STATUTORY RULES OF NORTHERN IRELAND

2003 No. 359

INSOLVENCY

The Insolvent Partnerships (Amendment No. 2) Order (Northern Ireland) 2003

Made - - - -	*27th July 2003*
To be laid before Parliament	
Coming into operation	*5th September 2003*

The Lord Chancellor, in exercise of the powers conferred upon him by Article 364(1) of the Insolvency (Northern Ireland) Order 1989(**1**) and Article 24(1) of the Company Directors Disqualification (Northern Ireland) Order 2002(**2**) with the concurrence of the Department of Enterprise, Trade and Investment(**3**), hereby makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Insolvent Partnerships (Amendment No. 2) Order (Northern Ireland) 2003 and shall come into operation on 5th September 2003.

(2) In this Order –

(a) "the 1995 Order" means the Insolvent Partnerships Order (Northern Ireland) 1995(**4**); and

(b) a reference to a "modified Article" is a reference to an Article of the Insolvency (Northern Ireland) Order 1989 as modified by, and set out in, the 1995 Order.

Amendments to the 1995 Order

2. In the Arrangement of Articles in the 1995 Order –

(a) for the words "16. Application of Part II of the Companies (Northern Ireland) Order 1989" there shall be substituted the words "16. Application of the Company Directors Disqualification (Northern Ireland) Order 2002.";

(b) for the words "Schedule 8 – Provisions of Part II of the Companies (Northern Ireland) Order 1989 which apply with modifications for the purposes of Article 16" there shall be

(**1**) S.I. 1989/2405 (N.I. 19) – to which the most recent relevant amendments were made by the Insolvency (Northern Ireland) Order 1989 (Amendment) Regulations (Northern Ireland) (2002 S.R. 2002 No. 223)
(**2**) S.I. 2002/3150 (N.I. 4)
(**3**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1)
(**4**) S.R. 1995 No. 225 as amended by the Insolvent Partnerships (Amendment) Order (Northern Ireland) 1996 (S.R. 1996 No. 472) and the Insolvent Partnerships (Amendment) Order (Northern Ireland) (2003 S.R. 2003 No. 144)

substituted the words "Schedule 8 – Provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 which apply with modifications for the purposes of Article 16.".

3. In paragraph (1) of Article 3 of the 1995 Order, for the words "Companies (Northern Ireland) Order 1989" there shall be substituted the words "Company Directors Disqualification (Northern Ireland) Order 2002".

4. For Article 16 of the 1995 Order there shall be substituted the following Article -

"**Application of the Company Directors Disqualification (Northern Ireland) Order 2002**

16. Where an insolvent partnership is wound up as an unregistered company under Part VI of the Order the provisions of Articles 3, 4, 9-14, 18, 19, 21 and 23 of, and Schedule 1 to, the Company Directors Disqualification (Northern Ireland) Order 2002 shall apply, certain of those provisions being modified in such manner that, after modification, they are as set out in Schedule 8.".

5. In paragraph (1) of Article 18 of the 1995 Order, for the words "Part II of the Companies (Northern Ireland) Order 1989" there shall be substituted the words "the Company Directors Disqualification (Northern Ireland) Order 2002".

6. In paragraph 9 of Schedule 3 to, and paragraph 27 of Schedule 4 to, the 1995 Order (Article 198: Getting in the partnership property), in paragraph (2) of modified Article 198 for the words "Part II of the Companies (Northern Ireland) Order 1989" there shall be substituted the words "the Company Directors Disqualification (Northern Ireland) Order 2002".

7. For Schedule 8 to the 1995 Order there shall be substituted the Schedule set out in Schedule 1 to this Order.

8. For Schedule 10 to the 1995 Order there shall be substituted the Schedule set out in Schedule 2 to this Order.

Dated 27th July 2003 *Falconer of Thoroton,* C.

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 30th July 2003.

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

SCHEDULE 1 Article 7.

"SCHEDULE 8 Article 16

PROVISIONS OF THE COMPANY DIRECTORS DISQUALIFICATION (NORTHERN IRELAND) ORDER 2002(**5**) WHICH APPLY WITH MODIFICATIONS FOR THE PURPOSES OF ARTICLE 16

The following provisions of the Company Directors Disqualification (Northern Ireland) Order 2002 are modified so as to read as follows –

"**Duty of High Court to disqualify unfit officers of insolvent partnership**

9.—(1) The High Court shall make a disqualification order against a person in any case where, on an application under this Article, it is satisfied –

(a) that he is or has been an officer of a partnership which has at any time become insolvent (whether while he was an officer or subsequently), and

(b) that his conduct as an officer of that partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships, or as a director of any company or companies) makes him unfit to be concerned in the management of a company.

(2) For the purposes of this Article and Article 10 –

(a) a partnership becomes insolvent if –

(i) the High Court makes an order for it to be wound up as an unregistered company at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up; or

(ii) an administration order is made in relation to the partnership; and

(b) a company becomes insolvent if –

(i) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(ii) an administration order is made in relation to the company, or

(iii) an administrative receiver of the company is appointed.

