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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 VI

#### WINDING UP BY THE HIGH COURT

#### *General powers of High Court*

#### **Power to stay winding up**

**125.**—(1) The High Court may at any time after an order for winding up, on the application either of the liquidator or the official receiver or any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) The High Court may, before making an order, require the official receiver to furnish to it a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) [<sup>F1</sup>A copy] of every order made under this Article shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the registrar for registration.

**F1** Words in art. 125(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(18)** (with art. 10)

#### **Settlement of list of contributories and application of assets**

**126.**—(1 <sup>F2</sup> As soon as may be after making a winding#up order, the High Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required <sup>F3</sup>. . . , and shall cause the company's assets to be collected, and applied in discharge of its liabilities.

(2) If it appears to the High Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list, the High Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

**F2** mod. by SR 2004/307

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**F3** Words in art. 126(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(19)** (with art. 10)

### Debts due from contributory to company

**127.**—(1) <sup>F4</sup> The High Court may, at any time after making a winding#up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due from him (or from the estate of the person whom he represents) to the company, exclusive of any money payable by him or the estate by virtue of any call <sup>F5</sup>. . . .

(2) <sup>F4</sup> The High Court in making such an order may—

- (a) in the case of an unlimited company, allow to the contributory by way of set#off any money due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit, and
- (b) in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance.

(3) <sup>F4</sup> In the case of any company, whether limited or unlimited, when all the creditors are paid in full (together with interest at the official rate), any money due on any account whatever to a contributory from the company may be allowed to him by way of set#off against any subsequent call.

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

**F5** Words in art. 127(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(19)** (with art. 10)

### Power to make calls

**128.**—(1) The High Court may, at any time after making a winding#up order, and either before or after it has ascertained the sufficiency of the company's assets, make calls on all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the company's debts and liabilities, and the expenses of winding up, and for the adjustment of the rights of the contributories among themselves, and make an order for payment of any calls so made.

(2) In making a call the High Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay it.

### Payment into bank of money due to company

**129.**—(1) The High Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into such bank as the Court may appoint for the purpose to the account of the liquidator instead of to the liquidator, and such an order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into any such bank as is mentioned in paragraph (1) in the event of a winding up by the High Court are subject in all respects to the orders of the Court.

### **Order on contributory to be conclusive evidence**

**130.**—(1) An order made by the High Court on a contributory is conclusive evidence that the money (if any) thereby appearing to be due or ordered to be paid is due, but subject to any right of appeal.

(2) All other pertinent matters stated in the order are to be taken as truly stated as against all persons and in all proceedings.

### **Power to exclude creditors not proving in time**

**131.** The High Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved.

### **Adjustment of rights of contributories**

**132.** The High Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

### **Inspection of books by creditors, etc.**

**133.**—(1) The High Court may, at any time after making a winding#up order, make such order for inspection of the company's books and papers by creditors and contributories as the Court thinks just; and any books and papers in the company's possession may be inspected by creditors and contributories accordingly, but not further or otherwise.

(2) Nothing in this Article excludes or restricts any statutory rights of—

- (a) a Northern Ireland department; or
- (b) a department of the Government of the United Kingdom; or
- (c) a person acting under the authority of either such department.

### **Payment of expenses of winding up**

**134.** The High Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the Court thinks just.

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

**C1** [Art. 134](#) modified (06.03.2008) by [The Regulated Covered Bonds Regulations 2008 \(S.I. 2008/346\)](#), reg. 1(1), [Sch. para. 9\(2\)\(b\)](#)

### **Power to arrest absconding contributory**

**135.** The High Court, at any time either before or after making a winding#up order, on proof of probable cause for believing that a contributory is about to quit the United Kingdom or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls, may cause the contributory to be arrested and his books and papers and movable personal property to be seized and him and them to be kept safely until such time as the Court may order.

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### Powers of High Court to be cumulative

**136.** Powers conferred [<sup>F6</sup>on the High Court by this Order] are in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sum.

**F6** Words in art. 136 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(20)** (with art. 10)

### Delegation of powers to liquidator

**137.**—(1) Provision may be made by rules for enabling or requiring all or any of the powers and duties conferred and imposed on the High Court <sup>F7</sup>. . . in respect of the following matters—

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories,
- (b) <sup>F8</sup> the settling of lists of contributories and the rectifying of the register of members where required, and the collection and application of the assets,
- (c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator,
- (d) the making of calls,
- (e) the fixing of a time within which debts and claims must be proved,

to be exercised or performed by the liquidator as an officer of the Court, and subject to the Court's control.

(2) <sup>F8</sup> But the liquidator shall not, without the special leave of the High Court, rectify the register of members, and shall not make any call without either that special leave or the sanction of the liquidation committee.

**F7** Words in art. 137(1) omitted (1.10.2009) by virtue of Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), arts. 2(1), 8, **Sch. 1 para. 111(21)** (with art. 10)

**F8** mod. by SR 2004/307

**Changes to legislation:**

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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\(2\)](#)