



# Corporate Insolvency and Governance Act 2020

## 2020 CHAPTER 12

### *Termination clauses in supply contracts*

#### **18 Protection of supplies of goods and services: Northern Ireland**

(1) After Article 197A of the Insolvency (Northern Ireland) Order 1989 insert—

##### **“197B Protection of supplies of goods and services**

- (1) This Article applies where a company becomes subject to a relevant insolvency procedure.
- (2) A company becomes subject to a relevant insolvency procedure for the purposes of this Article where—
  - (a) a moratorium under Part 1A comes into force for the company,
  - (b) the company enters administration,
  - (c) an administrative receiver of the company is appointed (otherwise than in succession to another administrative receiver),
  - (d) a voluntary arrangement approved under Part 2 takes effect in relation to the company,
  - (e) the company goes into liquidation,
  - (f) a provisional liquidator of the company is appointed (otherwise than in succession to another provisional liquidator), or
  - (g) a court order is made under section 901C(1) of the Companies Act 2006 in relation to the company (order summoning meeting relating to compromise or arrangement).
- (3) A provision of a contract for the supply of goods or services to the company ceases to have effect when the company becomes subject to the relevant insolvency procedure if and to the extent that, under the provision—

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*Status: This is the original version (as it was originally enacted).*

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- (a) the contract or the supply would terminate, or any other thing would take place, because the company becomes subject to the relevant insolvency procedure, or
  - (b) the supplier would be entitled to terminate the contract or the supply, or to do any other thing, because the company becomes subject to the relevant insolvency procedure.
- (4) Where—
  - (a) under a provision of a contract for the supply of goods or services to the company the supplier is entitled to terminate the contract or the supply because of an event occurring before the start of the insolvency period, and
  - (b) the entitlement arises before the start of that period,  
the entitlement may not be exercised during that period.
- (5) Where a provision of a contract ceases to have effect under paragraph (3) or an entitlement under a provision of a contract is not exercisable under paragraph (4), the supplier may terminate the contract if—
  - (a) in a case where the company has become subject to a relevant insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), the office-holder consents to the termination of the contract,
  - (b) in any other case, the company consents to the termination of the contract, or
  - (c) the High Court is satisfied that the continuation of the contract would cause the supplier hardship and grants permission for the termination of the contract.
- (6) Where a provision of a contract ceases to have effect under paragraph (3) and the company becomes subject to a further relevant insolvency procedure, the supplier may terminate the contract in accordance with paragraph (5)(a) to (c).
- (7) The supplier shall not make it a condition of any supply of goods and services after the time when the company becomes subject to the relevant insolvency procedure, or do anything which has the effect of making it a condition of such a supply, that any outstanding charges in respect of a supply made to the company before that time are paid.
- (8) In this Article “the insolvency period”, in relation to a relevant insolvency procedure, means the period beginning when the company becomes subject to the relevant insolvency procedure and ending—
  - (a) in the case of a moratorium under Part 1A, when the moratorium comes to an end,
  - (b) in the case of the company entering administration, when the appointment of the administrator ceases to have effect under —
    - (i) paragraphs 77 to 85 of Schedule B1, or
    - (ii) an order under section 901F of the Companies Act 2006,
  - (c) in the case of the appointment of an administrative receiver of the company, when the receiver or any successor to the receiver ceases to hold office without a successor being appointed,
  - (d) in the case of a voluntary arrangement approved under Part 2 taking effect in relation to the company, when the arrangement ceases to have effect,

- (e) in the case of the company going into liquidation, when the liquidator has—
    - (i) pursuant to Article 80(1), laid the account of the winding up before a general meeting of the company and given an explanation of it,
    - (ii) pursuant to Article 92(1), laid the account of the winding up before a general meeting of the company and a meeting of the creditors and given an explanation of it to each meeting, or
    - (iii) pursuant to Article 124(1), given the liquidator’s report of the winding up to a general meeting of the company’s creditors,or when the appointment of the liquidator ceases to have effect under an order under section 901F of the Companies Act 2006,
  - (f) in the case of the appointment of a provisional liquidator for the company, when the provisional liquidator or any successor to the provisional liquidator ceases to hold office without a successor being appointed, and
  - (g) in the case of the making of a court order under section 901C(1) of the Companies Act 2006 in relation to the company, when—
    - (i) an order made by the High Court under section 901F of that Act takes effect, or
    - (ii) the High Court decides not to make such an order.
- (9) In this Article “office-holder”, in relation to a company which has entered into an insolvency procedure as specified in paragraph (2)(b), (c), (e) or (f), means the administrator, administrative receiver, liquidator or provisional liquidator respectively.
- (10) Schedule 2ZZA provides for exclusions from the operation of this Article.

#### **197C Powers to amend Article 197B and Schedule 2ZZA**

- (1) Regulations may omit any of sub-paragraphs (a) to (g) of Article 197B(2) (relevant insolvency procedures).
- (2) Regulations may amend Schedule 2ZZA so as to—
  - (a) remove or amend any exclusion from Article 197B for the time being specified there, or
  - (b) add further exclusions from Article 197B.
- (3) In paragraph (2), references to exclusions from Article 197B are to circumstances in which Article 197B, or any provision of that Article, does not apply.
- (4) The circumstances referred to in paragraph (3) may be framed by reference to kinds of company, supplier, contract, goods or services or in any other way.
- (5) Regulations under this Article may make—
  - (a) consequential provision;
  - (b) transitional and supplementary provision.
- (6) Regulations under this Article made by virtue of paragraph (5) may in particular make provision amending this Order or any other statutory provision whenever passed or made (including, if paragraph 1(1) or (2)

of Schedule 2ZZA is omitted, provision omitting Article 197A or 197 respectively).

- (7) Regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”
- (2) In the Insolvency (Northern Ireland) Order 1989, in Article 2(2), in the definition of “regulations”, before “Article 359(2)” insert “Article 197C and”.
- (3) Schedule 13—
- (a) inserts a new Schedule into the Insolvency (Northern Ireland) Order 1989 which provides for exclusions from the operation of Article 197B of that Order, and
  - (b) contains consequential amendments.
- (4) The amendments made by this section and Schedule 13 have effect in relation to a company which becomes subject to a relevant insolvency procedure on or after the day on which this section comes into force (but in respect of contracts entered into before, as well as those entered into on or after, that day).