(3) For the purposes of this Article and Article 10 references to a person's conduct as an officer of any partnership or partnerships, or as a director of any company or companies, include, where the partnership or company concerned or any of the partnerships or companies concerned has become insolvent, that person's conduct in relation to any matter connected with or arising out of the insolvency of that partnership or company.

(4) In this Article and in Article 10 "director" includes a shadow director.

(5) Under this Article the minimum period of disqualification is 2 years, and the maximum period is 15 years.

Disqualification order or undertaking; and reporting provisions

10.—(1) If it appears to the Department that it is expedient in the public interest that a disqualification order under Article 9 should be made against any person, an application for the making of such an order against that person may be made –

(**5**) S.I. 2002/3150 (N.I. 4)

(a) by the Department, or

(b) if the Department so directs in the case of a person who is or has been an officer of a partnership which is being, or has been, wound up by the High Court as an unregistered company, by the official receiver.

(2) Except with the leave of the High Court, an application for the making under Article 9 of a disqualification order against any person shall not be made after the expiration of 2 years from the day on which the partnership of which that person is or has been an officer became insolvent.

(3) If it appears to the Department that the conditions mentioned in Article 9(1) are satisfied as respects any person who has offered to give the Department a disqualification undertaking, the Department may accept the undertaking if it appears to the Department that it is expedient in the public interest that the Department should do so (instead of applying, or proceeding with an application, for a disqualification order).

(4) If it appears to the office-holder responsible under this Article, that is to say –

(a) in the case of a partnership which is being wound up by the High Court as an unregistered company, the official receiver, or

(b) in the case of a partnership in relation to which an administration order is in force, the administrator,

that the conditions mentioned in Article 9(1) are satisfied as respects a person who is or has been an officer of that partnership, the office-holder shall forthwith report the matter to the Department.

(5) The Department or the official receiver may require any of the persons mentioned in paragraph (6) –

(a) to furnish the Department or, as the case may be, the official receiver with such information with respect to any person's conduct as an officer of a partnership or as a director of a company, and

(b) to produce and permit inspection of such books, papers and other records relevant to that person's conduct as such an officer or director,

as the Department or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function under this Article.

(6) The persons referred to in paragraph (5) are –

(a) the liquidator or administrator, or former liquidator or administrator of the partnership,

(b) the liquidator, administrator or administrative receiver, or former liquidator, administrator or administrative receiver of the company.

Disqualification after investigation

11.—(1) If it appears to the Department from –

(a) a report made by an inspector or person appointed to conduct an investigation under a provision mentioned in paragraph (2), or

(b) information or documents obtained under a provision mentioned in paragraph (3),

that it is expedient in the public interest that a disqualification order should be made against any person who is, or has been, an officer of an insolvent partnership, the Department may apply to the High Court for such an order.

(2) The provisions are –

(a) Article 430 of the Companies Order;

(b) section 167, 168(3), 169(1)(b) or 284 of the Financial Services and Markets Act 2000(**6**); or

(c) regulations made as a result of section 262(2)(k) of the Financial Services and Markets Act 2000 or section 1(2)(k) of the Open-Ended Investment Companies Act (Northern Ireland) 2002(**7**).

(3) The provisions are –

(a) Article 440 or 441 of the Companies Order;

(b) section 2 of the Criminal Justice Act 1987(**8**);

(c) section 28 of the Criminal Law (Consolidation) (Scotland) Act 1995(**9**);

(d) section 83 of the Companies Act 1989(**10**); or

(e) section 171 or 173 of the Financial Services and Markets Act 2000.

(4) Where it appears to the Department from such report, information or documents that, in the case of a person who has offered to give the Department a disqualification undertaking –

(a) the conduct of the person in relation to an insolvent partnership of which the person is or has been an officer makes him unfit to be concerned in the management of a company, and

(b) it is expedient in the public interest that the Department should accept the undertaking (instead of applying, or proceeding with an application, for a disqualification order), the Department may accept the undertaking.

(5) The High Court may make a disqualification order against a person where, on an application under this Article, it is satisfied that his conduct in relation to the partnership makes him unfit to be concerned in the management of a company.

(6) The maximum period of disqualification under this Article is 15 years.

Matters for determining unfitness of officers of partnership

13.—(1) This Article applies where it falls to the High Court to determine whether a person's conduct as an officer of a partnership (either taken alone or taken together with his conduct as an officer of any other partnership or partnerships or as a director of any company or companies) makes him unfit to be concerned in the management of a company.

(2) The High Court shall, as respects that person's conduct as an officer of that partnership or each of those partnerships or as a director of that company or each of those companies, have regard in particular –

(a) to the matters mentioned in Part I of Schedule 1, and

(b) where the partnership or company (as the case may be) has become insolvent, to the matters mentioned in Part II of that Schedule;

and references in that Schedule to the officer and the partnership or, as the case may be, to the director and the company are to be read accordingly.

(3) In determining whether it may accept a disqualification undertaking from any person the Department shall, as respects the person's conduct as an officer of any partnership or a director of any company concerned, have regard in particular –

(a) to the matters mentioned in Part I of Schedule 1, and

(**6**) 2000 c. 8
(**7**) 2002 c. 13
(**8**) 1987 c. 38
(**9**) 1995 c. 39
(**10**) 1989 c. 40