1991 No. 366

INSOLVENCY

The Insolvent Partnerships Order (Northern Ireland) 1991

Made	*5th August 1991*
Coming into operation . .	*1st October 1991*

To be laid before Parliament

The Lord Chancellor, in exercise of the powers conferred on him by Article 364 of the Insolvency (Northern Ireland) Order 1989(**a**) and Article 24(1) of the Companies (Northern Ireland) Order 1989(**b**) and of all other powers enabling him in that behalf, with the concurrence of the Department of Economic Development, hereby makes the following Order:

PART I

GENERAL

Citation and commencement

1. This Order may be cited as the Insolvent Partnerships Order (Northern Ireland) 1991 and shall come into operation on 1st October 1991.

Interpretation

2.—(1) In this Order—

"the Bankruptcy Acts" means the Bankruptcy Acts (Northern Ireland) 1857 to 1980(**c**);

"corporate member" means an insolvent member which is a company;

"individual member" means an insolvent member who is an individual;

"insolvent member" means a member of an insolvent partnership, against whom an insolvency petition is being or has been presented;

"insolvency order" means—

(*a*) in the case of an insolvent partnership or a corporate member, a winding-up order; and

(*b*) in the case of an individual member, a bankruptcy order;

"insolvency petition" means—

(*a*) in the case of a petition presented against a corporate member, a petition for its winding up by the High Court; and

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(a) S.I. 1989/2405 (N.I. 19)
(b) S.I. 1989/2404 (N.I. 18)
(c) 1857 c. 60; 1872 c. 57; 1872 c. 58; 1929 c. 1 (N.I.); 1963 c. 23 (N.I.); S.I. 1980/561 (N.I. 4)

(*b*) in the case of a petition presented against an individual member, a petition to the Court for a bankruptcy order to be made against the individual,

where the petition is presented in conjunction with a petition for the winding up of the partnership by the Court as an unregistered company under the Order;

"the Order" means the Insolvency (Northern Ireland) Order 1989; and

"responsible insolvency practitioner" means—

(*a*) in winding up, the liquidator; and

(*b*) in bankruptcy, the trustee,

and in either case includes the official receiver when so acting.

(2) The definitions in paragraph (1) other than the definition of "the Order" shall be added to those in Article 2 of the Order.

(3) A form referred to in this Order by number means the form so numbered in Schedule 3.

Members or other persons having control or management of business of insolvent partnership

3. Where an insolvent partnership is being wound up under Part VI of the Order as an unregistered company, any member or former member of the partnership or any other person who has or has had control or management of the partnership business—

(*a*) shall for the purposes of the provisions of the Order and the Companies (Northern Ireland) Order 1989 applied by this Order be deemed to be an officer and director of the company; and

(*b*) shall deliver up to the liquidator of the partnership for the purposes of the exercise of the liquidator's functions under the provisions referred to in paragraph (*a*) possession of any partnership property within the meaning of the Partnership Act 1890(**a**) which he holds for the purposes of the partnership.

Verification of petition for winding up insolvent partnership

4. Every affidavit verifying the petition for the winding up of an insolvent partnership under Part VI of the Order shall include the names in full and addresses of all members of the partnership so far as known to the petitioner.

Application of Insolvency Rules, Insolvency Regulations, Insolvency Fees Order and Insolvency Deposits Order to provisions of the Order applied in relation to insolvent partnerships

5.—(1) The Insolvency Rules (Northern Ireland) 1991(**b**), the Insolvency Regulations (Northern Ireland) 1991(**c**), the Insolvency (Fees)

(**a**) 1890 c. 39
(**b**) S.R. 1991 No. 364
(**c**) S.R. 1991 No. 388

Order (Northern Ireland) 1991(**a**) and the Insolvency (Deposits) Order (Northern Ireland) 1991(**b**) apply with the necessary modifications for the purpose of giving effect to the provisions of Parts I and II and V to X of the Order which are applied in relation to insolvent partnerships with the modifications specified in this Order.

(2) In the case of any conflict between any provision of the Insolvency Rules (Northern Ireland) 1991 and any provision of this Order, the latter provision shall prevail.

(3) Article 361(2) of the Order shall apply with the following modifications—

(*a*) where an order provides for any sum to be deposited on presentation of a winding-up or bankruptcy petition, that sum shall, in the case of an insolvent partnership, only be required to be deposited in respect of the petition for winding up the partnership; and

(*b*) production of any receipt for the sum deposited upon presentation of the petition for winding up the partnership shall suffice for the filing in the High Court of an insolvency petition against an insolvent member.

Application of provisions of the Companies (Northern Ireland) Order 1989 in relation to insolvent partnerships

6. Where an insolvent partnership is wound up as an unregistered company under Part VI of the Order the provisions of Articles 9 to 13, 18, 22(*b*) and 23 of, and Schedule 1 to, the Companies (Northern Ireland) Order 1989 apply in relation to the partnership as if any member of the partnership were a director of a company, and the partnership were a company which may be wound up under Part VI of the Order.

