STATUTORY RULES OF NORTHERN IRELAND

2003 No. 550

INSOLVENCY

The Insolvent Partnerships (Amendment No. 3) Order (Northern Ireland) 2003

Made - - - -	*23rd December 2003*
To be laid before Parliament	
Coming into operation	*2nd February 2004*

The Lord Chancellor, in exercise of the powers conferred upon him by Article 364 of the Insolvency (Northern Ireland) Order 1989(**1**), and of all other powers enabling him in that behalf, with the concurrence of the Department of Enterprise, Trade and Investment(**2**), hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Insolvent Partnerships (Amendment No. 3) Order (Northern Ireland) 2003 and shall come into operation on 2nd February 2004.

Interpretation

2.—(1) In this Order,

"the Order" means the Insolvency (Northern Ireland) Order 1989,

"rule" means a rule of the Insolvency Rules (Northern Ireland) 1991(**3**),

"the 1995 Order" means the Insolvent Partnerships Order (Northern Ireland) 1995(**4**).

(2) In this Order a reference to a "modified Article" means an Article of the Order as modified by, and set out in, the 1995 Order.

Amendment to modified Article 3(3) of the Insolvency (Northern Ireland) Order 1989

3. For Article 3(3)(c) of the Order as modified by Article 14 of the 1995 Order substitute –

(**1**) S.I. 1989/2405 (N.I. 19); Article 364 was amended by regulation 4(3) of S.R. 2002 No. 223
(**2**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Art. 3(5)
(**3**) S.R. 1991 No. 364; amended by S.R. 1994 No. 26, S.R. 1995 No. 291, S.R. 2000 No. 247, S.R. 2002 No. 261 and S.R. 2003 No. 549
(**4**) S.R. 1995 No. 225; amended by S.R. 1996 No. 472, S.R. 2003 No. 144 and S.R. 2003 No. 359

"(c) where a voluntary arrangement in relation to the insolvent partnership is proposed or approved under Part II, as nominee or supervisor.".

Amendment to Article 4 of the Insolvent Partnerships Order (Northern Ireland) 1995

4. For Article 4(1) of the 1995 Order (voluntary arrangement of insolvent partnership) substitute –

"(1) The provisions of Part II of, and Schedule Al to, the Order shall apply in relation to an insolvent partnership, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 1.".

Amendment to Article 19 of the Insolvent Partnerships (Northern Ireland) Order 1995

5. In Article 19(4) of the 1995 Order (supplemental and transitional provisions), after "provision" insert –

"except where paragraph 23 of Schedule Al to the Order, as applied by this Order, has the effect of preventing a petition being so presented".

Substitution of Schedule 1 to the Insolvent Partnerships Order (Northern Ireland) 1995

6. For Schedule 1 to the 1995 Order (modified provisions of Part II of the Order) substitute the Schedule set out in Schedule 1 to this Order.

Amendments to Schedule 2 to the Insolvent Partnerships Order (Northern Ireland) 1995

7.—(1) Schedule 2 to the 1995 Order (modified provisions of Part III of the Order) is amended as follows.

(2) In paragraph 2 (Article 21: power of High Court to make order), after modified Article 21(4) insert –

"(5) In this Part a reference to an insolvent partnership includes a reference to an insolvent partnership in relation to which an administration order may be made by virtue of Article 3 of the EC Regulation.".

(3) In paragraph 4 (Article 23: effect of application), after modified Article 23(1)(a) insert –

"(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the leave of the High Court and subject to such terms as the Court may impose;".

(4) In paragraph 5 (Article 24: effect of order), after modified Article 24(3)(c) insert –

"(ca) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises forming part of the partnership property or let to one or more officers of the partnership in their capacity as such in respect of a failure by the partnership or one or more officers of the partnership to comply with any term or condition of the tenancy of such premises, except with the consent of the administrator or the leave of the High Court and subject (where the Court gives leave) to such terms as the Court may impose;".

Amendment to Schedule 3 to the Insolvent Partnerships Order (Northern Ireland) 1995

8. In paragraph 3 of Part I of Schedule 3 to the 1995 Order (Article 185: winding up of unregistered companies), after modified Article 185(7)(c) insert –

"(d) at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.

(7A) A winding-up petition on the ground set out in Article 185(7)(d) may only be presented by one or more creditors.".

Amendment to Schedule 4 to the Insolvent Partnerships (Northern Ireland) Order 1995

9.—(1) Schedule 4 to the 1995 Order (modified provisions of the Order applying for purposes of Article 8) is amended as follows.

