date on

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which the Insolvency Act 1986 (c. 45) came into force), this paragraph shall have effect with the following modifications—

- (a) for references to the bankrupt's estate for the purposes of Part 9 of that Act there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914 (c. 59);
- (b) for references to the Act of 1986 and sections 280(2)(c) and 286 of that Act there shall be respectively substituted references to the Act of 1914 and to sections 26(2) and 8 of that Act;
- (c) the references in sub-paragraph (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the Act of 1914; and
- (d) sub-paragraph (2)(b) shall be omitted.

*Bankruptcy: Northern Ireland*

- 10 (1) Where a person is adjudged bankrupt in Northern Ireland—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the order adjudging him bankrupt, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph,
- is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)).
- (2) Where a person has been adjudged bankrupt in Northern Ireland, the powers conferred on a receiver appointed under paragraph 5 above shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt's estate for the purposes of that Part of that Order;
  - (b) property in respect of which his trustee in bankruptcy may (without leave of court) serve a notice under Article 280 or 281 of that Order (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement); and
  - (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under Article 254(2)(c) of that Order.
- (3) Nothing in that Order shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under Article 259 of that Order and any property of the debtor is subject to a freezing order, the powers conferred on the receiver by virtue of that Order do not apply to property for the time being subject to the freezing order.
- (5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) came into force), this paragraph shall have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Order there shall be substituted references to the property of the bankrupt for the purposes of the Bankruptcy Acts (Northern Ireland) 1857 to 1980;
  - (b) sub-paragraph (2)(b) shall be omitted;

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- (c) for the reference in sub-paragraph (2)(c) to Article 254(2)(c) of that Order there shall be substituted a reference to Articles 28(4), (5)(c) and (11) and 30(6)(c) of the Bankruptcy Amendment (Northern Ireland) Order 1980 (S.I. 1980/561 (N.I. 4));
- (d) for the reference in sub-paragraph (3) to that Order there shall be substituted a reference to the Bankruptcy Acts (Northern Ireland) 1857 to 1980; and
- (e) for the reference in sub-paragraph (4) to an interim receiver appointed under Article 259 of that Order there shall be substituted a reference to a receiver or manager appointed under section 68 of the Bankruptcy (Ireland) Amendment Act 1872 (c. 58).

#### *Winding up: England and Wales*

- 11 (1) Where an order for the winding up of a company has been made under the Insolvency Act 1986 (c. 45), or a resolution has been passed by a company for voluntary winding up under that Act, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph.
- (2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) In this paragraph—
- “company” means any company which may be wound up under the Insolvency Act 1986; and
  - “the relevant time” means—
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
  - (c) in any other case where such an order has been made, the time of the making of the order.
- (5) In any case in which a winding up of a company commenced or is treated as having commenced before 29th December 1986 (the date on which the Insolvency Act 1986 (c. 45) came into operation), this paragraph shall have effect with the substitution for references to that Act of references to the Companies Act 1985 (c. 6).

*Winding up: Northern Ireland*

- 12 (1) Where an order for the winding up of a company has been made under the Insolvency (Northern Ireland) Order 1989 ([S.I. 1989/2405 \(N.I. 19\)](#)), or a resolution has been passed by a company for voluntary winding up under that Order, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property for the time being subject to a freezing order, or an order having the like effect in Scotland, made before the relevant time, and
  - (b) any proceeds of property realised by virtue of paragraph 5(2) for the time being in the hands of a receiver appointed under that paragraph.
- (2) Where such an order has been made or such a resolution has been passed, the powers conferred on a receiver appointed under paragraph 5 shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency (Northern Ireland) Order 1989 shall be taken as restricting, or enabling the restriction of, the exercise of those powers.
- (4) In this paragraph—
- “company” means any company which may be wound up under the Insolvency (Northern Ireland) Order 1989 ([S.I. 1989/2405 \(N.I. 19\)](#)); and
- “the relevant time” means—
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
  - (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
  - (c) in any other case where such an order has been made, the time of the making of the order.
- (5) In any case in which a winding up of a company commenced or is treated as having commenced before 1st October 1991 (the date on which the Insolvency (Northern Ireland) Order 1989 ([S.I. 1989/2405 \(N.I. 19\)](#)) came into operation), this paragraph shall have effect with the substitution for references to that Order of references to the Companies (Northern Ireland) Order 1986 ([S.I. 1986/1032 \(N.I. 6\)](#)).

*Protection of insolvency practitioners*

- 13 (1) This paragraph applies where an insolvency practitioner seizes or disposes of property which is subject to a freezing order and—
- (a) he reasonably believes that he is entitled to do so in the exercise of his functions, and
  - (b) he would be so entitled if the property were not subject to a freezing order.

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- (2) The insolvency practitioner shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence.
- (3) The insolvency practitioner shall have a lien on the property seized or the proceeds of its sale—
  - (a) for such of his expenses as were incurred in connection with the insolvency proceedings in relation to which the seizure or disposal purported to take place, and
  - (b) for so much of his remuneration as may be reasonably assigned for his acting in connection with those proceedings.
- (4) Sub-paragraphs (1) to (3) are without prejudice to the generality of any provision contained in the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989.
- (5) In this paragraph “insolvency practitioner”, in any part of the United Kingdom, means a person acting as an insolvency practitioner in that or any other part of the United Kingdom.
- (6) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in England and Wales or in Scotland shall be determined in accordance with section 388 of the Insolvency Act 1986, except that—
  - (a) the reference in section 388(2)(a) to a permanent or interim trustee in the sequestration of a debtor’s estate shall be taken to include a reference to a trustee in sequestration,
  - (b) section 388(5) shall be disregarded, and
  - (c) the expression shall also include the Official Receiver acting as receiver or manager of property.
- (7) For the purpose of sub-paragraph (5) any question whether a person is acting as an insolvency practitioner in Northern Ireland shall be determined in accordance with Article 3 of the Insolvency (Northern Ireland) Order 1989, except that—
  - (a) Article 3(5) shall be disregarded, and
  - (b) the expression shall also include the Official Receiver acting as receiver or manager of property.

### *Interpretation*

- 14 (1) For the purposes of this Schedule—
- (a) “property” includes money and all other property, real or personal, heritable or moveable, and including things in action and other intangible or incorporeal property; and
  - (b) “dealing with property” includes (without prejudice to the generality of that expression)—
    - (i) where a debt is owed to a person, making a payment to any person in reduction of the amount of the debt, and
    - (ii) removing the property from England and Wales or Northern Ireland.
- (2) For the purposes of this Schedule ICC proceedings are concluded—
- (a) when there is no further possibility of a forfeiture order being made in the proceedings; or

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- (b) on the satisfaction of a forfeiture order made in the proceedings (whether by the recovery of all the property liable to be recovered, or otherwise).