

## SCHEDULES

### SCHEDULE 11

#### WINDING-UP PETITIONS: NORTHERN IRELAND

#### PART 2

##### RESTRICTION ON WINDING-UP PETITIONS AND ORDERS

###### *Restriction on winding-up petitions: registered companies*

- 2 (1) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of a registered company on a ground specified in Article 103(1)(a) to (d) of that Order (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of a registered company on the ground specified in Article 103(1)(e) or (2) of that Order (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

###### *Restriction on winding-up petitions: unregistered companies*

- 3 (1) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of an unregistered company on a ground specified in Article 186, 187 or 188(1)(a) to (c) of that Order (“the relevant ground”), unless the condition in sub-paragraph (2) is met.
- (2) The condition referred to in sub-paragraph (1) is that the creditor has reasonable grounds for believing that—
- (a) coronavirus has not had a financial effect on the company, or

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- (b) the facts by reference to which the relevant ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) A creditor may not during the relevant period present a petition under Article 104 of the 1989 Order for the winding up of an unregistered company on the ground specified in Article 188(1)(d) or (2) of that Order (“the relevant ground”), unless the condition in sub-paragraph (4) is met.
- (4) The condition referred to in sub-paragraph (3) is that the creditor has reasonable grounds for believing that—
  - (a) coronavirus has not had a financial effect on the company, or
  - (b) the relevant ground would apply even if coronavirus had not had a financial effect on the company.
- (5) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up petitions: petitions made before commencement*

- 4 (1) This paragraph applies where a creditor presents a petition under Article 104 of the 1989 Order—
  - (a) on or after 27 April 2020, but
  - (b) before the day on which this Schedule comes into force.
- (2) If the High Court is satisfied that the creditor presented the petition without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the Court may make such order as it thinks appropriate to restore the position to what it would have been if the petition had not been presented.
- (3) If it appears to the official receiver that the person who presented the petition did so without the condition in paragraph 2(2) or (4) or paragraph 3(2) or (4) (as the case may be) being met, the official receiver must refer the matter to the High Court to determine whether to make an order under sub-paragraph (2).
- (4) For the purposes of the 1991 Insolvency Rules, a reference under sub-paragraph (3) is to be treated as if it were an application under Article 125 of the 1989 Order.

*Restriction on winding-up orders: registered companies*

- 5 (1) This paragraph applies where—
  - (a) a creditor presents a petition for the winding up of a registered company under Article 104 of the 1989 Order in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in Article 103(1) or (2) of that Order, and
  - (c) it appears to the High Court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The High Court may wind the company up under Article 102(f) of the 1989 Order on a ground specified in Article 103(1)(a) to (d) of that Order only if the Court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The High Court may wind the company up under Article 102(f) of the 1989 Order on the ground specified in Article 103(1)(e) or (2) of that Order only if the Court

is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.

(4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: unregistered companies*

- 6 (1) This paragraph applies where—
- (a) a creditor presents a petition for the winding up of an unregistered company under Article 104 of the 1989 Order in the relevant period,
  - (b) the company is deemed unable to pay its debts on a ground specified in Article 186, 187 or 188 of that Order, and
  - (c) it appears to the High Court that coronavirus had a financial effect on the company before the presentation of the petition.
- (2) The High Court may wind the company up under Article 185(4)(b) of the 1989 Order on a ground specified in Article 186, 187 or 188(1)(a) to (c) of that Order only if the Court is satisfied that the facts by reference to which that ground applies would have arisen even if coronavirus had not had a financial effect on the company.
- (3) The High Court may wind the company up under Article 185(4)(b) of the 1989 Order on the ground specified in Article 188(1)(d) or (2) of that Order only if the Court is satisfied that the ground would apply even if coronavirus had not had a financial effect on the company.

(4) This paragraph is to be regarded as having come into force on 27 April 2020.

*Restriction on winding-up orders: orders made before commencement*

- 7 (1) This paragraph applies where—
- (a) the High Court makes an order under Article 102(f) or 185(4)(b) of the 1989 Order on or after 27 April 2020 but before the day on which this Schedule comes into force, and
  - (b) the order was not one which the Court would have made had paragraphs 5 and 6 been in force at the time.
- (2) The High Court is to be regarded as having had no power to make the order (and, accordingly, the order is to be regarded as void).
- (3) Neither the official receiver nor the liquidator or provisional liquidator is liable in any civil or criminal proceedings for anything done pursuant to the order.
- (4) The High Court may give such directions to the official receiver, liquidator or provisional liquidator as it thinks fit for the purpose of restoring the company to which the order relates to the position it was in immediately before the petition was presented.
- (5) If at any time it appears to the official receiver that—
- (a) an order made by the High Court under Article 102(f) or 185(4)(b) of the 1989 Order is void by virtue of sub-paragraph (2), and
  - (b) it might be appropriate for the Court to give directions under sub-paragraph (4),
- the official receiver must refer the matter to the Court to determine whether to give such directions.

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- (6) For the purposes of the 1991 Insolvency Rules a reference under sub-paragraph (5) is to be treated as if it were an application under Article 125 of the 1989 Order.