PART II

WINDING UP OF INSOLVENT PARTNERSHIP ONLY

Application of Part VI of the Order with modifications

7. The provisions of Part VI of the Order specified in Schedule 1 shall apply in relation to the winding up of insolvent partnerships as unregistered companies with the modifications specified in that Schedule where no insolvency petition is presented by the petitioner against an insolvent member.

(**a**) S.R. 1991 No. 385
(**b**) S.R. 1991 No. 384

PART III

WINDING UP OF INSOLVENT PARTNERSHIP INVOLVING INSOLVENCY PETITIONS AGAINST TWO OR MORE INSOLVENT MEMBERS

Application of provisions of the Order and the 1986 Companies Order with modifications

8.—(1) Articles 184 and 185 of the Order shall apply in relation to the winding up of insolvent partnerships as unregistered companies where an insolvency petition is presented by the petitioner against two or more insolvent members, with the following modifications—

(*a*) in Article 184, before the words "any association" there shall be inserted the words "any insolvent partnership,";

(*b*) for Article 185(1) there shall be substituted the following—

"(1) Subject to the provisions of this Part, any insolvent partnership which has a principal place of business in Northern Ireland may be wound up as an unregistered company under this Order and all the provisions of this Order and the Companies Order about winding up apply to the winding up of such a partnership as an unregistered company with the exceptions and additions mentioned in paragraphs (2) to (4) and in Part I of Schedule 2 to the Insolvent Partnerships Order (Northern Ireland) 1991.";

(*c*) after Article 185(3) there shall be added the following paragraph—

"(3A) The High Court only has jurisdiction to wind up an insolvent partnership if the partnership has carried on business in Northern Ireland at any time in the period of 3 years ending with the day on which the petition for winding it up was presented."; and

(*d*) for Article 185(4) there shall be substituted the following—

"(4) The circumstances in which an insolvent partnership may be wound up are that the partnership is unable to pay its debts.".

(2) All the provisions of the Order and the Companies (Northern Ireland) Order 1986(**a**) about winding up of companies by the High Court shall apply in relation to the winding up of a corporate member where the insolvent partnership is wound up as an unregistered company under paragraph (1), with the modifications specified in Part II of Schedule 2 and all the provisions of the Order about bankruptcy of individuals shall apply in relation to the bankruptcy of an individual member, with the modifications specified in Part III of Schedule 2.

Priority of expenses of insolvency proceedings where insolvency orders are made in relation to an insolvent partnership

9.—(1) The provisions of paragraphs (2) to (5) shall apply as regards priority of expenses of insolvency proceedings, where insolvency orders are made in relation to an insolvent partnership, incurred up to and including the date of the appointment of a person to act as liquidator of the partnership and

(**a**) S.I. 1986/1032 (N.I. 6)

to act as the responsible insolvency practitioner in relation to any insolvent member against whom an insolvency order has been made.

(2) The joint estate of an insolvent partnership shall be applicable in the first instance in payment of the joint expenses of the insolvency proceedings in winding up the partnership, and the separate estate of each insolvent member shall be applicable in the first instance in payment of the separate expenses of the insolvency proceedings relating to that member.

(3) Where the joint estate of the partnership is insufficient for the payment in full of the joint expenses of the insolvency proceedings in winding up the partnership incurred up to and including the date mentioned in paragraph (1), the unpaid balance shall be apportioned equally between the separate estates of the insolvent members and form part of the expenses to be paid out of those estates.

(4) Where any separate estate of an insolvent member is insufficient for the payment in full of the expenses of the insolvency proceedings so incurred to be paid out of that estate, the unpaid balance shall form part of the expenses to be paid out of the joint estate of the partnership.

(5) Where after the transfer of any unpaid balance in accordance with the preceding paragraphs any estate is insufficient for the payment in full of the expenses to be paid out of that estate, the balance then remaining unpaid shall be apportioned equally between the other estates, and if after such an apportionment one or more estates are insufficient for the payment in full of the expenses to be paid out of those estates, the total of the unpaid balances of the expenses to be paid out of those estates shall continue to be apportioned equally between the other estates until provision is made for the payment in full of the expenses or there is no estate available for the payment of the balance finally remaining unpaid, in which case it abates in equal proportions between the estates which are then insufficient.

(6) The provisions of paragraphs (2), (7) and (8) shall apply as regards priority of expenses of insolvency proceedings, where insolvency orders are made in relation to an insolvent partnership, incurred after the date of the appointment of a person to act as liquidator of the partnership and to act as the responsible insolvency practitioner in relation to any insolvent member against whom an insolvency order has been made.

(7) Where the joint estate of the partnership is insufficient for the payment in full of the joint expenses of the insolvency proceedings in winding up the partnership incurred after the date mentioned in paragraph (6), the unpaid balance shall be apportioned between the separate estates of the insolvent members and form part of the expenses to be paid out of those estates in such proportions as the liquidation committee established for the partnership and any corporate member sanctions or the High Court, on application by the liquidator of the partnership or any person interested, orders.

(8) With the sanction of the liquidation committee established for the partnership and any corporate member, or with the leave of the High Court obtained on application, the responsible insolvency practitioner may—

(*a*) pay out of the joint estate of the partnership as part of the expenses to be paid out of that estate any expenses so incurred for any separate estate of an insolvent member; or