



## 2010 CHAPTER 16

### **Debt relief restrictions orders and undertakings**

3. After Schedule 2ZA to the Order of 1989 (inserted by section 2) (conditions for making a debt relief order) insert—

#### “SCHEDULE 2ZB

#### Debt relief restrictions orders and undertakings

##### *Debt relief restrictions order*

- (1) A debt relief restrictions order may be made by the High Court in relation to a person in respect of whom a debt relief order has been made.
- (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*

- (1) The High Court shall grant an application for a debt relief restrictions order if it thinks it appropriate to do so having regard to the conduct of the debtor (whether before or after the making of the debt relief order).
- (2) The Court shall, in particular, take into account any of the following kinds of behaviour on the part of the debtor—
  - (a) failing to keep records which account for a loss of property by the debtor, or by a business carried on by him, where the loss occurred in the period beginning 2 years immediately preceding the application date

- for the debt relief order and ending with the date of the application for the debt relief restrictions order;
- (b) failing to produce records of that kind on demand by the official receiver;
  - (c) entering into a transaction at an undervalue in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
  - (d) giving a preference in the period beginning 2 years before the application date for the debt relief order and ending with the date of the determination of that application;
  - (e) making an excessive pension contribution;
  - (f) a failure to supply goods or services that were wholly or partly paid for;
  - (g) trading at a time, before the date of the determination of the application for the debt relief order, when the debtor knew or ought to have known that he was unable to pay his debts;
  - (h) incurring, before the date of the determination of the application for the debt relief order, a debt which the debtor had no reasonable expectation of being able to pay;
  - (i) failing to account satisfactorily to the Court or the official receiver for a loss of property or for an insufficiency of property to meet his debts;
  - (j) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased the extent of his inability to pay his debts before the application date for the debt relief order or which took place between that date and the date of the determination of the application for the debt relief order;
  - (k) neglect of business affairs of a kind which may have materially contributed to or increased the extent of his inability to pay his debts;
  - (l) fraud or fraudulent breach of trust;
  - (m) failing to co-operate with the official receiver.
- (3) The High Court shall also, in particular, consider whether the debtor was an undischarged bankrupt at some time during the period of 6 years ending with the date of the application for the debt relief order.
- (4) For the purposes of sub-paragraph (2)—
- “excessive pension contribution” shall be construed in accordance with Article 315A;
  - “preference” shall be construed in accordance with paragraph 10(2) of Schedule 2ZA;

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*Status: This is the original version (as it was originally enacted).*

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“undervalue” shall be construed in accordance with paragraph 9(2) of that Schedule.

*Timing of application for order*

3. An application for a debt relief restrictions order in respect of a debtor may be made—
- (a) at any time during the moratorium period relating to the debt relief order in question, or
  - (b) after the end of that period, but only with the permission of the Court.

*Duration of order*

- (1) A debt relief restrictions order—
  - (a) comes into force when it is made, and
  - (b) ceases to have effect at the end of a date specified in the order.
- (2) The date specified in a debt relief restrictions order under subparagraph (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 debt relief restrictions order*

- (1) This paragraph applies at any time between—
  - (a) the institution of an application for a debt relief restrictions order, and
  - (b) the determination of the application.
- (2) The High Court may make an interim debt relief restrictions order if the Court thinks that—
  - (a) there are prima facie grounds to suggest that the application for the debt relief restrictions order will be successful, and
  - (b) it is in the public interest to make an interim debt relief restrictions order.
- (3) An interim debt relief restrictions order may only be made on the application of—
  - (a) the Department, or
  - (b) the official receiver acting on a direction of the Department.
- (4) An interim debt relief restrictions order—
  - (a) has the same effect as a debt relief restrictions order, and
  - (b) comes into force when it is made.

- (5) An interim debt relief restrictions order ceases to have effect—
- (a) on the determination of the application for the debt relief restrictions order,
  - (b) on the acceptance of a debt relief restrictions undertaking made by the debtor, or
  - (c) if the Court discharges the interim debt relief restrictions order on the application of the person who applied for it or of the debtor.

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

(2) Paragraph 4(2) has effect in relation to the debt relief restrictions order as if a reference to the date of that order were a reference to the date of the interim debt relief restrictions order.

#### *Debt relief restrictions undertaking*

(1) A debtor may offer a debt relief restrictions undertaking to the Department.

(2) In determining whether to accept a debt relief 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 debt relief restrictions order has effect (or who is “the subject of” a debt relief restrictions order) includes a reference to a person in respect of whom—

- (a) an interim debt relief restrictions order; or
- (b) a debt relief restrictions undertaking,

has effect.

(1) A debt relief restrictions undertaking—

- (a) comes into force on being accepted by the Department, and
- (b) ceases 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 debtor the High Court may—

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

*Effect of revocation of debt relief order*

**10.** Unless the High Court directs otherwise, the revocation at any time of a debt relief order does not—

- (a) affect the validity of any debt relief restrictions order, interim debt relief restrictions order or debt relief restrictions undertaking which is in force in respect of the debtor;
- (b) prevent the determination of any application for a debt relief restrictions order, or an interim debt relief restrictions order, in relation to the debtor that was instituted before that time;
- (c) prevent the acceptance of a debt relief restrictions undertaking that was offered before that time; or
- (d) prevent the institution of an application for a debt relief restrictions order or interim debt relief restrictions order in respect of the debtor, or the offer or acceptance of a debt relief restrictions undertaking by the debtor, after that time.”.