

SCHEDULES

SCHEDULE 5

Article 13(2)

SCHEDULE 2A TO THE 1989 ORDER

“SCHEDULE 2A

BANKRUPTCY RESTRICTIONS ORDER AND UNDERTAKING

Bankruptcy restrictions order

- 1.—(1) A bankruptcy restrictions order may be made by the High Court.
- (2) An order may be made only on the application of—
 - (a) the Department, or
 - (b) the official receiver acting on a direction of the Department.

Grounds for making order

2.—(1) The High Court shall grant an application for a bankruptcy restrictions order if it thinks it appropriate having regard to the conduct of the bankrupt (whether before or after the making of the bankruptcy order).

(2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the bankrupt—

- (a) failing to keep records which account for a loss of property by the bankrupt, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding petition and ending with the date of the application;
- (b) failing to produce records of that kind on demand by the official receiver or the trustee;
- (c) entering into a transaction at an undervalue;
- (d) giving a preference;
- (e) making an excessive pension contribution;
- (f) a failure to supply goods or services which were wholly or partly paid for which gave rise to a claim provable in the bankruptcy;
- (g) trading at a time before commencement of the bankruptcy when the bankrupt knew or ought to have known that he was unable to pay his debts;
- (h) incurring, before commencement of the bankruptcy, a debt which the bankrupt had no reasonable expectation of being able to pay;
- (i) failing to account satisfactorily to the Court, the official receiver or the trustee for a loss of property or for an insufficiency of property to meet bankruptcy debts;
- (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent

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of the bankruptcy or which took place between presentation of the petition and commencement of the bankruptcy;

- (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of the bankruptcy;
- (l) fraud or fraudulent breach of trust;
- (m) failing to cooperate with the official receiver or the trustee.

(3) The Court shall also, in particular, consider whether the bankrupt was an undischarged bankrupt at some time during the period of 6 years ending with the date of the bankruptcy to which the application relates.

- (4) For the purpose of sub-paragraph (2)—
- “immediately preceding petition” shall be construed in accordance with Article 322(c),
 - “excessive pension contribution” shall be construed in accordance with Article 315A,
 - “preference” shall be construed in accordance with Article 313, and
 - “undervalue” shall be construed in accordance with Article 312.

Timing of application for order

3.—(1) An application for a bankruptcy restrictions order in respect of a bankrupt must be made—

- (a) before the end of the period of one year beginning with the date on which the bankruptcy commences, or
- (b) with the permission of the High Court.¹

(2) The period specified in sub-paragraph (1)(a) shall cease to run in respect of a bankrupt while the period set for his discharge is suspended under Article 253(3).

Duration of order

4.—(1) A bankruptcy restrictions order—

- (a) shall come into force when it is made, and
- (b) shall cease to have effect at the end of a date specified in the order.

(2) The date specified in a bankruptcy restrictions order under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the order is made, or
- (b) after the end of the period of 15 years beginning with that date.

Interim bankruptcy restrictions order

5.—(1) This paragraph applies at any time between—

- (a) the institution of an application for a bankruptcy restrictions order, and
- (b) the determination of the application.

(2) The High Court may make an interim bankruptcy restrictions order if the Court thinks that—

- (a) there are prima facie grounds to suggest that the application for the bankruptcy restrictions order will be successful, and
- (b) it is in the public interest to make an interim order.
- (3) An interim order may be made only on the application of—
 - (a) the Department, or
 - (b) the official receiver acting on a direction of the Department.
- (4) An interim order—
 - (a) shall have the same effect as a bankruptcy restrictions order, and
 - (b) shall come into force when it is made.
- (5) An interim order shall cease to have effect—
 - (a) on the determination of the application for the bankruptcy restrictions order,
 - (b) on the acceptance of a bankruptcy restrictions undertaking made by the bankrupt, or
 - (c) if the Court discharges the interim order on the application of the person who applied for it or of the bankrupt.

6.—(1) This paragraph applies to a case in which both an interim bankruptcy restrictions order and a bankruptcy restrictions order are made.

(2) Paragraph 4(2) shall have effect in relation to the bankruptcy restrictions order as if a reference to the date of that order were a reference to the date of the interim order.

Bankruptcy restrictions undertaking

7.—(1) A bankrupt may offer a bankruptcy restrictions undertaking to the Department.

(2) In determining whether to accept a bankruptcy restrictions undertaking the Department shall have regard to the matters specified in paragraph 2(2) and (3).

8. A reference in a statutory provision to a person in respect of whom a bankruptcy restrictions order has effect (or who is “the subject of” a bankruptcy restrictions order) includes a reference to a person in respect of whom—

- (a) an interim bankruptcy restrictions order, or
- (b) a bankruptcy restrictions undertaking,

has effect.

9.—(1) A bankruptcy restrictions undertaking—

- (a) shall come into force on being accepted by the Department, and
- (b) shall cease to have effect at the end of a date specified in the undertaking.

(2) The date specified under sub-paragraph (1)(b) must not be—

- (a) before the end of the period of 2 years beginning with the date on which the undertaking is accepted, or
- (b) after the end of the period of 15 years beginning with that date.

(3) On an application by the bankrupt the High Court may—

- (a) annul a bankruptcy restrictions undertaking;
- (b) provide for a bankruptcy restrictions undertaking to cease to have effect before the date specified under sub-paragraph (1)(b).

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Effect of annulment of bankruptcy order

10. Where a bankruptcy order is annulled under Article 256(1)(a)—
 - (a) any bankruptcy restrictions order, interim order or undertaking which is in force in respect of the bankrupt shall be annulled,
 - (b) no new bankruptcy restrictions order or interim order may be made in respect of the bankrupt, and
 - (c) no new bankruptcy restrictions undertaking by the bankrupt may be accepted.
11. Where a bankruptcy order is annulled under Article 235, 237D or 256(1)(b)—
 - (a) the annulment shall not affect any bankruptcy restrictions order, interim order or undertaking in respect of the bankrupt,
 - (b) the High Court may make a bankruptcy restrictions order in relation to the bankrupt on an application instituted before the annulment,
 - (c) the Department may accept a bankruptcy restrictions undertaking offered before the annulment, and
 - (d) an application for a bankruptcy restrictions order or interim order in respect of the bankrupt may not be instituted after the annulment.

Registration

12. The Department shall maintain a register of—
 - (a) bankruptcy restrictions orders,
 - (b) interim bankruptcy restrictions orders, and
 - (c) bankruptcy restrictions undertakings.”.