(2) In paragraph 3 of Part I (Article 185: winding up of unregistered companies), for modified Article 185(8) substitute –

"(8) The circumstances in which an insolvent partnership may be wound up as an unregistered company are as follows –

(a) the partnership is unable to pay its debts,

(b) at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.".

(3) In paragraph 6 of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the High Court), for modified Article 102 substitute –

"**102.** A corporate member or former corporate member of an insolvent partnership may be wound up by the High Court if –

(a) it is unable to pay its debts,

(b) there is a creditor, by assignment or otherwise, to whom the insolvent partnership is indebted and the corporate member or former corporate member is liable in relation to that debt and at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.".

(4) In paragraph 6 of Part II (circumstances in which members of insolvent partnerships may be wound up or made bankrupt by the High Court),

(a) in modified Article 241(2) after "Subject to", insert "paragraph (2A) and",

(b) after modified Article 241(2) insert –

"(2A) A creditor's petition may be presented to the High Court in respect of a joint debt or debts if at the time at which a moratorium for the insolvent partnership under Article 14A comes to an end, no voluntary arrangement approved under Part II of this Order has effect in relation to the insolvent partnership.".

Forms

10. For Forms 5, 6 and 7 contained in Schedule 9 to the 1995 Order substitute Forms 5, 6 and 7 contained in Schedule 2 to this Order.

Transitional provisions

11.—(1) The amendments to the 1995 Order set out in Articles 3, 4, 5, 6, 8, 9 and 10 of, and Schedules 1 and 2 to, this Order do not apply where, in relation to a voluntary arrangement under Part II of the Order, as the case may be, a proposal is made by –

(a) the members of a partnership and before this Order comes into operation the intended nominee has endorsed a copy of the written notice of the proposal under Rule 1.04(3),

(b) the liquidator or the administrator (acting as nominee) and before this Order comes into operation the liquidator or administrator (as the case may be) has sent out a notice summoning the meetings under Article 16 of the Order as required by Rule 1.11, or

(c) the liquidator or the administrator of a partnership (not acting as the nominee) and before this Order comes into operation the intended nominee has endorsed a copy of the written notice of the proposal under Rule 1.12(2).

(2) The amendments to the 1995 Order set out in Article 7 of this Order do not apply where a petition for an administration order in relation to an insolvent partnership has been presented before this Order comes into operation.

(3) Where, by virtue of the 1995 Order, provisions of the Order apply in a case falling within paragraph (1) or (2), those provisions shall continue to have effect as if this Order had not been made.

Signed by the authority of the Lord Chancellor

Department for Constitutional Affairs
Dated 18th December 2003

Lord Filkin
Parliamentary Under Secretary of State,

The Department of Enterprise, Trade and Investment hereby concurs with the foregoing Order. Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 23rd December 2003.

Michael J. Bohill
Senior Officer of the
Department of Enterprise, Trade and Investment

SCHEDULE 1 Article 6

"SCHEDULE 1 Article 4

MODIFIED PROVISIONS OF PART II OF, AND SCHEDULE A1 TO, THE ORDER (COMPANY VOLUNTARY ARRANGEMENTS) AS APPLIED BY ARTICLE 4

PART I

MODIFIED PROVISIONS OF ARTICLES 14 TO 20B OF THE ORDER

Articles 14 to 20B of the Order are modified to read as follows:–

"PART II

PARTNERSHIP VOLUNTARY ARRANGEMENTS

The proposal

Those who may propose an arrangement

14.—(1) The members of an insolvent partnership (other than one for which an administration order is in force, or which is being wound up as an unregistered company, or in respect of which an order has been made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995) may make a proposal under this Part to the partnership's creditors for a composition in satisfaction of the debts of the partnership or a scheme of arrangement of its affairs (from here on referred to, in either case, as a "voluntary arrangement").

(2) A proposal under this Part is one which provides for some person ("the nominee") to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation; and the nominee must be a person who is qualified to act as an insolvency practitioner or authorised to act as nominee, in relation to the voluntary arrangement.

(3) Such a proposal may also be made –

(a) where an administration order is in force in relation to the partnership, by the administrator,

(b) where the partnership is being wound up as an unregistered company, by the liquidator, and

(c) where an order has been made by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995, by the trustee of the partnership.

(4) In this Part a reference to an insolvent partnership includes a reference to an insolvent partnership in relation to which a proposal for a voluntary arrangement may be made by virtue of Article 3 of the EC Regulation.

Moratorium

14A.—(1) Where the members of an eligible insolvent partnership intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the insolvent partnership.