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## STATUTORY INSTRUMENTS

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# 1989 No. 2405

## The Insolvency (Northern Ireland) Order 1989

### PART V

#### WINDING UP OF COMPANIES REGISTERED UNDER [<sup>F1</sup>the Companies Act 2006]

#### CHAPTER V

#### PROVISIONS APPLYING TO BOTH KINDS OF VOLUNTARY WINDING UP

#### **Distribution of company's property**

**93.** Subject to the provisions of this Order as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the company's articles otherwise provide) be distributed among the members according to their rights and interests in the company.

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

**C1** Art. 93 modified (06.03.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 1(1), [Sch. para. 9\(2\)\(a\)](#)

#### **Appointment or removal of liquidator by the High Court**

**94.**—(1) If from any cause whatever there is no liquidator acting, the High Court may appoint a liquidator.

(2) The High Court may, on cause shown, remove a liquidator and appoint another.

#### **Notice by liquidator of his appointment**

**95.**—(1) The liquidator shall, within 14 days from his appointment, publish in the Belfast Gazette and deliver to the registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator contravenes this Article, he shall be guilty of an offence and, for continued contravention, he shall be guilty of a continuing offence.

#### **Acceptance of shares, etc., as consideration for sale of company's property**

**96** <sup>F1</sup>.—(1) This Article applies, in the case of a company proposed to be, or being, wound up voluntarily, where the whole or part of the company's business or property is proposed to be transferred or sold

[<sup>F2</sup>(a)] to another company (“the transferee company”), whether or not the latter is [<sup>F3</sup>a company registered under the Companies Act 2006][<sup>F2</sup>, or]

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[<sup>F2</sup>(b) to a limited liability partnership (the transferee limited liability partnership).]

(2) With the requisite sanction, the liquidator of the company being, or proposed to be, wound up ( “the transferor company”) may receive, in compensation or part compensation for the transfer or [<sup>F2</sup> sale—]

[<sup>F2</sup>(a) in the case of the transferee company, shares, policies or other like interests in the transferee company for distribution among the members of the transferor company, or

(b) in the case of the transferee limited liability partnership, membership in the transferee limited liability partnership for distribution among the members of the transferor company.]

(3) The sanction requisite under paragraph (2) is—

(a) in the case of a members' voluntary winding up, that of a special resolution of the company, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, and

(b) in the case of a creditors' voluntary winding up, that of either the High Court or the liquidation committee.

(4) Alternatively to paragraph (2), the liquidator may (with that sanction) enter into any other arrangement whereby the members of the transferor [<sup>F2</sup> company may—]

[<sup>F2</sup>(a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the transferee company, or

(b) in the case of the transferee limited liability partnership, in lieu of receiving cash or membership (or in addition thereto), participate in some other way in the profits of, or receive any other benefit from, the transferee limited liability partnership.]

(5) A sale or arrangement in pursuance of this Article is binding on members of the transferor company.

(6) A special resolution is not invalid for the purposes of this Article by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators; but, if an order is made within a year for winding up the company by the High Court, the special resolution is not valid unless sanctioned by the Court.

**F1** mod. by SR 2004/307

**F2** SR 2004/307

**F3** Words in art. 96(1)(a) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), arts. 2(1), 8, **Sch. 1 para. 111(11)** (with art. 10)

## Dissent from arrangement under Article 96

**97.**—(1 <sup>F4</sup> This Article applies in the case of a voluntary winding up where, for the purposes of Article 96(2) or (4), there has been passed a special resolution of the transferor company providing the sanction requisite for the liquidator under that Article.

(2 <sup>F4</sup> If a member of the transferor company who did not vote in favour of the special resolution expresses his dissent from it in writing, addressed to the liquidator and left at the company's registered office within 7 days from the passing of the resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration under this Article.

(3)<sup>F4</sup> If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution.

(4)<sup>F4</sup> For the purposes of an arbitration under this Article, the provisions of the Companies Clauses Consolidation Act 1845<sup>F5</sup> with respect to the settlement of disputes by arbitration are incorporated with this Order, and—

- (a) in the construction of those provisions this Order is deemed the special Act and “the company” means the transferor company, and
- (b) any appointment by the incorporated provisions directed to be made under the hand of the secretary or any 2 of the directors may be made in writing by the liquidator (or, if there is more than one liquidator, then any 2 or more of them).

**F4** mod. by SR 2004/307

**F5** 1845 c. 16

### Reference of questions to the High Court

**98.**—(1) The liquidator or any contributory or creditor may apply to the High Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2) The High Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(3) [<sup>F6</sup>A copy] of an order made by virtue of this Article staying the proceedings in the winding up shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

**F6** Words in art. 98(3) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(12)** (with art. 10)

### No liquidator appointed or nominated by company

**99.**—(1) This Article applies where, in the case of a voluntary winding up, no liquidator has been appointed or nominated by the company.

(2) The powers of the directors shall not be exercised, except with the sanction of the High Court or (in the case of a creditors' voluntary winding up) so far as may be necessary to secure compliance with Article 84 (creditors' meeting) and Article 85 (statement of affairs), during the period before the appointment or nomination of a liquidator of the company.

(3) Paragraph (2) does not apply in relation to the powers of the directors—

- (a) to dispose of perishable goods and other goods the value of which is likely to diminish if they are not immediately disposed of, and
- (b) to do all such other things as may be necessary for the protection of the company's assets.

(4) If the directors of the company without reasonable excuse contravene this Article, they shall be guilty of an offence.

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### Expenses of voluntary winding up

**100.** [<sup>F7</sup>After the payment of any liabilities to which Article 148A applies,] all expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

**F7** Words in art. 100 inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 7 para. 13](#) (with ss. 2(2), 5(2))

### Saving for certain rights

**101.** The voluntary winding up of a company does not bar the right of any creditor or contributory to have it wound up by the High Court; but in the case of an application by a contributory the Court must be satisfied that the rights of the contributories will be prejudiced by a voluntary winding up.

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**Changes and effects yet to be applied to :**

- Instrument amended by [1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40](#)
- Instrument amended (prosp) by [S.I. 1994/279 \(N.I.\) art. 26\(1\)Sch. 2 para. 15](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 Pt. 2 para. 66 revoked by [1996 c. 23 s. 107\(2\)Sch. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov.uk](#))
- art. 2B inserted by [2016 c. 2 \(N.I.\) s. 2\(1\)](#)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by [2016 c. 2 \(N.I.\) s. 1\(1\)](#)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by [2016 c. 2 \(N.I.\) s. 1\(2\)](#)