

**Status:** Point in time view as at 27/03/2006.

**Changes to legislation:** The Insolvency (Northern Ireland) Order 1989, APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE is up to date with all changes known to be in force on or before 03 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE B1 **N.I.**

#### ADMINISTRATION

**F1** Sch. B1 inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(2), Sch. 1 (with art. 4); S.R. 2006/21, art. 2 (with S.R. 2006/22, arts. 2-7)

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

**C1** Sch. B1 applied (with modifications) (1.10.2011) by Postal Services Act 2011 (c. 5), ss. 73, 87(1)(2), 93(3), Sch. 10 Pt. 1, Sch. 10 Pt. 2

### APPOINTMENT OF ADMINISTRATOR BY HOLDER OF FLOATING CHARGE

#### *Power to appoint*

**15.—**(1) The holder of a qualifying floating charge in respect of a company's property may appoint an administrator of the company.

(2) For the purposes of sub-paragraph (1) a floating charge qualifies if created by an instrument which—

- (a) states that this paragraph applies to the floating charge,
- (b) purports to empower the holder of the floating charge to appoint an administrator of the company, or
- (c) purports to empower the holder of the floating charge to make an appointment which would be the appointment of an administrative receiver within the meaning given by Article 5(1).

(3) For the purposes of sub-paragraph (1) a person is the holder of a qualifying floating charge in respect of a company's property if he holds one or more debentures of the company secured—

- (a) by a qualifying floating charge which relates to the whole or substantially the whole of the company's property,
- (b) by a number of qualifying floating charges which together relate to the whole or substantially the whole of the company's property, or
- (c) by charges and other forms of security which together relate to the whole or substantially the whole of the company's property and at least one of which is a qualifying floating charge.

#### *Restrictions on power to appoint*

**16.—**(1) A person may not appoint an administrator under paragraph 15 unless—

- (a) he has given at least 2 business days' written notice to the holder of any prior floating charge which satisfies paragraph 15(2), or

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- (b) the holder of any prior floating charge which satisfies paragraph 15(2) has consented in writing to the making of the appointment.
- (2) One floating charge is prior to another for the purposes of this paragraph if—
  - (a) it was created first, or
  - (b) it is to be treated as having priority in accordance with an agreement to which the holder of each floating charge was party.
- 17. An administrator may not be appointed under paragraph 15 while a floating charge on which the appointment relies is not enforceable.
- 18. An administrator of a company may not be appointed under paragraph 15 if—
  - (a) a provisional liquidator of the company has been appointed under Article 115, or
  - (b) an administrative receiver of the company is in office.

#### *Notice of appointment*

- 19.—(1) A person who appoints an administrator of a company under paragraph 15 shall file with the High Court—
- (a) a notice of appointment, and
  - (b) such other documents as may be prescribed.
- (2) The notice of appointment must include a statutory declaration by or on behalf of the person who makes the appointment—
- (a) that the person is the holder of a qualifying floating charge in respect of the company's property,
  - (b) that each floating charge relied on in making the appointment is (or was) enforceable on the date of the appointment, and
  - (c) that the appointment is in accordance with this Schedule.
- (3) The notice of appointment must identify the administrator and must be accompanied by a statement by the administrator—
- (a) that he consents to the appointment,
  - (b) that in his opinion the purpose of administration is reasonably likely to be achieved, and
  - (c) giving such other information and opinions as may be prescribed.
- (4) For the purpose of a statement under sub-paragraph (3) an administrator may rely on information supplied by directors of the company (unless he has reason to doubt its accuracy).
- (5) The notice of appointment and any document accompanying it must be in the prescribed form.
- (6) A statutory declaration under sub-paragraph (2) must be made during the prescribed period.
- (7) A person commits an offence if in a statutory declaration under sub-paragraph (2) he makes a statement—
- (a) which is false, and
  - (b) which he does not reasonably believe to be true.

#### *Commencement of appointment*

20. The appointment of an administrator under paragraph 15 takes effect when the requirements of paragraph 19 are satisfied.
21. A person who appoints an administrator under paragraph 15—

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- (a) shall notify the administrator and such other persons as may be prescribed as soon as is reasonably practicable after the requirements of paragraph 19 are satisfied, and
- (b) commits an offence if he fails without reasonable excuse to comply with paragraph (a).

*Invalid appointment: indemnity*

**22.—**(1) This paragraph applies where—

- (a) a person purports to appoint an administrator under paragraph 15, and
- (b) the appointment is discovered to be invalid.

(2) The High Court may order the person who purported to make the appointment to indemnify the person appointed against liability which arises solely by reason of the appointment's invalidity.]

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