STATUTORY INSTRUMENTS

# 1990 No. 1504

# The Companies (No. 2) (Northern Ireland) Order 1990

## PART V

## FINANCIAL MARKETS AND INSOLVENCY

*Supplementary provisions*

### Insolvency proceedings in other jurisdictions

**104.**—(1) The references to insolvency law in section 426 of the Insolvency Act 1986(**1**) (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.

(2) A court shall not, in pursuance of that section or any other statutory provision or rule of law, recognise or give effect to—

(a) any order of a court exercising jurisdiction in relation to involvency law in a country or territory outside the United Kingdom, or

(b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in Northern Ireland or a relevant office-holder by provisions made by or under this Part.

(3) Paragraph (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982(**2**).

### Indemnity for certain acts, &c.

**105.**—(1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.

(2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.

(3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house,

(**1**) 1989 c. 40
(**2**) 1946 c. 36

shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this paragraph applies unless the act or omission is shown to have been in bad faith.

(4) The functions to which paragraph (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—

(a) its default rules, or

(b) any obligations to which it is subject by virtue of this Part.

(5) No person exercising any functions by virtue of arrangements made pursuant to paragraph 5 or 12 of Schedule 21 to the Companies Act 1989(**3**) (delegation of functions in connection with default procedures), nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

### Power to make further provision by regulations

**106.**—(1) The Department may by regulations make such further provision as appears to it necessary or expedient for the purposes of this Part and, in particular but without prejudice to the generality of the foregoing, for integrating the provisions of this Part with the general law of insolvency.

(2) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.

(3) Regulations under this Article may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

### Supplementary provisions as to regulations

**107.**—(1) Regulations under this Part may contain such incidental, transitional and other supplementary provisions as appear to the Department, or as the case may be, to the Secretary of State to be necessary or expedient.

(2) Regulations made by the Department under this Part shall be subject to negative resolution.

(3) Regulations made by the Secretary of State under this Part shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(**4**) shall apply accordingly.

### Construction of references to parties to market contracts

**108.**—(1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.

(2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.

(3) The Secretary of State may by regulations—

(a) modify or exclude the operation of paragraphs (1) and (2), and

(b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

(**3**) 1986 c. 60
(**4**) 1986 c. 53

### Meaning of "default rules" and related expressions

**109.**—(1) In this Part "default rules" means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.

(2) References in this Part to a "defaulter" are to a person inrespect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to "default" shall be construed accordingly.

(3) In this Part "default proceedings" means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

(4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

### Meaning of "relevant office-holder"

**110.**—(1) The following are relevant office-holders for the purposes of this Part—

(a) the official receiver,

(b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,

(c) any person acting in relation to an individual as his trustee in bankruptcy,

(d) any person acting as administrator of an insolvent estate of a deceased person.

(2) In paragraph (1)(b) "company" means any company, society, association, partnership or other body which may be wound up under the Insolvency Order.

### Minor definitions

**111.**—(1) In this Part—

"administrative receiver" has the meaning given by Article 5(1) of the Insolvency Order;

"charge" means any form of security, including a mortgage;

"clearing house" has the same meaning as in the Financial Services Act 1986(**5**);

"investment" and "investment exchange" have the same meaning as in the Financial Services Act 1986;

"overseas", in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;

"recognised" means recognised under the Financial Services Act 1986(**6**);

"The Stock Exchange" means The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited;

"UK", in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.

(2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(3) In this Part the expressions "margin" and "cover for margin" have the same meaning.

(**5**) 1907 c. 24
(**6**) 1907 c. 24

(4) References in this Part to ensuring the performance of a transaction have the same meaning as in the Financial Services Act 1986.

(5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

This does not apply for the purposes of a provision requiring "actual notice".

(6) References in this Part to the law of insolvency include references to every provision made by or under the Insolvency Order, and in relation to a building society references to insolvency law or to any provision of the Insolvency Order are to that law or provision as modified by the Building Societies Act 1986(**7**).

**Index of defined expressions**

**112.** The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same Article or paragraph)—

| | |
|---|---|
| administrative receiver | Article 111(1) |
| charge | Article 111(1) |
| clearing house | Article 111(1) |
| cover for margin | Article 111(3) |
| default rules (and related expressions) | Article 109 |
| designated non-member | Article 80(2) |
| ensuring the performance of a transaction | Article 111(4) |
| insolvency law (and similar expressions) | Article 111(6) |
| investment | Article 111(1) |
| investment exchange | Article 111(1) |
| margin | Article 111(3) |
| market charge | Article 95 |
| market contract | Article 80 |
| notice | Article 111(5) |
| overseas (in relation to an investment exchange or clearing house) | Article 111(1) |
| party (in relation to a market contract) | Article 108 |
| recognised | Article 111(1) |
| relevant office-holder | Article 110 |
| settlement and related expressions (in relation to a market contract) | Article 111(2) |
| The Stock Exchange | Article 111(1) |

(**7**) 1986 c. 53

| | |
|---|---|
| UK (in relation to an investment exchange or clearing house) | Article 111(1) |