

# INSOLVENCY (NORTHERN IRELAND) ORDER 2002

S.I. 2002 No. 3152 (N.I. 6)

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## EXPLANATORY MEMORANDUM

### PURPOSE OF THE ORDER AND SUMMARY OF ITS MAIN PROVISIONS

4. The primary purpose of the Order is to make available to small companies attempting to enter a voluntary arrangement<sup>1</sup> with their creditors the option of a short moratorium<sup>2</sup> protecting them from legal proceedings (including proceedings for winding-up) while they are convening a meeting of creditors to vote on their proposal for payment. This will provide such companies with the same protection as is available to their counterparts in GB through the enactment of the Insolvency Act 2000 and which under current law is also available to individuals. Small companies are defined by Article 255(3) of the Companies (Northern Ireland) Order 1986 as companies satisfying two out of three criteria, namely having a turnover not exceeding £2.8 million, having a balance sheet total not exceeding £1.4 million, and having 50 or less employees.
1. *Company Voluntary Arrangements* were introduced by the Insolvency (Northern Ireland) Order 1989 Part II and similarly provide a means for financially troubled companies to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs.
2. *Moratorium* is a temporary stay on certain legal acts and processes from being performed or continued.
5. The Order includes a range of other measures. It: -
  - makes an interim order (moratorium) optional in the case of an individual attempting to enter a voluntary arrangement<sup>1</sup> with his creditors;
  - provides for the Department to recognise bodies to authorise persons to act as nominees or supervisors in company or individual voluntary arrangements not being persons who are currently licensed to act as insolvency practitioners;
  - prohibits a landlord effecting peaceable re-entry to bring a tenant's lease to an end where an administration order<sup>2</sup> has been applied for or made, except with the leave of the High Court;
  - amends Article 182 of the Insolvency (Northern Ireland) Order 1989 to require liquidators<sup>3</sup> to report alleged criminal misconduct on the part of company officers or members in connection with company liquidations directly to the Department rather than through the Director of Public Prosecutions;
  - amends Article 183 of the Insolvency (Northern Ireland) Order 1989, to ensure that it is compatible with Article 6 of the European Convention on Human Rights (ECHR). Article 183 as it stands would allow answers obtained under powers of compulsion derived from the Companies (Northern Ireland) Order 1986 to be used as evidence in subsequent criminal proceedings against the person who gave the answers. The European Court of Human Rights ruled in the case of *Saunders v. UK* that this was an infringement of the individual's rights under Article 6;

*This Explanatory Memorandum refers to the Insolvency  
(Northern Ireland) Order 2002No. 3152 (N.I. 6)*

- amends Article 365 so that the value of a deceased insolvent's interest in jointly-owned property which would otherwise have been lost to the deceased insolvent's estate through the operation of the survivorship rules will be recoverable for the benefit of the estate and therefore of the creditors<sup>4</sup>;
1. *Individual Voluntary Arrangements* were introduced by the Insolvency (Northern Ireland) Order 1989 Part VIII and provide a means for financially troubled individuals to reach a legally binding agreement with their creditors in satisfaction of their debts or a scheme of arrangement of their affairs.
  2. The *Administration Order Procedure* was introduced by the Insolvency (Northern Ireland) Order 1989 Part III.
  3. A *liquidator* is the insolvency practitioner appointed to realise the assets of a company and distribute the proceeds to creditors in liquidation.
  4. This will counteract the results of a Court of Appeal decision in the case of *In re Palmer Deceased (A Debtor)* 1994 Ch. 316, the effect of which was to place any share which the deceased had in property held on a joint tenancy beyond the reach of his creditors.
    - creates power for the Department with the agreement of the Lord Chancellor to make regulations to give effect with or without modifications to the model law on cross-border insolvency which was adopted by the United Nations Commission on International Trade Law (UNCITRAL)<sup>1</sup> of which the UK is a member state.