*Modifications of 1989 Order*

- 8 (1) Paragraphs 9 to 16 apply where—
- (a) a creditor presents a petition under Article 104 of the 1989 Order during the relevant period in relation to a registered or unregistered company, and
  - (b) the High Court makes an order under Article 102(f) or 185(4)(b) of that Order (“the winding-up order”).
- (2) Paragraphs 9 to 16 are to be regarded as having come into force on 27 April 2020.
- 9 If the winding up would by virtue of Article 109(2) of the 1989 Order be deemed to commence at the time of the presentation of the petition, the winding up is instead for the purposes of that Order to be deemed to commence on the making of the winding-up order.
- 10 In Article 61 of the 1989 Order (liability as contributories of present and past members), paragraph (2)(a) has effect as if the reference to one year or more before the commencement of the winding up were to—
- (a) one year or more before the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 18 months or more before the day on which the winding-up order was made.
- 11 In Article 170 of the 1989 Order (fraud etc in anticipation of winding up), paragraph (1) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which—
- (a) begins with whichever is the later of—
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and
  - (b) ends with the day on which the winding-up order was made.
- 12 In Article 171 of the 1989 Order (transactions in fraud of creditors), paragraph (1)(a) has effect as if the reference to 5 years immediately preceding the commencement of the winding up were to—
- (a) 5 years immediately preceding the day on which the petition was presented, or
  - (b) if the winding-up order was made more than 6 months after the day on which the petition was presented, 5 years and 6 months immediately preceding the day on which the winding-up order was made.
- 13 In Article 172 of the 1989 Order (misconduct in course of winding up), paragraph (2) has effect as if the reference to 12 months immediately preceding the commencement of the winding up were to a period which—
- (a) begins with whichever is the later of—
    - (i) the day 12 months before the day on which the petition was presented, and
    - (ii) the day 18 months before the day on which the winding-up order was made, and

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- (b) ends with the day on which the winding-up order was made.
- 14 (1) Article 178A of the 1989 Order (as inserted for the purposes of limited liability partnerships by the [Limited Liability Partnership Regulations \(Northern Ireland\) 2004 \(S.R. \(N.I.\) 2004/307\)](#)) has effect as follows.
- (2) Paragraph (2) has effect as if the reference to 2 years ending with the commencement of the winding up were to a period which—
- (a) begins with whichever is the later of—
- (i) the day 2 years before the day on which the petition was presented, and
- (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- 15 (1) Article 204 of the 1989 Order (definition of “relevant time”) has effect as follows.
- (2) Paragraph (1)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 2 years before the day on which the petition was presented, and
- (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- (3) Paragraph (1)(b) has effect as if the reference to the period of 6 months ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 6 months before the day on which the petition was presented, and
- (ii) the day 12 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- 16 (1) Article 207 of the 1989 Order (avoidance of certain floating charges) has effect as follows.
- (2) Paragraph (3)(a) has effect as if the reference to the period of 2 years ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 2 years before the day on which the petition was presented, and
- (ii) the day 2 years and 6 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.
- (3) Paragraph (3)(b) has effect as if the reference to the period of 12 months ending with the onset of insolvency were to the period which—
- (a) begins with whichever is the later of—
- (i) the day 12 months before the day on which the petition was presented, and

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- (ii) the day 18 months before the day on which the winding-up order was made, and
- (b) ends with the day on which the winding-up order was made.

#### *Modification of Insolvency Rules*

- 17 (1) This paragraph applies in relation to a petition which is presented by a creditor under Article 104 of the 1989 Order—
- (a) on or after the day on which this Schedule comes into force, but
  - (b) before the end of the relevant period.
- (2) Any provision of the 1991 Insolvency Rules which requires or permits (or authorises the High Court to require or permit) notice, publication or advertisement of the petition does not apply until such time as the High Court has made a determination in relation to the question of whether it is likely that the Court will be able to make an order under Article 102(f) or 185(4)(b) of the 1989 Order.
- (3) The 1991 Insolvency Rules have effect as if they required the petition to contain a statement that the petitioner considers that the condition described in paragraph 2(2) or (4) or 3(2) or (4) of this Schedule (as the case may be) is met.
- (4) The rights referred to in the following provisions of the 1991 Insolvency Rules are not exercisable without the permission of the High Court—
- (a) paragraph (1) of Rule 7.25 (right to inspect court record);
  - (b) paragraphs (1) to (3) of Rule 7.27 (right to inspect court file);
  - (c) paragraphs (1) and (2) of Rule 7.55 (right to copy of document in court file).

#### *Interpretation*

- 18 (1) In this Part of this Schedule, “relevant period” means the period which—
- (a) begins with 27 April 2020, and
  - (b) ends with 30 September 2020.
- (2) For the purposes of this Part of this Schedule, references to a petition presented by a creditor—
- (a) do not include a petition presented by one or more creditors together with one or more other persons, but
  - (b) subject to that, do include a petition presented by more than one creditor (in which case the condition referred to in paragraph 3(2) or (4) or 4(2) or (4) must be met in relation to each creditor presenting the petition).
- (3) For the purposes of this Part of this Schedule—
- “the 1991 Insolvency Rules” means the [Insolvency Rules \(Northern Ireland\) 1991 \(S.R. \(N.I.\) 1991/364\)](#);
  - “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
  - coronavirus has a “financial effect” on a company if (and only if) the company’s financial position worsens in consequence of, or for reasons relating to, coronavirus.