

INSOLVENCY (NORTHERN IRELAND) ORDER 2005

S.I. 2005 1455

EXPLANATORY MEMORANDUM

COMMENTARY ON PROVISIONS

Schedule 1

Article 3(1) replaces Part III of the Insolvency (Northern Ireland) Order 1989 with a new *Schedule B1* as set out in Schedule 1 to this Order.

Paragraph 3 of Schedule B1 provides that an administrator can be appointed under an administration order made by the High Court, or by the holder of a floating charge or by the company or its directors.

Paragraph 4 sets out the purposes of administration. It places the administrator under a duty to try to rescue the company as a going concern unless this is not reasonably practicable or it would not bring about the best result for the company's creditors as a whole in which case he is required to try to achieve a better result for creditors than would be achieved in a winding up. He can only realise the company's property and make a distribution to secured or preferential creditors if doing so would not result in unnecessary harm to the interests of the unsecured creditors and the company is not viable and does not have a business that can be sold as a going concern.

Paragraphs 11 to 14 deal with the appointment of an administrator by the High Court.

Paragraph 13 enables the company or its directors or creditors (which could include floating charge holders) to apply to the High Court for an administration order.

Paragraphs 15 to 22 deal with the appointment of an administrator by the holder of a floating charge.

Paragraphs 23 to 35 deal with the appointment of an administrator by a company or its directors.

Paragraph 36 gives a floating charge holder the right to apply to the Court for an administration order without having to demonstrate that the company is or is likely to become unable to pay its debts and paragraph 38 gives him the right to apply to do so if a winding up order has been made. Paragraph 39 gives a liquidator the right to apply to the Court for administration.

Paragraphs 43 and 44 provide that once a company is in administration the moratorium, which is a feature of administration, takes effect. Under paragraph 43 a resolution cannot be passed or an order made for the winding up the company except in certain limited circumstances.

Paragraph 44 provides that no steps can be taken by creditors to enforce their rights except with the consent of the administrator or the permission of the Court.

Paragraph 50 provides that as soon as reasonably practicable, or, in any event, within 8 weeks of the administration commencing (subject to any extension granted by the Court or agreed to by the creditors), the administrator is required to make a statement setting out proposals for achieving the purpose of the administration.

Paragraphs 52 and 53 provide that each copy of the administrator's proposals sent to creditors must be accompanied by an invitation to an initial creditors's meeting, which must be held within ten weeks of the administration commencing.

Under paragraph 54 the creditors may at the initial meeting decide to accept or reject the administrator's proposals, or with his approval, amend them.

Paragraph 66 allows an administrator to make a distribution to secured or preferential creditors without the permission of the Court and to unsecured creditors with the permission of the Court.

Under paragraph 74 an administrator's statement of proposals may not include any proposal affecting the right of a secured creditor to enforce his security without his consent.

Under paragraph 77 an administrator's appointment ceases to have effect one year after the date on which it takes effect. However this term may be extended by up to six months with the consent of creditors or, for as long as necessary, by the Court.

Paragraph 84 allows an administrator to end the administration and convert the proceedings into a voluntary winding-up if the total amount which each secured creditor is likely to receive has been paid or set aside for him.

Paragraph 85 provides that an administrator can take steps to dissolve the company where he thinks that there are no assets remaining from which to make a distribution to creditors.